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## Better Than Bullets: Ethiopia is Committing War Crimes by Starving Civilian Populations in the Ethiopian Civil War

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# **BETTER THAN BULLETS: ETHIOPIA IS COMMITTING WAR CRIMES BY STARVING CIVILIAN POPULATIONS IN THE ETHIOPIAN CIVIL WAR**

JORDAN LUBER\*

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## I. INTRODUCTION

Abiy Ahmed is the prime minister of Ethiopia. He has been starving seven million people of a lone ethnic group in Ethiopia for over a year.<sup>1</sup> He is a Nobel Peace Prize laureate<sup>2</sup> and a war criminal.<sup>3</sup>

He won a Nobel Peace Prize for allying with a dictator<sup>4</sup> who

1. See Scott Neuman, *9 Things to Know About the Unfolding Crisis in Ethiopia's Tigray Region*, NPR (Mar. 5, 2021), <https://www.npr.org/2021/03/05/973624991/9-things-to-know-about-the-unfolding-crisis-in-ethiopia-tigray-region> (providing that Ethiopia has an estimated seven million ethnic Tigrayans); Cara Anna, *'I just cry': Dying of hunger in Ethiopia's blockaded Tigray*, AP NEWS (Sept. 20, 2021), <https://apnews.com/article/africa-united-nations-only-on-ap-famine-kenya-0598a26af21928d11d5734b7b826e988> (reporting on the ongoing blockade and resulting food crisis in Tigray).

2. *The Nobel Peace Prize 2019*, THE NOBEL PRIZE, <https://www.nobelprize.org/prizes/peace/2019/summary> (last visited Apr. 22, 2022) [hereinafter *The Nobel Peace Prize*] (praising Abiy and Eritrean dictator and slave-master Isaias Afwerki for ending the stalemate in their frozen border war and establishing close relations).

3. A Nobel Peace Prize Winner being a war criminal is not a paradox. See Nick Cumming-Bruce, *Nobel Peace Laureate Could Face Prosecution Over Myanmar Military's Actions*, N.Y. TIMES (Sept. 17, 2019), <https://www.nytimes.com/2019/09/17/world/asia/myanmar-leader-war-crimes.html> (explaining how Daw Aung San Suu Kyi, a former international posterchild for human rights, is more than likely responsible for the genocide against the Rohingya which her government committed); see also Adam Taylor, *Peter Handke Won the Nobel for His 'Great Artistry.' Critics Say He's an Apologist for Genocide*, WASH. POST (Oct. 10, 2019), <https://www.washingtonpost.com/world/2019/10/10/peter-handke-won-nobel-his-great-artistry-critics-say-hes-an-apologist-genocide> (detailing how the winner of the Nobel Prize for literature is an apologist for Milosevic, supporting the genocidaire and even delivering his eulogy).

4. *The Nobel Peace Prize*, *supra* note 2 (providing details about the winner);

oversees slavery and locks dissidents in shipping containers in the desert.<sup>5</sup> He took power promising an unprecedented age of progress, then a year later, changed his mind and began to massacre protestors.<sup>6</sup> He launched a civil war with a barrage from armed drones.<sup>7</sup> He manufactured a famine by destroying food supplies, ruining the harvest, and then preventing all food deliveries and aid with a military blockade.<sup>8</sup> When the international community began

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*Eritrea, Africa's Gulag State, Is on the March*, THE ECONOMIST (May 22, 2021), <https://www.economist.com/leaders/2021/05/20/eritrea-africas-gulag-state-is-on-the-march> (concluding the Nobel-winning alliance emboldened Abiy to launch the Tigray War because Afwerki had guaranteed military support).

5. *Eritrea, Africa's Gulag State, Is on the March*, *supra* note 4 (pointing out how the Nobel laureate “is now knee-deep in blood alongside Eritrea’s president”).

6. Jason Burke, ‘*These Changes Are Unprecedented*’: *How Abiy Is Upending Ethiopian Politics*, GUARDIAN (July 9, 2018), <https://www.theguardian.com/world/2018/jul/08/abiy-ahmed-upending-ethiopian-politics> (reporting “a rally organized to showcase popular support for the reforms in Addis Ababa’s vast Meskel Square, where many among the tens of thousands of supports wore clothes displaying the new prime minister’s image and carried signs saying ‘one love, one Ethiopia’”); Agence France-Presse, *166 Die During Protests after Shooting of Ethiopian Singer*, GUARDIAN (July 4, 2020), <https://www.theguardian.com/world/2020/jul/04/166-dead-following-protests-at-shooting-of-ethiopian-pop-star> (“[o]fficials have attributed the deaths to a combination of lethal force by security officers and inter-ethnic violence”).

7. Declan Walsh, ‘*I Didn’t Expect to Make It Back Alive*’: *An Interview with Tigray’s Leader*, N.Y. TIMES (July 29, 2021), <https://www.nytimes.com/2021/07/03/world/africa/tigray-leader-interview-ethiopia.html> (“drones had changed the course of the war”).

8. *Infra* Part II.B.1–2; WORLD PEACE FOUND., STARVING TIGRAY: HOW ARMED CONFLICT AND MASS ATROCITIES HAVE DESTROYED AN ETHIOPIAN REGION’S ECONOMY AND FOOD SYSTEM AND ARE THREATENING FAMINE (2021), <https://sites.tufts.edu/wpf/files/2021/04/Starving-Tigray-report-final.pdf> [hereinafter STARVING TIGRAY] (finding “the sole reason for the scale of the humanitarian emergency is that the coalition of Ethiopian Federal forces, Amhara regional forces, and Eritrean troops are committing starvation crimes on large scale;” reporting, for example, Ethiopia’s army is looting houses, raiding agricultural stores, and cutting off routes for aid delivery); Akshaya Kumar, *Millions at Risk as Ethiopia Expels UN Officials*, HUM. RTS. WATCH (Oct. 1, 2021), <https://www.hrw.org/news/2021/10/01/millions-risk-ethiopia-expels-un-officials#> (confirming “For nearly a year, warring parties in Tigray have pillaged towns and villages, destroyed crops and critical infrastructure, and massacred civilians, among other serious abuses. Humanitarian agencies have been hamstrung by the Ethiopian government’s de facto blockade of Tigray in recent months”).

to care about the famine, after months of silence,<sup>9</sup> he rallied his supporters in the capital, who held placards of genocidaires Putin and Xi along with his.<sup>10</sup>

Starving an entire civilian population is an effective tactic of war.<sup>11</sup> At some point, the enemy military operating in the blockaded geographic area has to surrender.<sup>12</sup> In the past, starving whole populations was seen as a reasonable way to compel a hostile population to submit to conquest and even to punish them.<sup>13</sup> For this reason, armies around the world since the titanic battles of classical warfare have intentionally starved populations.<sup>14</sup> However, Geneva

9. Cf. Laetitia Bader, *G7 Leaders Can't Ignore Ethiopia's Looming Famine*, HUM. RTS. WATCH (June 11, 2021), <https://www.hrw.org/news/2021/06/11/g7-leaders-cant-ignore-ethiopias-looming-famine#> (condemning the G7 for not giving the hunger any attention, and noting the United Nations only talked about a famine after around eight months).

10. *Ethiopia's Tigray Conflict: Tens of Thousands Attend Anti-US Rally*, BBC (May 30, 2021), <https://www.bbc.com/news/world-africa-57298019> (“[t]he banners praising Mr Putin and Mr Xi are meant to send a message to the United States that Ethiopia has other powerful friends, the BBC’s Kalkidan Yibeltal in Addis Ababa reports”).

11. Lionel M. Beehner et al., *The Strategic Logic of Sieges in Counterinsurgencies*, 47 PARAMETERS 77, 77 (2017), <https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=2933&context=parameters> (finding that besieging enemy forces allows the attacker to conserve strength and minimize casualties yet win by starving the population into capitulation).

12. See *General Orders No. 100: The Lieber Code*, THE AVALON PROJECT, [https://avalon.law.yale.edu/19th\\_century/lieber.asp#art17](https://avalon.law.yale.edu/19th_century/lieber.asp#art17) (last visited Apr. 30, 2022) (providing Articles 17 and 18, which state to Union Army troops “War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy,” and “When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender”).

13. See HOWARD S. LEVIE, *THE LAW OF LAND WARFARE* 20 (1956) (illustrating at paragraph forty-four how the U.S. military code permitted starving civilians even in the 1950s); see also George Alfred Mudge, *Starvation as a Means of Warfare*, 4 INT'L LAW. 228, 230 (1970) (recounting the sociological view of starvation: for much of human history and in some regions today, it was not such an outrage because people spent their whole lives near starvation, so the tactic was less shocking than it should be and is becoming).

14. E.g., Thucydides, *The Peloponnesian War* Chapter X (ca. 4th century BCE) (telling of various sieges and efforts by armies to starve cities into surrender during the generation of the Peloponnesian War).

Convention IV and Protocol Additional II changed things.<sup>15</sup> Now, starving a civilian population during wartime constitutes a war crime under international law.<sup>16</sup>

In November 2020, the Ethiopian government launched a civil war against the Ethiopian state of Tigray.<sup>17</sup> Constant warfare since then has killed at the minimum tens of thousands of people, and the conflagration is increasingly threatening the bare survival of the Ethiopian nation and state.<sup>18</sup> By destroying supplies indispensable for the civilian population's survival, ruining the harvest, and blockading the region—consequently causing a famine—Ethiopia is starving the Tigrayan population. Doing this is a violation of Protocol Additional II to the Fourth Geneva Convention.<sup>19</sup> At the same time, the war crime of starvation of civilians is newer than other war crimes and is largely untested in international law practice.<sup>20</sup>

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15. *Accord* Beth Van Schaack, *Siege Warfare and the Starvation of Civilians as a Weapon of War and War Crime*, JUST SEC. (Feb. 4, 2016), <https://www.justsecurity.org/29157/siege-warfare-starvation-civilians-war-crime> (quoting the Secretary General (“Let me be clear: The use of starvation as a weapon of war is a war crime”) and Secretary of State John Kerry condemning Bashaar (“[P]eople are dying; children are suffering not as a result of an accident of war, but as the consequence of an intentional tactic—surrender or starve. And that tactic is directly contrary to the law of war”)).

16. *Starvation ‘as a Weapon’ Is a War Crime, UN Chief Warns Parties to Conflict in Syria*, U.N. NEWS (Jan. 14, 2016), <https://news.un.org/en/story/2016/01/519982-starvation-weapon-war-crime-un-chief-warns-parties-conflict-syria> (starvation is among the “‘atrocious acts’ prohibited under international humanitarian law”).

17. Cara Anna, *Ethiopia Warns Civilians of ‘No Mercy’ in Tigray Offensive*, AP (Nov. 22, 2021), <https://apnews.com/article/africa-ethiopia-international-law-kenya-95ab65c5942bff98e68826f93d74920f> (describing the attack and the State's messaging to civilians).

18. Alex De Waal, *Five Scenarios of State Collapse in Ethiopia*, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (July 26, 2021), <https://sites.tufts.edu/reinventingpeace/2021/07/26/five-scenarios-of-state-collapse-in-ethiopia> (“State collapse in Ethiopia cannot be ruled out. It could take one of several different forms. It may happen soon.”).

19. *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 14, June 8, 1977, U.N.T.S. 15713 [hereinafter Protocol II].

20. Tom Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, JUST SEC. (Nov. 13, 2020), <https://www.justsecurity.org/73350/a-landmark-report-on-starvation-as-a-method-of-warfare> (noting the ICC has not used the Rome Statute's prohibition of starving civilians during war yet, and that

Starvation is haunting the Tigrayan population. Abiy and his axis could do this to someone else next. The noble principle of banning starvation of civilians is increasingly ignored in brutal wars and disturbances around the world—like in Myanmar/Burma, Syria, South Sudan, and Venezuela.<sup>21</sup> The international community must take this opportunity to stand against this crime, enforce the law, reverse the rising tide of impunity across the world, and create a better future.<sup>22</sup>

Part II of this Comment discusses the background of starvation as a war crime and how international bodies—such as the International Criminal Court (ICC), Security Council, General Assembly, and U.N.-appointed expert panels—have analyzed it in recent contexts, the facts of the Tigrayan war, and the Ethiopian acts to starve the

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before 2020 the United Nations had not produced a report focused solely on this crime).

21. See, e.g., *Myanmar: Shameful Anniversary Highlights Lack of Accountability for Atrocities Against Rohingya*, AMNESTY INT'L (Aug. 23, 2018), <https://www.amnesty.org/en/latest/news/2018/08/myanmar-shameful-anniversary-highlights-lack-of-accountability-for-atrocities-against-rohingya> (decrying the lack of action towards Myanmar authorities accused of grave human rights violations—including using forced starvation—against the Rohingya minority population); Ali Haj Suleiman & Kareem Chehayeb, *Syrians Seek Justice for War Atrocities 11 Years After Uprising*, AL JAZEERA (Mar. 15, 2022), <https://www.aljazeera.com/news/2022/3/15/syrians-seek-justice-for-war-atrocities-11-years-after-uprising> (reporting local measures to seek accountability for Syrian authorities accused of “deliberate starvation” during the civil war); UNICEF – S. SUDAN, COST OF INACTION 1 (2022), [https://www.unicef.org/southsudan/media/9706/file/20220523\\_UNICEF%20SS%20Cost%20of%20Inaction%20.pdf](https://www.unicef.org/southsudan/media/9706/file/20220523_UNICEF%20SS%20Cost%20of%20Inaction%20.pdf) (raising concern for starvation in South Sudan, particularly for children, in the face of violence); Rhoda Howard-Hassmann, *Famine in Venezuela*, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (Aug. 21, 2018), <https://sites.tufts.edu/reinventingpeace/2018/08/21/famine-in-venezuela> (explaining Venezuela’s government-induced famine and the ineffective global responses).

22. See generally Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT'L L. 7 (2005) (describing the role of the international community in prevention and mitigating of crimes); Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence), Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, A/HRC/27/56, paras. 31, 57, 103 (Aug. 27, 2014) [hereinafter Report of the Special Rapporteur] (affirming impunity is counterproductive to non-repetition of grave violations of human rights and international law).

population. Part III analyzes Protocol Additional II and how Ethiopia is violating its provisions in its ongoing Civil War.

Part IV recommends how the international community should respond: 1) the United Nations should move toward establishing an ad hoc tribunal with jurisdiction to try individuals for international crimes, 2) the United Nations should seize itself of the situation and deploy an armed multinational military force to stop the atrocities and establish the road to a just solution, and 3) states should file a lawsuit against Ethiopia before the International Court of Justice (ICJ) under Article 9 of the Genocide Convention of 1948.<sup>23</sup> Part V summarizes how Ethiopia is committing the war crime of starvation, and why for the sake of law and humanity now is the time for the international community to use its effective but neglected toolkit to address state crimes against millions.

## II. BACKGROUND

### A. INTERNATIONAL LAW ON STARVING CIVILIAN POPULATIONS DURING CIVIL WARS

After substantial developments, international law now categorically and strongly prohibits the starvation of civilians during war. This section discusses the history of international law on starvation, from widespread use with no prohibitions to having a customary international law prohibition today. This section then analyzes the elements of Article 14 of Protocol Additional II. Finally, this section explores case studies of starvation during war under the current law.

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23. See Convention on the Prevention and Punishment of the Crime of Genocide art. 9, Dec. 9 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]; see also *The Gambia v. Myanmar*, Application instituting proceedings and Request for the indication of provisional measures, International Court of Justice (Nov. 11, 2019) [hereinafter *The Gambia v. Myanmar Application*] (filing an application with the ICJ against Myanmar for committing genocide against the Rohingya people).



*i. History of starving civilians as a war crime under customary international law*

Almost every horror imaginable was at one time permissible under international law and commonplace in global conduct.<sup>24</sup> Slavery, aggression, dictatorship, and discrimination used to be legal.<sup>25</sup> For thousands of years these crimes were the norm, and until recently, international law did not prohibit or prosecute these atrocities.<sup>26</sup> In the twentieth century, international treaties established prohibitions of certain heinous crimes.<sup>27</sup> Similarly, customary international law<sup>28</sup> only recently prohibited starving a civilian population during war.<sup>29</sup> Now tools are available to prevent and punish such atrocities.

Throughout the last decades, customary international law's categorical prohibition on the starvation of civilians during war has developed to bind all states. After World War II, the international community created the four Geneva Conventions on the rules of war in response to the increasing harm civilians and non-combatants suffered during modern warfare.<sup>30</sup> The Geneva Conventions are

24. See, e.g., *France v. Turkey*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 46 (Sept. 7, 1927), [http://www.worldcourts.com/pcij/eng/decisions/1927.09.07\\_lotus.htm](http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm) (deciding all acts not explicitly banned under international law are legal).

25. E.g. Jens David Ohlin, *In Praise of Jus Cogens' Conceptual, Incoherence*, 64 MCGILL L.J. 701, 709–10 (2018) (discussing the 1825 *Antelope* case, which ruled the slave trade was not internationally banned—*despite the natural law abhorrence of slavery and some states, like Britain and the United States banning it by treaty*—because some states still practiced it).

26. E.g. Sanji Mmasenono Monageng, *The Crime of Aggression: Following the Needs of a Changing World?*, 58 HARV. INT'L L.J. 79 (2017) (explaining aggression became a crime only with the Allied victory in WWII, the Nuremberg Trials, and the U.N. Charter).

27. E.g. U.N. Charter art. 2 ¶ 4 (prohibiting the use of force by states against other states).

28. *Customary Law*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law> (last visited Nov. 19, 2021) (defining customary international law as “a general practice accepted as law,” i.e. it requires practice and opinio juris).

29. Bridget Conley & Alex De Waal, *The Purposes of Starvation: Historical and Contemporary Uses*, 17 J. INT'L CRIM. JUST. 699, 704–21 (Feb. 3, 2020) (detailing the historical uses of starvation tactics for war, genocide, and conquest).

30. Phillip Spoerri, *The Geneva Conventions of 1949: origins and current significance*, INT'L COMM. OF THE RED CROSS (Aug. 12, 2009), <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions->

universally ratified and binding, yet they are also reflective of customary international law as the rules of the Geneva Conventions bind all states regardless of reservations or non-ratifications.<sup>31</sup>

The 1949 Fourth Geneva Convention is about the treatment of civilian populations during war.<sup>32</sup> There are two provisions about starving civilians in war, but the provisions are limited.<sup>33</sup> For example, under article 23, it is banned to block consignments of food only for children under fifteen and expectant mothers.<sup>34</sup> Similarly, food and medical supplies for populations are mandatory only “[t]o the fullest extent possible” by an “Occupying Power.”<sup>35</sup> Geneva Convention IV does not apply to non-international armed conflicts (NIACs) (e.g., civil wars), and its prohibition on starving civilian populations were neither ironclad nor clear.<sup>36</sup>

Then Protocol Additional to the Geneva Conventions II (Protocol Additional II) in 1977 addressed the limits of Geneva Convention IV’s protections of civilians.<sup>37</sup> The international community clarified, expanded, and affirmed the protection of civilian populations from starvation during war.<sup>38</sup> Protocol Additional II’s Article 14 makes clear that starving civilian populations during wartime is a war crime.<sup>39</sup> Protocol Additional II applies to NIACs.<sup>40</sup> Nations have

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statement-120809.htm (affirming the Conventions were a reaction to the tragedy of World War II).

31. *The Practical Guide to Humanitarian Law*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/customary-international-law> (last visited Apr. 30, 2022) (“[t]oday, the four 1949 Geneva Conventions—as well as most provisions of the 1977 Additional Protocols—have gained the status of customary international law. This means that even States that have not ratified them must abide by their rules.”).

32. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

33. *Id.* arts. 23, 55.

34. *Id.*

35. *Id.* art. 55.

36. Tom Dannenbaum, *Encirclement, Deprivation, and Humanity: Revising the San Remo Manual Provisions on Blockade*, 97 INT’L L. STUD. 307, 319–20 (2021) (noting the severe limits of Geneva IV’s restrictions on starving civilians, and finding “even those limited obligations are subject to exception”).

37. *Id.* at 322–25 (describing changes added with Protocol II).

38. *Id.* (describing changes added with Protocol II).

39. *Commentary of 1987: Protection of Objects Indispensable to the Survival of the Civilian Population*, INT’L COMM. OF THE RED CROSS, <https://ihl->

broadly endorsed this rule.<sup>41</sup>

Other developments in the late twentieth century showed the prohibition of starving civilians during war was becoming a part of customary international law. First, militaries prohibited this tactic, even though prohibiting its use forfeited an effective war tactic.<sup>42</sup> Second, before the rise in impunity and atrocity of the last decade, this tactic became increasingly uncommon in war.<sup>43</sup> Third, there is strong condemnation when armies starve civilian populations.<sup>44</sup> States' conduct satisfies both practice and *opinio juris*, so the norm exists.<sup>45</sup>

At the end of the century, the Rome Statute of the International Criminal Court, which States created at the Rome Conference in 1998, adopted these principles.<sup>46</sup> Establishing the International

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databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=22A3363FA0482A57C12563CD0043AB5D (last visited Apr. 25, 2022) (commenting that the first sentence of Article 14 establishes “[t]he prohibition on using starvation against civilians, and the specific protection given to objects indispensable to the survival of the population, are new rules supplementing and developing existing law,” and “[t]he prohibition on using starvation against civilians is a rule from which no derogation may be made.”).

40. Protocol II, *supra* note 19, art. 1 (stating the Protocol applies to conflicts which are not IACs but involve conflict within a state between organized armed groups with a responsible command, control over territory, and ability to conduct military operations).

41. See generally *Practice Relating to Rule 53. Starvation as a Method of Warfare*, INT'L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53) (last visited Apr. 25, 2022) (generally describing State practice related to Rule 53).

42. *Id.* (generally describing State practice related to Rule 53).

43. See Alex de Waal, *Armed Conflict and the Challenge of Hunger: Is an End in Sight?*, GLOB. HUNGER INDEX (Oct. 2015), <https://www.globalhungerindex.org/issues-in-focus/2015.html> (analyzing a decrease in starvation and famine from political crises and armed conflict since the end of the Cold War).

44. E.g., *US Troops 'Starve Iraqi Citizens'*, BBC (Oct. 15, 2005), [http://news.bbc.co.uk/2/hi/middle\\_east/4344136.stm](http://news.bbc.co.uk/2/hi/middle_east/4344136.stm) (demonstrating the outcry provoked by a military causing starvation).

45. See Federica D'Alessandra & Matthew Gillett, *The War Crime of Starvation in Non-International Armed Conflict*, 17 J. INT'L CRIM. JUST. 815, 820–21 (2019) (explaining the prohibition is customary international law because state practice shows this is outlawed, and states observe this practice because they believe it is the law).

46. Rome Statute of the International Criminal Court art. 8.xxv, July 17, 1998,

Criminal Court (ICC), the Rome Statute represented a landmark agreement among most nations of the world about certain war crimes, so the inclusion of this prohibition in the Rome Statute is legally meaningful.<sup>47</sup>

Likewise, insufficient food for those deprived of liberty can constitute the international crime of cruel and unusual punishment.<sup>48</sup> The prohibition of torture is a *jus cogens* norm in international law, which means that it is automatically and unconditionally binding on all actors.<sup>49</sup> Thus, since starvation is a form of torture, the prohibition against starvation as torture must also constitute a *jus cogens* norm in international law.

The trend toward the prohibition on starvation becoming customary international law continues today. In 2019, the member states of the ICC amended the Rome Statute to apply the prohibition of starvation to NIACs.<sup>50</sup> Currently, an international group of experts is considering whether to update the law of sea warfare to prohibit

2187 U.N.T.S. 3 (making “[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies” a war crime) [hereinafter Rome Statute].

47. ALEX J. BELLAMY, *RESPONSIBILITY TO PROTECT* 118–23 (2009).

48. See Sarah Joseph et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, 355 *WORLD. ORG. AGAINST TORTURE* (2014), [https://www.omct.org/files/2014/11/22956/v4\\_web\\_onusien\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf) (noting case of “*Deidrick v. Jamaica* (Comm. No. 619/1995), in which the author of the Communication was locked in his cell for twenty-three hours a day, without a mattress, bedding, adequate sanitation, natural light, recreational facilities, decent food or adequate medical care, and this amounted to cruel and inhuman treatment”); see also *Torture in International Law: A Guide to Jurisprudence*, *CTR. FOR J. AND INT’L L.*, 115–16 (2008), <https://www.corteidh.or.cr/tablas/26562.pdf> (discussing how the Inter-American Court of Human Rights has found insufficient food for prisoners can be a violation of the right to humane treatment under Article 5 of the American Convention).

49. Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under The U.N. Charter*, 3 *SANTA CLARA J. INT’L L.* 72, 73 (2005) (explaining *jus cogens* binds all states automatically).

50. World Peace Found., *Starvation: Vital Amendment to the Rome Statute Unanimously Passes*, *TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE* (Dec. 6, 2019), <https://sites.tufts.edu/reinventingpeace/2019/12/06/starvation-vital-amendment-to-the-rome-statute-unanimously-passes> (reporting the change passed unanimously).

naval blockades as part of the prohibition of starvation of civilians.<sup>51</sup> Since 1949, the international community has continuously strengthened the customary international law prohibition on starving civilians during war.<sup>52</sup> The Security Council recently reaffirmed that starving civilians during war is prohibited.<sup>53</sup>

All these sources reinforce the treaty obligations of state parties to Geneva Convention IV and Protocol Additional II. The war crime of starvation, especially in NIACs, is clear, binding, and well-established in customary international law.<sup>54</sup> However, it is also relatively new, and no international-level court has ever prosecuted this crime.<sup>55</sup> Given the challenge of transforming rule into practice in international law, these additional binding authorities reinforce the obligation of the international community to observe and enforce Protocol Additional II's Article 14.

*ii. Elements of Article 14 of Protocol Additional II*

If a state is not a party to the ICC, but it is a party to Protocol Additional II, Article 14 effectively prohibits the state from starving civilians.<sup>56</sup> Ethiopia has ratified Protocol Additional II and, therefore, must comply with Article 14.<sup>57</sup> Article 14 applies if: (1) during an

51. Dannenbaum, *Encirclement, Deprivation, and Humanity*, *supra* note 36, at 309–11 (“[u]nder the auspices of the Institute for International Humanitarian Law, an international group of experts has started to deliberate on an update to the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*”).

52. *See Practice Relating to Rule 53. Starvation as a Method of Warfare*, *supra* note 42 (demonstrating various states’ military manuals prohibiting this).

53. S.C. Res. 2417, 2 (May 24, 2018) (“*Underlining* that using starvation of civilians as a method of warfare may constitute a war crime”).

54. WORLD PEACE FOUND., THE CRIME OF STARVATION AND METHODS OF PROSECUTION AND ACCOUNTABILITY I, <https://reliefweb.int/sites/reliefweb.int/files/resources/Legal%20Paper%20Starvation.pdf> (last visited Apr. 30, 2022) [hereinafter THE CRIME OF STARVATION].

55. *Id.* at 1–2, (pointing out “the absence of prosecutions at the international level” for the war crime of starvation of civilian and identifying paths to prosecuting the crime).

56. *See* D’Alessandra & Gillett, *supra* note 45, at 819–20 (noting clear prohibitions in international law against starvation of civilians).

57. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II), 8 June 1977, IHL DATABASES: TREATIES, STATE PARTIES, AND COMMENT., <https://ihl->

NIAC,<sup>58</sup> (2) a civilian population<sup>59</sup> (3) is starving (4) because an armed force (5) through act or omission causes starvation or destroys objects indispensable to survival for the civilian population. Notably, there is no requirement for specific intent to starve the population.<sup>60</sup>

The language of Article 14 and the ICC's provision on starving civilian populations are similar, but there are significant differences.<sup>61</sup> Article 14's element-thresholds are lower. To constitute the war crime of starvation under the ICC, there are four requirements: (1) the events must have taken place during an IAC, (2) the acts or omissions must have attacked or destroyed objects indispensable to the civilian population's nourishment and survival, (3) the acts or omissions must have been intended for this specific purpose, and (4) one or more people must have died as a result.<sup>62</sup> Article 14 is broader in scope than the ICC in defining starvation as a war crime.<sup>63</sup> Because of the broader language, Article 14 may be applied in a wider range of situations. While the ICC does not have a death requirement for the crime of starving civilians, there is an intent requirement.<sup>64</sup> Meanwhile Article 14 does not have a death

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databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\_viewStates=XPages\_NORMStat esParties&xp\_treatySelected=475 (last visited June 27, 2022).

58. See *Internal Conflicts or Other Situations of Violence – What Is the Difference for Victims?*, INT'L COMM. OF THE RED CROSS (Dec. 12, 2012), <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> (defining NIAC).

59. *The Practical Guide to Humanitarian Law—Civilians*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/civilians> (defining civilians and stating they are protected during war).

60. See Protocol II, *supra* note 19, art. 14.

61. *Id.*; Rome Statute, *supra* note 46, art. 8.

62. Letter from the United States to the Preparatory Committee on the Establishment of an International Criminal Court on the Elements and Offenses for the International Criminal Court (Mar. 27, 1998), <https://www.legal-tools.org/doc/ccd73c/pdf> (last visited Apr. 25, 2022) [hereinafter *Elements and Offenses*] (stating, for the second and third elements respectively, “that the accused engaged in an act or omission calculated to attack, destroy, remove, or render useless objects indispensable to the nourishment and survival of the civilian population” and “that the accused’s act or omission was intended for the specific purpose of denying nourishment necessary for the survival of the civilian population of the adverse Party”).

63. Compare Protocol II, *supra* note 19, art. 14 with *Elements and Offenses*, *supra* note 62.

64. Tom Dannenbaum, *Speech on International Criminal Law and Starvation*

requirement, and specific intent is not necessary to satisfy the elements under Article 14.<sup>65</sup> There is a debate about exactly what level of intent is required.<sup>66</sup> Though the provision is unclear on this, by the interpretation of a lower standard of intent, intent is met if the conduct which starves civilian populations is conduct by armed forces during an NIAC.<sup>67</sup>

*iii. Persuasive findings of starving civilian populations during NIACs being a war crime: South Sudan, LRA, Serbia, Lebanon, Syria/Russia, Saudi Arabia*

The war crime of starving civilians during NIACs is relatively new and Protocol Additional II only established it in 1977.<sup>68</sup> Prohibitions on starving civilians during civil conflicts were not specifically enumerated within the Rome Statute until 2019.<sup>69</sup> In fact, no international court has heard a case on this issue yet. While

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at the World Peace Foundation, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (Sept. 4, 2018), <https://sites.tufts.edu/reinventingpeace/2018/09/04/tom-dannenbaum-on-international-criminal-law-and-starvation> (discussing the ICC's intent requirement); World Peace Found., *supra* note 50 (reporting the provision now applies to NIACs too). *See generally* Elements and Offenses, *supra* note 62 (breaking down the elements of starvation into four parts).

65. Protocol II, *supra* note 19, art. 14 (stating the text of Article 14, which noticeably includes neither a death requirement nor specific intent, but says starvation "as a method of combat" is prohibited); *see* Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20 (logicizing how Protocol Additional II's Article 14's intent requirement is minimal and basic, even if unelaborated, and met if the conduct causing the starvation happens during the NIAC, with or without the objective of starving the population).

66. *See* Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20 (concluding that even under the ICC the specific intent is probably met by knowledge of starvation from policies, not original intent to starve); *contra* Meagan DeSimone, *Broken, Beaten, and Starved: Attacking Water Resources as Objects Indispensable to the Survival of a Civilian Population in Yemen's Internal Armed Conflict*, 36 AM. U. INT'L L. REV. 337, 350, 353–55 (2021) (understanding Article 14 to have a specific intent requirement to starve as a method of war; but also adopting an essentially knowledge-crime level of intent).

67. Protocol II, *supra* note 19, art. 14.

68. *Id.*

69. Amendment to Article 8 of the Rome Statute of the International Criminal Court (Intentionally Using Starvation of Civilians), Dec. 6, 2019, C.N.394.2020.TREATIES-XVIII.10.g of 15 September 2020 (entered into force Oct. 14, 2021).

Article 14 did include starving civilians as an international crime in 1977, it is part of the Geneva Conventions, so it has never been prosecuted.<sup>70</sup> Therefore, persuasive non-judicial findings from non-governmental organizations and U.N. bodies are the best source to look to for application of this crime and its elements.

The South Sudanese Civil War is an example of how armed forces can commit the war crime of starvation of civilians by destroying objects indispensable to the survival of civilian populations. The Human Rights Council released a milestone report on starvation and war crimes in this war.<sup>71</sup> The report detailed how the South Sudan People's Liberation Army (SPLA) endangered subsistence farmers by destroying supplies like livestock, homes, and crops.<sup>72</sup> The report noted a widespread hunger crisis in South Sudan and says part of the cause of this hunger is the civil war.<sup>73</sup> And the U.N. Special Rapporteur on the right to food has said, “[i]f the famine comes from deliberate action of the State or other players using food as a weapon of war, it is an international crime.”<sup>74</sup>

Likewise, in cases about the Lord's Resistance Army (LRA) in Uganda and Central Africa, the ICC has shown how stealing civilian's indispensable supplies is a war crime. The ICC found that

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70. See *International Humanitarian Law Needs Strengthening, Says ICRC*, DEUTSCHE WELLE (Aug. 12, 2009), <https://www.dw.com/en/international-humanitarian-law-needs-strengthening-says-icrc/a-4558176> (interviewing the director of the ICRC, who explains governments must enforce the Geneva Conventions—which did not create judicial bodies—and this often does not happen).

71. See generally Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20 (discussing in depth the effects of starvation tactics within the South Sudan war).

72. Human Rights Council, *“There is Nothing Left for Us”*: *Starvation as a Method of Warfare in South Sudan*, Forty-fifth session, U/N. Doc. A/HRC/45/CRP.3, paras. 9, 54, 59–61, 65, 79, 109, 124 (Oct. 5, 2021) [hereinafter *There is Nothing Left for Us*] (describing in detail the effects of the conflict on the civilian population of South Sudan).

73. *Id.* para. 7.

74. *Id.* paras. 4–7 ((describing in detail the effects of the conflict on the civilian population of South Sudan); *Famine Can be a War Crime and Should be Prosecuted, Says Independent UN Rights Expert*, U.N. NEWS (Oct. 23, 2017), <https://news.un.org/en/story/2017/10/569112-famine-can-be-war-crime-and-should-be-prosecuted-says-independent-un-rights> (“an estimated 70 million people in 45 countries need emergency food aid”).



LRA commanders committed the war crime of pillaging when their forces stole food and other supplies from refugee camps.<sup>75</sup>

Destroying buildings of utmost economic importance can be a war crime, demonstrating Article 14's prohibition on destroying objects indispensable to civilians' survival. A domestic court in Croatia convicted Serbian officers for firing missiles, machine guns, and artillery at a town, killing 30 civilians and causing widespread damage.<sup>76</sup> Part of the conviction was on the basis of Article 14 of Protocol Additional II because the attacks destroyed buildings of the utmost economic significance like factories, residences, and schools.<sup>77</sup>

When an armed forces' conduct keeps farmers from planting or harvesting their crops, and then the ruined harvest leads to hunger, that conduct can be a war crime. In the 2006 Lebanon War, the heaviest fighting happened during the peak harvest time, and it caused significant hunger hardship for the civilian population due to the loss of crops.<sup>78</sup> Similarly, the SPLA ruined the harvest in multiple

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75. See generally Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Trial Judgment, ¶¶ 1385, 1458–61, 2874 (Feb. 4, 2021). While the Rome Statute refers to the conduct as “pillaging,” it is substantially the same behavior as stealing described under Article 14 of Protocol II and allows a comparable analysis to determine violations of the prohibited conduct. Compare Protocol II, *supra* note 19, art. 14 with Rome Statute, *supra* note 46, art. 8.

76. Prosecutor v. Perišić, District Court of Zadar, K. 74/96, Judgment of 24 April 1997, 2, 5, 9 (1997), [http://www.haguejusticeportal.net/Docs/NLP/Croatia/M.P\\_et\\_al.\\_verdict\\_24-4-1997.pdf](http://www.haguejusticeportal.net/Docs/NLP/Croatia/M.P_et_al._verdict_24-4-1997.pdf).

77. Croatia: Practice Relating to Rule 54. Attacks against Objects Indispensable to the Survival of the Civilian Population, INT'L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihlweb\\_por\\_1.nsf/docindexeng-print/v2\\_cou\\_hr\\_rule54\\_sectiona](https://ihl-databases.icrc.org/applic/ihl/ihlweb_por_1.nsf/docindexeng-print/v2_cou_hr_rule54_sectiona) (last visited Apr. 25, 2022) (“In the *Perišić and Others* case before a Croatian district court in 1997, after a trial *in absentia*, several persons were convicted of ordering the shelling of the city of Zadar and its surroundings, *inter alia*, on the basis of Article 14 of the 1977 Protocol II, as incorporated in Article 120(1) of Croatia's Criminal Code of 1993.”).

78. Human Rights Council, *Human Rights in Lebanon: Report of the Special Rapporteur on the Right to Food, Jean Ziegler, on His Mission to Lebanon*, Second Session, U.N. Doc. A/HRC/2/8, para. 20 (Sept. 29, 2006) [hereinafter *Human Rights in Lebanon*] (“The war took place at the peak of the fishing and fruit harvest season, affecting the people who earn their livelihood from these sectors both directly in terms of damage, but even more importantly, indirectly in terms of lost markets and revenues. Much farmland has been affected by bombing and will

ways. They timed attacks on villages during the harvest to deprive villages of the crops, displaced people who needed to remain in their villages to farm, and intimidated and killed farmers to keep them from planting or harvesting crops. This led to hunger among the farmers.<sup>79</sup> These two examples show how armies' conduct can cause rural civilians to starve, which violates Article 14. In Syria, Russia and the Baathists also burned swathes of crops before the harvest.<sup>80</sup>

The Syrian Genocide shows that besieging towns is a war crime. The Baathist-Russian forces' main weapon was besieging population settlements.<sup>81</sup> The "kneel-or-starve" campaign displaced millions and allowed the fascists to reconquer the country.<sup>82</sup> Using this tactic, the military surrounded the Syrian towns and prevented food from entering for years, starving the besieged population into submission.<sup>83</sup>

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continue to be affected by unexploded bombs that continue to make access to many fields impossible.”).

79. *There is Nothing Left for Us*, *supra* note 72, paras. 9, 55, 61, 75, 98 (noting effects of hostilities on food security).

80. Salar Salim & Sarah El Deeb, *Crop Fires, a Weapon of War, Ruin Iraqi, Syrian Harvests*, AP (May 30, 2019), <https://apnews.com/article/syria-middle-east-international-news-iraq-civil-wars-272413506b96453c9acac467c1840d42>

(reporting “a government military offensive against the country’s last rebel stronghold has also left thousands of acres of farms in ashes, in what activists and experts say is a calculated move to deny the locals livelihood and force them to leave the enclave, home to 3 million people.”); Mohammad Kanfash & Ali al-Jasem, *Syrians Are Watching Their Crops Burn. These Crimes of Starvation Must End*, *GUARDIAN* (July 11, 2019), <https://www.theguardian.com/global-development/2019/jul/11/syrians-are-watching-their-crops-burn-these-starvation-crimes-must-end> (“A briefing published last month by the Damaan Humanitarian Organization reveals in detail how the Syrian government, and to a lesser degree, other armed groups, intentionally and repeatedly deprived civilians of food, deploying hunger as a core weapon in their arsenal.”).

81. Kanfash & al-Jasem, *supra* note 81 (noting intentional and repeated tactics of depriving civilians of food).

82. *Id.*

83. *Syria: ‘Surrender or Starve’ Strategy Displacing Thousands Amounts to Crimes Against Humanity*, AMNESTY INT’L (Nov. 13, 2017), <https://www.amnesty.org/en/latest/press-release/2017/11/syria-surrender-or-starve-strategy-displacing-thousands-amounts-to-crimes-against-humanity> [hereinafter *Syria: ‘Surrender or Starve’*] (“[w]hile the Syrian government’s stated aim has been to vanquish opposition fighters, its cynical use of ‘surrender or starve’ tactics has involved a devastating combination of sieges and bombardments. These have been part of a systematic, as well as widespread, attack on civilians that amounts to

Amnesty International said the campaign was a crime against humanity and a war crime, because the starvation targeted civilians.<sup>84</sup> Speaking on Syria, the Secretary-General specifically said using starvation as a weapon was a war crime, and besieging towns to achieve surrender by forcing the population to starve is using hunger as a weapon against civilians.<sup>85</sup> An independent commission, which the Security Council authorized, found “the consequences of the deprivation and starvation policies of sieges may amount to war crimes.”<sup>86</sup>

Similarly, blockading a whole territory can be a war crime of starving the civilian population. Saudi Arabia has blockaded Yemen for years during its war against the Houthi rebels.<sup>87</sup> Hunger has killed at least tens of thousands of civilians as a result.<sup>88</sup> For these reasons,

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crimes against humanity”); *see also* Keir Simmons et al., *Starving Syrians Ate Grass to Live, Survivor Says*, NBC (Jan. 16, 2016), <https://www.nbcnews.com/news/world/starving-syrians-ate-grass-survive-survivor-says-n497541> (describing a sixty-year-old woman eating grass for three weeks before escaping).

84. *Syria: ‘Surrender or Starve’*, *supra* note 83 (“These have been part of a systematic, as well as widespread, attack on civilians that amounts to crimes against humanity”).

85. *Starvation ‘as a Weapon’ Is a War Crime, UN Chief Warns Parties to Conflict in Syria*, *supra* note 16 (“This is utterly unconscionable,” Mr. Ban stated. “Let me be clear: the use of starvation as a weapon of war is a war crime”).

86. *Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate*, INDEP. INT’L COMM’N OF INQUIRY ON THE SYRIAN ARAB REPUBLIC para. 7 (May 29, 2018), [https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/PolicyPaperSieges\\_29May2018.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/PolicyPaperSieges_29May2018.pdf) (indicating that the Commission’s findings are based on 400 interviews highlighting the “negative impact of sieges and ‘evacuation agreements’ on the civilian population in the Syrian Arab Republic between November 2012 and April 2018.”).

87. *See generally Yemen: Coalition Blockade Imperils Civilians*, HUM. RTS. WATCH (Dec. 7, 2017), <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians> [hereinafter *Yemen: Coalition Blockade*] (describing the “naval and air blockade on Yemen since the current conflict began in March 2015 that has severely restricted the flow of food, fuel, and medicine to civilians”).

88. Pablo Karasz, *85,000 Children in Yemen May Have Died of Starvation*, N.Y. TIMES (Nov. 21, 2018), <https://www.nytimes.com/2018/11/21/world/middleeast/yemen-famine-children.html> (providing an estimate of 85,000 child deaths from hunger since 2015).

the European Parliament determined the blockade was a war crime.<sup>89</sup> A Security Council-appointed Panel of Experts also found that the blockade was causing starvation of civilians.<sup>90</sup> Furthermore, the blockade is even more harmful during the pandemic because it deprives the population of medicine and food, which are sorely needed due to the dual medical and food crisis the pandemic has caused.<sup>91</sup>

## B. STARVATION IN THE ETHIOPIAN CIVIL WAR

During the current Ethiopian Civil War, Ethiopia has undertaken three campaigns against Tigray which are relevant to Article 14: the destruction of supplies, the ruination of the harvest, and a blockade.

### *i. The war*

Three coalition armies occupied Tigray from November 2020 through June 2021.<sup>92</sup> Massed forces and conventional divisions from the Ethiopian National Defense Force (ENDF), the militia from the neighboring Ethiopian state of Amhara, and Eritrea's massive army

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89. See *European Parliament Resolution of 11 February 2021 on the Humanitarian and Political Situation in Yemen*, EUROPEAN PARLIAMENT (Feb 11, 2021), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053_EN.html) (calling on Saudi Arabia to immediately stop the blockade and reiterating “that all parties must urgently refrain from using the starving of civilians as a method of warfare, as this constitutes a breach of international humanitarian law in accordance with Article 8(2)(b)(xxv) of the Rome Statute of the International Criminal Court”).

90. Security Council, Ahmed Himmiche, Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council resolution 2342 (2017) addressed to the President of the Security Council, U.N. Doc. S/2018/594, 3, 53 (Jan. 26, 2018) [hereinafter Letter dated 26 January 2018] (“[the lack of access] had the effect of using the threat of starvation as an instrument of war”).

91. See generally *Deadly Consequences: Obstruction of Aid in Yemen During Covid-19*, HUM. RTS. WATCH (Sept. 14, 2020), <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19> [hereinafter *Deadly Consequences*] (emphasizing the increased effect of lack of access to food and medicine due to the struggling healthcare system and health crisis due to the Covid-19 pandemic).

92. Declan Walsh & Simon Marks, *Ethiopian Forces Retreat in Tigray, and Rebels Enter the Capital*, N.Y. TIMES (July 11, 2021), <https://www.nytimes.com/2021/06/28/world/asia/tigray-mekelle-ethiopia-retreat.html>.

(EDF) invaded Tigray simultaneously in November 2020.<sup>93</sup> Abiy said this was solely a war against the TPLF leadership, but on the ground, that was not the case.<sup>94</sup> Sources soon showed the reality of widespread attacks on civilians.<sup>95</sup> Atrocities by the coalition plus reform from the TPLF caused masses of Tigrayans to join.<sup>96</sup> The Tigrayan population is about seven million people,<sup>97</sup> and the TPLF/TDF has approximately 250,000 fighters.<sup>98</sup> Tigrayans' rural guerilla war turned into a stunning rout of the three armies, including two of Africa's largest.<sup>99</sup> Through October 2021 the Tigrayans resisted a conventional general attack, and in November began an advance against Abiy's regime, before again retreating after Abiy escalated his rhetoric, swelled his ranks with cannon fodder, and deployed a new fleet of drones.<sup>100</sup>

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93. See *id.* ("The Ethiopian military has occupied the Tigray region since last November, after invading in cooperation with Eritrean and militia forces to wrest control from the regional government.").

94. Immediately the coalition harmed—and targeted—civilians and Tigrayans rather than the small groups TPLF leaders. See Abdi Latif Dahir, *Fleeing Ethiopians Tell of Ethnic Massacres in Tigray War*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/2020/12/09/world/africa/ethiopia-tigray-sudan.html> (reporting massacres within the first days of the war).

95. *Id.*

96. See Declan Walsh, *How Local Guerrilla Fighters Routed Ethiopia's Powerful Army*, N.Y. TIMES (July 11, 2021), <https://www.nytimes.com/2021/07/11/world/africa/tigray-guerrilla-fighters-ethiopia-army.html> (arguing that the atrocities of the war united Tigrayans and energized young recruits).

97. Neuman, *supra* note 1 (providing general information on Tigray including its estimated population of seven million people).

98. *Ethiopia Crisis: Tigray Force 'Still Fighting' Despite Army Mekelle Push*, BBC (Nov. 30, 2020), <https://www.bbc.com/news/world-africa-55127820> (describing the composition of the TPLF as "drawn mostly from a paramilitary unit and a well-drilled local militia . . . thought to number about 250,000").

99. See generally *Tigrayan Forces Have Routed the Ethiopian Army*, THE ECONOMIST (July 1, 2021), <https://www.economist.com/middle-east-and-africa/2021/07/01/tigrayan-forces-have-routed-the-ethiopian-army> (recounting the routing of Ethiopia's and Eritrea's armies).

100. See generally *Ethiopia's Capital Is Under Threat*, THE ECONOMIST (Nov. 4, 2021), <https://www.economist.com/middle-east-and-africa/ethiopia-capital-is-under-threat/21806092> (stressing the TPLF's strong successes and discussing Abiy's declaration of a nationwide state of emergency); *Ethiopian Forces Have Recaptured Key Towns on the Road to Tigray*, THE ECONOMIST (Dec. 18, 2021), <https://www.economist.com/middle-east-and-africa/ethiopian-forces-have-recaptured-key-towns-on-the-road-to-tigray/21806825> (highlighting the alternating

ii. *Ethiopia's hunger crimes in the Ethiopian Civil War*

First, immediately and for the duration of the occupation of Tigray, the coalition armies destroyed food and other supplies essential for the civilian population's survival. The EDF and ENDF stole fertilizer from villages.<sup>101</sup> Moreover, the coalition armies killed livestock, stole seed, and looted farm equipment.<sup>102</sup> Ethiopia and its allies widely pillaged, looted, and asset-stripped the rural population.<sup>103</sup> This initial campaign caused hunger in Tigray.<sup>104</sup> Ethiopia's axis also destroyed critical buildings. For example, Abiy's fighters ransacked around seventy percent of health facilities in Tigray, and in just one instance they razed hundreds of homes.<sup>105</sup> Finally, Ethiopia shut down the internet in Tigray and has kept the

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successes between the TPLF and Abiy's forces).

101. *Ethiopia: Fear and Lack of Farming Supplies Risk Long-Term Food Shortages*, INR'L COMM. OF THE RED CROSS (May 31, 2021), <https://www.icrc.org/en/document/ethiopia-tigray-food-supplies-decrease> [hereinafter *Fear and Lack of Farming Supplies*].

102. See Rodney Muhumuza, *In Tigray, Food Is Often a Weapon of War as Famine Looms*, AP (June 11, 2021), <https://apnews.com/article/only-on-ap-united-nations-africa-business-6181c3751f90fd758dc99e2257ccc4a5> (featuring the blockages, theft, and destruction of food aid, seeds, livestock, and farm equipment).

103. See *Tigray is Edging Closer to Famine*, THE ECONOMIST (Apr. 22, 2021), <https://www.economist.com/graphic-detail/2021/04/22/tigray-is-edging-closer-to-famine> (reporting Ethiopian soldiers have been raiding shops and farms, destroying what they could not carry away, and targeted supplies vital for farming like water tanks and reservoirs).

104. *Fear and Lack of Farming Supplies*, *supra* note 101; see generally *Ethiopia Tigray Crisis: Fear of Mass Starvation*, BBC (Jan. 18, 2021), <https://www.bbc.com/news/world-africa-55695123> [hereinafter *Fear of Mass Starvation*] (telling how—because of looting and destruction by Abiy's invaders—people are starving to death and dying in their sleep, with hundreds of thousands at risk of death).

105. *Ethiopia's Tigray Crisis: Hospitals 'Vandalised and Looted'*, BBC (Mar. 15, 2021), <https://www.bbc.com/news/world-africa-56399882> [hereinafter *Hospitals 'Vandalised and Looted'*] (estimating that seventy percent of health facilities in the affected region of Tigray have been vandalized and have had their equipment looted); see also *Hundreds of Buildings Burned Around Tigray Town, Research Group Says*, REUTERS (Feb. 25, 2021), <https://www.reuters.com/article/us-ethiopia-conflict-fires/hundreds-of-buildings-burned-around-tigray-town-research-group-says-idUSKBN2AP196> (reporting how in one reprisal against civilians for guerilla resistance, the EDF burned over 500 homes in a town).

region in a communications blackout since November 2020.<sup>106</sup>

Second, during the occupation, the coalition armies took direct and indirect action to ensure the Tigrayan population's harvest failed.<sup>107</sup> The Tigrayan population is around eighty percent subsistence farmers.<sup>108</sup> A lot of the looting and destruction during the invasion and occupation targeted farming equipment like fertilizer.<sup>109</sup> Directly, the three armies killed farmers who were planting and blocked access to fields.<sup>110</sup> They also stole or ruined the supplies necessary for planting like tools and seeds.<sup>111</sup> Indirectly, the Ethiopian campaign used massacres to terrorize rural people and prevent them from farming.<sup>112</sup> Forced displacement of almost the entire population of western Tigray ruined the harvest for these populations because people had to flee many miles from their fields and homes.<sup>113</sup> When

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106. See *Civilians in Ethiopia's Tigray Speak of Horror as Blackout Lifts*, FRANCE 24 (Dec. 14, 2020), <https://www.france24.com/en/live-news/20201214-civilians-in-ethiopia-s-tigray-speak-of-horror-as-blackout-lifts> (recounting how there was a communications blackout concurrent with a shutdown for several weeks).

107. Tigray is a rural and subsistence-based region. See *Irish Aid Contributes to Improving Food Security in the Tigray Region*, EMBASSY OF IRELAND, ETHIOPIA (last visited Nov. 19, 2021), <https://www.dfa.ie/irish-embassy/ethiopia/news-and-events/2015/irish-aid-food-security-tigray>.

108. See *id.* (providing that approximately "80% of the population lives in rural areas and the majority are subsistence farmers").

109. See generally *Fear and Lack of Farming Supplies*, *supra* note 101.

110. See generally Giulia Paravicini & Katharine Houreld, *EXCLUSIVE UN Official Accuses Eritrean Forces of Deliberately Starving Tigray*, REUTERS (June 14, 2021), <https://www.reuters.com/world/africa/exclusive-un-official-accuses-eritrean-forces-deliberately-starving-tigray-2021-06-11> (describing accounts from residents of Amhara forces "stealing their crops and livestock, or chasing them off their farms").

111. *Id.*; see also *Tigray is Edging Closer to Famine*, *supra* note 103 (reporting Ethiopian soldiers have been raiding farms, targeting water supplies, and destroying the food they could not carry away).

112. See generally *Ethiopia: Eritrean Forces Massacre Tigray Civilians*, HUM. RTS. WATCH (Mar. 5, 2021), <https://www.hrw.org/news/2021/03/05/ethiopia-eritrean-forces-massacre-tigray-civilians#> (urging the United Nations to investigate the death of numerous civilians in an apparent retaliation on residents).

113. See generally Declan Walsh, *Ethiopia's War Leads to Ethnic Cleansing in Tigray Region*, U.S. REPORT SAYS, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/world/middleeast/ethiopia-tigray-ethnic-cleansing.html> (detailing a confidential U.S. government report finding Ethiopia and Amhara forces are ethnically cleansing Tigrayan populations, leaving villages

armed groups forcibly displace rural subsistence populations, the population cannot plant, grow, or harvest their crops.<sup>114</sup>

Third, for the entire war, Ethiopia has been blockading Tigray. Ethiopia has kept food and other humanitarian aid from reaching Tigray's seven million people. From the start of the war in November 2020, Ethiopia systematically prevented aid or supplies from entering the region—that is, Abiy blockaded Tigray immediately.<sup>115</sup> Already some Tigrayans needed aid.<sup>116</sup> During the occupation Ethiopia maintained the blockade.<sup>117</sup> Once the TDF ejected Ethiopia from its occupation of Tigray in June 2021, Ethiopia continued the blockade.<sup>118</sup> As an international organization not known to sound the alarm early—or even acknowledge criminal realities—the United Nations said in February 2021 that Ethiopia was blocking aid from getting to Tigray.<sup>119</sup> In May 2021, the United

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deserted and tens of thousands of people gone).

114. See *The War in Tigray Is Taking a Frightening Human Toll*, THE ECONOMIST (Apr. 17, 2021), <https://www.economist.com/middle-east-and-africa/2021/04/15/the-war-in-tigray-is-taking-a-frightful-human-toll> (explaining how thousands of farmers have fled the invasion and violence, abandoning the harvest and causing output of crops to plummet).

115. See Cara Anna, *Ethiopia's Forces Shoot at, Detain UN Staffers in Tigray*, AP (Dec. 8, 2020), <https://apnews.com/article/africa-ethiopia-united-nations-kenya-f945a81239325a418ee22f123058f39f> (reporting the government is not allowing aid to reach the worst crisis areas, even despite a deal with the United Nations, and already food and medicine is running out for people); see also *Ethiopia's Tigray Crisis: Four Aid Workers Killed*, BBC (Dec. 11, 2020), <https://www.bbc.com/news/world-africa-55274583> (reiterating allegations from aid agencies that blockages prevented staff and supplies from reaching the region).

116. See Simon Marks & Eric Nagourney, *As Fighting Rages in Ethiopia, Aid Groups Plead for Access to Refugees*, N.Y. TIMES (Nov. 17, 2020), <https://www.nytimes.com/2020/11/17/world/africa/ethiopia-tigray-refugees.html> (reporting in November 2020, that aid groups were appealing for secure access to replenish supplies for people isolated due to the armed conflict).

117. See Lisa Schlein, *Ethiopian Government Blocking Aid in Tigray, UN Says*, VOICE OF AM. (Feb. 6, 2021), <https://www.voanews.com/africa/ethiopian-government-blocking-aid-tigray-un-says> (reporting in 2021 that the United Nations asserted that the Ethiopian government was “preventing aid from reaching non-government-controlled rural areas in the Tigray region”).

118. Eliza Mackintosh et al., *Rebels in Tigray Reject Calls for Ceasefire After Ethiopian Government Forces Withdraw from Regional Capital*, CNN, <https://www.cnn.com/2021/06/29/africa/tigray-ethiopia-ceasefire-intl/index.html> (June 30, 2021, 3:05 AM EDT).

119. See Schlein, *Ethiopian Government Blocking Aid in Tigray, UN Says*,



Nations found that the blockade continued.<sup>120</sup> Then on July 2, 2021, the United Nations recognized Tigray was in famine.<sup>121</sup> With 400,000 people in famine, and 1.8 million on the brink, the United Nations called for unrestricted aid.<sup>122</sup> Yet, attacks and stoppages against attempted aid deliveries continued. The famine has grown in reach and intensity, with increasing numbers of Tigrayans in phase five famine.<sup>123</sup>

The outbreak of the famine put Ethiopia on notice that its actions were causing a famine, but Ethiopia has continued its forced-starvation actions. Since the UN's declaration of a famine, Ethiopia has perpetuated the famine by continuing its behavior. On August 26, 2021, the Secretary-General confirmed the blockade continued two months after the declaration of a famine.<sup>124</sup> In September, the United Nations' World Food Program said the situation was getting worse by the day as less than ten percent of stocks had gotten through. One hundred trucks a day had to enter Tigray to avert mass death, yet only 335 made it in total in the months since mid-July.<sup>125</sup> By the end

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*supra* note 119.

120. See Eliza Mackintosh & Richard Roth, *UN Confirms Military Forces Blocking Aid in Ethiopia's Tigray Region Following CNN Investigation*, CNN (May 13, 2021), <https://www.cnn.com/2021/05/13/africa/ethiopia-tigray-un-confirms-military-aid-blockade-intl/index.html> (confirming in May 2021 "that military forces [continued to impede] humanitarian access to parts of Ethiopia's war-torn Tigray region").

121. See *400,000 in Tigray Cross 'Threshold into Famine', with Nearly 2 Million on the Brink, Security Council Told*, U.N. NEWS (July 2, 2021), <https://news.un.org/en/story/2021/07/1095282> [hereinafter *Threshold into Famine*] (formalizing the status of a famine affecting 400,000 people).

122. See *id.* (emphasizing the need for immediate humanitarian access).

123. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS. (Sept. 23, 2021), <https://reports.unocha.org/en/country/ethiopia>.

124. See generally *Catastrophe 'Unfolding Before Our Eyes' in Ethiopia's Tigray Region – UN Chief*, U.N. NEWS (Aug. 26, 2021), <https://news.un.org/en/story/2021/08/1098582> [hereinafter *Catastrophe 'Unfolding Before our Eyes'*] (reporting the continuing "de-facto humanitarian blockade and cut off from electricity and communications" by the U.N. chief despite at least 400,000 people living in "famine-like conditions").

125. See Lisa Schlein, *Millions Face Hunger Crisis as Conflict Engulfs Northern Ethiopia*, VOA (Sept. 7, 2021), [https://www.voanews.com/a/africa\\_millions-face-hunger-crisis-conflict-engulfs-northern-ethiopia/6219345.html](https://www.voanews.com/a/africa_millions-face-hunger-crisis-conflict-engulfs-northern-ethiopia/6219345.html) (stating that the 355 trucks which made it into the

of September, ninety percent of the Tigrayan population required emergency aid,<sup>126</sup> yet Ethiopia's "de-facto blockade" continued.<sup>127</sup> In October, Ethiopia turned away U.N. aid flights trying to land in Mekelle; instead they bombed the city.<sup>128</sup> As Abiy used hate speech,<sup>129</sup> in November the United Nations reported nothing had entered Tigray since mid-October.<sup>130</sup>

Instead of targeting the military forces and capabilities of the Tigrayans, Abiy's armies have spent over a year destroying vital supplies like food, ruining the harvest by destroying crops and preventing farmers from working their fields, and blockading all food and supplies from reaching Tigray.<sup>131</sup> Armies in other wars have used these tactics, and this kind of conduct starved the civilian populations, leaving them to suffer and die at the mercy of these criminal armies.

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region provide less than ten percent of the supplies needed).

126. See generally Ellen Ioanes, *Why Ethiopia Wants to Expel UN Officials Sounding the Alarm on Famine*, VOX (Oct. 2, 2021), <https://www.vox.com/2021/10/2/22705570/ethiopia-expel-un-officials-famine-civil-war> (connecting the report from the United Nations that approximately ninety percent of Tigray's population are in need of humanitarian assistance with the Ethiopian government's steps to expel U.N. officials).

127. Michelle Nichols, *U.N. Aid Chief to Ethiopia on Famine in Tigray: 'Get Those Trucks Moving'*, REUTERS (Sept. 29, 2021), <https://www.reuters.com/world/africa/un-aid-chief-ethiopia-famine-tigray-get-those-trucks-moving-2021-09-28> ("This is man-made, this can be remedied by the act of government").

128. Rick Gladstone & Declan Walsh, *U.N. Flight Thwarted as Fighting Grows in Ethiopia*, N.Y. TIMES, <https://www.nytimes.com/2021/10/22/world/africa/ethiopia-united-nations-aid.html> (Nov. 2, 2021).

129. See generally Cara Anna, *Ethiopia Compares Tigray Forces to 'Rat' as War Marks 1 Year*, AP (Nov. 4, 2021), <https://apnews.com/article/africa-kenya-ethiopia-addis-ababa-abiy-ahmed-bcbd0980e5a1c9af4b55f5f489d83d36> (describing statements made by Ethiopia's government aimed at the Tigray forces).

130. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, *supra* note 123.

131. Fetiën Abay & Biadgilgn Demissie, *Tigray's Wounded Agriculture and a Second Year of Famine: an Urgent Call for Action*, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (May 9, 2022), <https://sites.tufts.edu/reinventingpeace/2022/05/09/tigrays-wounded-agriculture-and-a-second-year-of-famine-an-urgent-call-for-action>.

### III. ANALYSIS

Protocol Additional II prohibits the starvation of civilians during an NIAC.<sup>132</sup> Because Ethiopia is a state party to Protocol Additional II,<sup>133</sup> it is bound by Protocol Additional II.<sup>134</sup> In addition to Article 14 obligations, non-derogable customary international law compels Ethiopia not to starve civilians during a civil war.<sup>135</sup>

Ethiopia is obligated under international law to uphold Protocol Additional II's prohibition of starvation of civilians during a civil war.<sup>136</sup> Yet Ethiopia is violating these rules and is therefore committing a war crime. Ethiopia's actions satisfy the necessary elements to constitute using starvation of civilians as a weapon of war under Protocol Additional II's Article 14 because it has destroyed objects necessary to Tigrayans' survival, ruined the harvest essential for Tigray's mostly rural-subsistence population, and blockaded the region from all food supplies and humanitarian relief.<sup>137</sup>

Besides the issue of whether the state is starving civilian populations (element 5), all other elements (1, 2, 3, 4) of Article 14 are clearly met.<sup>138</sup> Previous studies of Article 14 and the war crime of

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132. See generally *Commentary of 1987: Protection of Objects Indispensable to the Survival of the Civilian Population*, *supra* note 39 (commenting “[t]he object of this provision is to prohibit the deliberate provocation of such a situation and to preserve the means of subsistence of the civilian population, in order to give effect to the protection to which it is entitled”).

133. See generally *Treaties, State Parties and Commentaries*, Protocol II, INT'L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=475](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475) (last visited Apr. 30, 2022) (defining ‘starvation’ and stating that “The object of this provision is to prohibit the deliberate provocation of such a situation and to preserve the means of subsistence of the civilian population, in order to give effect to the protection to which it is entitled.”).

134. Protocol II, *supra* note 19, art. 14 (“Starvation of civilians as a method of combat is prohibited.”).

135. *Supra* Part II.A.1 (overviewing the development of a strong customary prohibition on the starvation of civilians, starting with the Geneva Conventions in 1949, including less use of the tactic and the emergence of *opinio juris*, and the ICC parties' 2019 change to the Rome Statute, banning starvation in NIACs).

136. Protocol II, *supra* note 19, art. 14.

137. See *supra* Part II.B.2.

138. See *supra* Part II.A.3 (synthesizing Article 14's elements: (1) during an

starvation illustrate the elements necessary for conduct to constitute a violation of Article 14.<sup>139</sup> Ethiopia meets these elements: (1) the Ethiopian Civil War is an NIAC, (2) the Tigrayan population is a civilian population, (3) the Tigrayan people are starving, (4) Ethiopia is doing the conduct, and (5) Ethiopia's conduct is causing the starvation.<sup>140</sup>

#### A. ETHIOPIA'S ACTS IN THE CIVIL WAR MEET ELEMENTS 1–4 OF ARTICLE 14

All required elements of Article 14<sup>141</sup> are satisfied in the Ethiopian civil war.<sup>142</sup> Section III.B analyzes the fifth element, whether Ethiopia has committed acts or omissions to cause starvation or destroy objects indispensable to survival for the Tigrayan civilian population. This subsection addresses the first four elements, which are more evidently met.<sup>143</sup>

International humanitarian law applies because the Tigray War is a non-international armed conflict (“NIAC”).<sup>144</sup> Whether a period of collective violence in a country rises to the level of NIAC is a case-by-case question.<sup>145</sup> Two criteria must be met for something to constitute an NIAC: “the armed groups involved must show a minimum degree of organization and the armed confrontations must

NIAC, (2) a civilian population (3) is starving (4) because an armed force (5) through act or omission causes starvation or destroys objects indispensable to survival for the civilian population (with no specific intent to starve requirement)).

139. See generally Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20 (discussing how the United Nations analyzed the war crime of starvation of civilians in a new study on the war in South Sudan).

140. *Infra* Part III.A will deal with elements 1-4, and Section III.B.1-3 will deal with element 5; the biggest question for deciding whether there is a violation of Article 14 is whether Ethiopia's actions are causing the civilian population to starve.

141. See *infra* Part III.A-B.

142. See Marks & Nagourney, *supra* note 116 (quoting a senior U.N. official who says Ethiopia is enforcing a “de facto economic blockade”).

143. See *infra* Part II.A.3 (synthesizing the Article 14's elements: (1) during an NIAC, (2) a civilian population (3) is starving (4) because an armed force (5) through act or omission causes starvation or destroys objects indispensable to for population's survival (with no specific intent to starve requirement)).

144. See *Internal Conflicts or Other Situations of Violence – What Is the Difference for Victims?*, *supra* note 58.

145. *Id.*

reach a minimum level of intensity.”<sup>146</sup> Various factors determine whether the parties to the conflict satisfy the two criteria of organization and intensity.<sup>147</sup> Judging by the factors, since November 2020, the Tigray War is unquestionably a non-international armed conflict.<sup>148</sup> Therefore, Article 14 binds Ethiopia during this civil war.<sup>149</sup>

The Tigrayan population is a civilian population. Under international law, civilians are those who are not members of the armed forces, and are protected from targeting and disproportionate collateral harm if they are not taking part in active hostilities.<sup>150</sup> Naturally, this definition is less elucidating during non-international armed conflict because traditional lines between combatants and

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146. *Id.*

147. *Id.* (“such as the duration and gravity of the armed clashes, the type of government forces involved, the number of fighters and troops involved, the types of weapons used, the number of casualties and the extent of the damage caused by the fighting,” while organization depends on a chain of command, the ability to launch coordinated attacks, and the capacity to “recruit, train and equip new fighters”).

148. The Ethiopian Civil War is an NIAC. It meets intensity: the war has been going on for over a year and at least tens of thousands of people have violently died, large numbers of conventional units are fighting, at least hundreds of thousands of combatants have been involved, there are hundreds of thousands of casualties, and there is extensive damage from combat and non-combat destruction. It meets organization: Ethiopia and Eritrea’s armed forces are centrally involved, the TPLF was an official and organized armed force even before the war, the TPLF/TDF has maintained organization and command and control throughout the war, and all sides have shown the ability to recruit fighters, coordinate operations, and enforce command. See Farouk Chothia, *Ethiopia’s Tigray Conflict: How the TPLF Has Outflanked the Army*, BBC (Nov. 18, 2021), <https://www.bbc.com/news/world-africa-59288744>.

See generally *Q&A: Conflict in Ethiopia and International Law*, HUM. RTS. WATCH (Nov. 25, 2020), <https://www.hrw.org/news/2020/11/25/qa-conflict-ethiopia-and-international-law> (concluding, only weeks into the war, “Human Rights Watch is of the view that the hostilities between Ethiopian government forces and Tigray regional forces constitutes an internal, non-international armed conflict,” finding sufficient organization on both sides and a level of intense hostilities).

149. See Protocol II, *supra* note 19, art. 1 (explaining the Protocol applies during NIACs: “This Protocol . . . shall apply to all armed conflicts which . . . take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups . . . [and] shall not apply to situations of internal disturbances and tensions”).

150. *The Practical Guide to Humanitarian Law*, *supra* note 31.

civilians, like uniforms or membership in the armed forces, are frequently absent.<sup>151</sup> Nevertheless, the law of armed conflict still requires absolute distinction—it is illegal for a state to indiscriminately conduct combat operations, target, use force, or discriminate against a civilian population merely because some of its members are directly participating in hostilities.<sup>152</sup> Only civilians directly participating in hostilities lose their protection as civilians, and only while they directly participate in hostilities.<sup>153</sup> Participating in hostilities is defined as “a direct, causal, and intentional link between the act and its military effect.”<sup>154</sup> Tigray has a population of about seven million people.<sup>155</sup> The TDF has 250,000 fighters or less.<sup>156</sup> This means that at most, a little over three percent of the Tigrayan population is taking part in hostilities. The Tigrayan population does not include enough military elements to lose its civilian character. Even any civilians augmenting the TDF by directly participating in the hostilities do not implicate or reclassify the vast majority of the Tigrayan population. Seven million people, including elderly and children, are not directly participating in hostilities against armed forces from Ethiopia, Amhara, and Eritrea. Yet Ethiopia’s starvation campaign is indiscriminately affecting the entire population of Tigray.<sup>157</sup> Therefore, the Tigrayan population amounts to a civilian population under international humanitarian law and Article 14.

The Tigrayan population is starving. At least 400,000 Tigrayans

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151. *Id.* (in most NIACs at least one side consists of non-military persons taking part in armed hostilities).

152. *Principle of Distinction*, INT’L COMM. OF THE RED CROSS, <https://casebook.icrc.org/law/principle-distinction> (last visited Apr. 29, 2022).

153. *The Practical Guide to Humanitarian Law*, *supra* note 31.

154. *Id.* (explaining “6. The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and 7. There must be a direct causal link between the act and the harm likely to result either from that act or from a coordinated military operation of which that act constitutes an integral part (direct causation”).

155. Neuman, *supra* note 1.

156. *Ethiopia Crisis: Tigray Force ‘Still Fighting’ Despite Army Mekelle Push*, *supra* note 98.

157. *See supra* Part II.B.2.

are suffering from catastrophic hunger (phase five).<sup>158</sup> About seventy percent of the population, or four million people, are in phase three or above.<sup>159</sup> These classifications are misleading, as phase five is not the only time when hundreds of thousands of people die from hunger.<sup>160</sup> An entire civilian population is facing extreme hunger and is at risk of mass death.<sup>161</sup> Widespread hunger fatalities have already happened.<sup>162</sup>

Ethiopia is a party to this war, and its actions are the source of the starvation. The ENDF is the organization or group of people which has blockaded Tigray.<sup>163</sup> Moreover, Ethiopia started this war with attacks from its armed forces against Tigray.<sup>164</sup> Finally, Ethiopia is responsible for the conduct of the Amhara para-state and Eritrean state armies which violate Protocol Additional II and starve the population under the principle of attribution: Ethiopia invited in the Eritrean and Amhara armies, prosecutes the war in coordination with them, and is friendly and allied to them in the war.<sup>165</sup> Ethiopia is

158. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, *supra* note 123; *Integrated Phase Classification*, FEWS NET (last visited Nov. 4, 2021), <https://fewsn.net/IPC> (explaining the five phases of hunger: minimal, stressed, crisis, emergency, famine).

159. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, *supra* note 123.

160. Alex De Waal, *Viewpoint: From Ethiopia's Tigray Region to Yemen, the Dilemma of Declaring a Famine*, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (Feb. 7, 2021), <https://sites.tufts.edu/reinventingpeace/2021/02/07/viewpoint-from-ethiopia-tigray-region-to-yemen-the-dilemma-of-declaring-a-famine> (explaining in South Sudan hundreds of thousands died from hunger, yet only one percent were in phase five: quibbling over classifications and the high technical threshold of “famine” neglects the catastrophe of even low-level phases and places not officially in “famine”).

161. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, *supra* note 123.

162. Anna, *'I just cry': Dying of hunger in Ethiopia's blockaded Tigray*, *supra* note 1.

163. Schlein, *Ethiopian Government Blocking Aid in Tigray, UN Says*, *supra* note 117; Anna, *Ethiopia's Forces Shoot at, Detain UN Staffers in Tigray*, *supra* note 115.

164. Walsh & Marks, *supra* note 92.

165. *See Case of the “Mapiripán Massacre” v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, para. 123 (Sept. 15, 2005)* (holding—in a case directly mirroring Ethiopia and Eritrea-Amhara—

allied with Eritrea, inviting its army to conduct the joint campaign in Ethiopia against Tigray, and Ethiopia is coordinating with the EDF.<sup>166</sup> The Amhara army is a non-state actor in Ethiopia in alliance with the regime and has worked with the ENDF an ally.<sup>167</sup>

No specific intent to starve is required.<sup>168</sup> Neither the intent to starve the civilian population nor the actual starvation of civilians are elements of this crime.<sup>169</sup> While the final constitutive clause, “as a method of combat,” may seem like a daunting burden of proving intent and context, international humanitarian law interprets this element as simply asserting that if the armed forces did the conduct of element 5 during the war, the “as a method of combat” provision is satisfied.<sup>170</sup> Because Ethiopia—through its armed forces during an NIAC—has destroyed supplies, ruined the harvest, and blockaded the region through systematic and otherwise non-existent behavior since the war began, Ethiopia’s intent is irrelevant.<sup>171</sup> Ethiopia shows the required intent because it began these activities when the war began to subdue its armed opponent. No intent argument can shield

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Colombia responsible for violations of right to life and other rights when paramilitaries (far-right extremist, non-state, organized, and armed actors) massacred and disappeared villagers while benefiting from Colombia’s actions and omissions, as the military invited in and allied with the paramilitaries so the paramilitaries could conduct the politically-motivated attack, and then not taking action to end the three-day-long massacre or bring the perpetrators to justice); *cf.* Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. A/HRC/14/24/Add.6, paras. 37–38 (May 28, 2010) (reasoning a state consenting to another state carrying out a targeted killing in its territory remains responsible for upholding the obligations under international humanitarian law and international human rights law for the conduct of the intervening state, and any violations of human rights the invited state commits are attributable to the consenting host state).

166. *See* STARVING TIGRAY, *supra* note 8, at 1.

167. *Id.*

168. Protocol II, *supra* note 19, art. 14 (stating “starvation of civilians as a method of combat is prohibited”).

169. *See* Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20; *supra* Part I.A.2.

170. Dannenbaum, *A Landmark Report on Starvation as a Method of Warfare*, *supra* note 20 (“To deprive such a population of objects indispensable to human survival is to starve civilians as a method of warfare, even when done with a view to getting at the enemy forces within”).

171. *Supra* Part I.A.2.



Ethiopia from a charge of violating article 14.

Tigray's population is starving during a non-international armed conflict. The first four elements of Article 14's prohibition on starving civilians are met. The fifth and final element is met as well.<sup>172</sup> Ethiopia's actions have caused or tried to inflict starvation on the Tigrayans. Ethiopia has violated Article 14 of Protocol Additional II and is committing a war crime.

#### B. ELEMENT 5: ETHIOPIA HAS STARVED THE TIGRAYAN POPULATION

Ethiopia has undertaken three campaigns to starve the Tigrayan people. Each of the three patterns of conduct violate Article 14. Together they are a broad attack on Article 14's protections for civilians.

##### *i. Destruction of essential supplies*

Protocol Additional II explicitly prohibits destroying "objects indispensable to the survival of the civilian population," including foodstuffs and livestock.<sup>173</sup> Ethiopia has destroyed essential supplies necessary for Tigrayans' basic survival, violating Protocol Additional II and thus committing a war crime.

Ethiopia's conduct is like the SPLA's conduct. Along with rape, SPLA attacks were marked by pillage of food and livestock necessary for the civilians' survival.<sup>174</sup> These facts led the Commission to conclude that "[g]overnment forces deliberately and systematically attacked, destroyed, and rendered useless objects indispensable to the survival of the civilian population in Jonglei State."<sup>175</sup>

Abiy's armies have done the same things as the SPLA, so they too

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172. *Infra* Part III.B.1–2.

173. Protocol II, *supra* note 19, art. 14.

174. *There is Nothing Left for Us*, *supra* note 72, para. 9 (reporting army commanders authorized their fighters "to reward themselves by pillaging objects indispensable to the survival of these rural populations, including harvests such as sorghum, cassava, and okra, and livestock including chicken, cattle, and goats").

175. *Id.* para. 146 (discussing that Government forces have deliberately attacked and rendered useless objects necessary for the survival of civilians).

are destroying objects indispensable for the population.<sup>176</sup> Stealing food and damaging survival provisions like shelter and water violates Protocol Additional II's clear language.<sup>177</sup> Abiy's grand armée looted fertilizer, which is necessary for Tigrayan farmers to plant their crops.<sup>178</sup> Throughout Tigray, Ethiopian and Eritrean soldiers looted the seed necessary for planting, killed livestock, and looted farm equipment.<sup>179</sup> According to Article 14, these things are objects indispensable for the Tigrayan population's survival.<sup>180</sup> Without them, subsistence farmers like the Tigrayan population will starve.<sup>181</sup> Across the region Abiy's three armies systematically<sup>182</sup> looted food

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176. See Part II.B.2.

177. Protocol II, *supra* note 19, art. 14 (stating “[i]t is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”); *Rule 54. Attacks Against Objects Indispensable to the Survival of the Civilian Population*, INT’L COMM. OF THE RED CROSS (last visited Nov. 19, 2021), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule54](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule54) [hereinafter *Rule 54. Attacks against Objects Indispensable*] (observing Protocol Additional I includes shelter in its analogous protections); DeSimone, *supra* note 66, at 363 (arguing Saudi Arabia violated Article 14 by attacking objects indispensable to civilian population's survival by bombing desalination plants, water pumps, water tanks, wells, and other resources producing water because “[t]hese economic objectives are vital to the Yemen civilian population in light of the extreme need nationwide for drinkable water”).

178. *Fear and Lack of Farming Supplies*, *supra* note 101 (quoting a farmer explaining the crops will fail without fertilizer, which Abiy's armies stole).

179. Muhumuza, *supra* note 102 (reporting soldiers raided shops and farms and destroyed what they could not carry away).

180. Protocol II, *supra* note 19, art. 14 (stating “[i]t is therefore prohibited to attack, destroy, remove, or render useless . . . foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock”).

181. Muhumuza, *supra* note 102 (reporting that Ethiopian and Eritrean soldiers are stopping and stealing food aid).

182. See generally *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Inter-Am.Ct. H.R. (Ser. C) No. 4, ¶¶ 133–35, 147(b), 147(d)(i–v), 147(g), (29 July 1988) (defining systematic violations of international law: human rights cases are not criminal trials for individual responsibility, rather, international treaties protect human rights from abuse, so a pattern of behavior is systematic merely if the violation appears to be repeatedly perpetrated, looking at factors such as the number of instances, the similarity between the different acts, and whether it is likely the government is committing, organizing, ordering, supporting, or tolerating the acts).

and other vital supplies.<sup>183</sup>

The Human Rights Commission found South Sudan committed the war crime of starvation by stealing and destroying civilians' food and other supplies.<sup>184</sup> Considering that Abiy's armies have done the same thing,<sup>185</sup> they are also likely committing the war crime of starvation.

Furthermore, looting is a war crime according to the Rome Statute,<sup>186</sup> and Ethiopia's looting in Tigray violates Article 14's protections of objects indispensable to civilians' survival.<sup>187</sup> When the LRA attacked a civilian camp, the ICC found the commander guilty of the war crime of pillage for taking things like food and other vital supplies.<sup>188</sup> The Rome Statute does not apply to Ethiopia because Ethiopia is not a party to the ICC and its treaty. However, Ethiopia attacked civilian settlements and stole or destroyed civilians' food and other vital supplies like hospitals and homes.<sup>189</sup> Stealing food satisfies the crime of pillage under the Rome Statute. Likewise, stealing and destroying food and other supplies satisfies the crime of starvation by depriving civilians of supplies necessary to their survival under the Protocol Additional II.<sup>190</sup> Serbian fighters violated Article 14 by destroying buildings of utmost economic significance.<sup>191</sup> Hospitals and homes surely qualify as indispensable buildings because they are of the utmost important and necessary for

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183. See *Fear of Mass Starvation*, *supra* note 104 (explaining that food or items necessary to survive are stolen or destroyed).

184. See *There is Nothing Left for Us*, *supra* note 72, paras. 9–10 (stating that government forces are violating the rule that protects civilians).

185. See Muhumuza, *supra* note 102 (describing “ethnic cleansing” through not allowing the distribution of food and means to survive).

186. Rome Statute, *supra* note 46, art. 8(2)(b)(xxv).

187. Protocol II, *supra* note 19, art. 14.

188. *Prosecutor v. Dominic Ongwen*, *supra* note 75, ¶¶ 1385, 1458–61, 2874.

189. See *Fear of Mass Starvation*, *supra* note 104 (asserting that people are dying because of starvation); see also *Hospitals ‘Vandalised and Looted’*, *supra* note 105 (discussing how hospitals were attacked to render them non-functional); *Hundreds of Buildings Burned Around Tigray Town*, *supra* note 105 (reporting how in just one reprisal against civilians for guerilla resistance, the soldiers burned over 500 homes in a town).

190. Protocol II, *supra* note 19, art. 14.

191. *Prosecutor v. Perišić*, *supra* note 76.

civilian population's survival.<sup>192</sup>

Abiy's three armies attacked and ruined other vital supplies too. During the occupation of Mekelle, EDF soldiers vandalized and looted hospitals.<sup>193</sup> Medical supplies are part of the essential supplies that Protocol Additional II protects.<sup>194</sup> Additionally, the communications blackout Ethiopia has held Tigray in<sup>195</sup> further deprives the population of objects necessary for survival which are protected by Article 14; during war, famine, and a pandemic, communication is necessary for a population's survival.<sup>196</sup>

Destroying these other supplies is a war crime under Protocol Additional II because these items are necessary for the population's survival. Ethiopia destroyed houses throughout the occupation.<sup>197</sup> Houses, medicine, food, agricultural supplies, and communication are indispensable for civilian populations' survival, especially during war.<sup>198</sup> By destroying, looting, or spoiling homes, hospitals, livestock, food, and communication, Ethiopia and Abiy deprived the Tigrayan population of these essential objects to the population's survival, satisfying element 5 of Protocol Additional II's Article 14.

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192. See Rule 54. *Attacks against Objects Indispensable*, *supra* note 177 (stating Protocol Additional I includes shelter in its analogous protections, and both Protocols can protect medicine as an indispensable object as well).

193. *Hospitals 'Vandalised and Looted'*, *supra* note 105 (explaining that health facilities in Tigray have been vandalized and equipment has been stolen).

194. Rule 54. *Attacks Against Objects Indispensable*, *supra* note 177 (explaining items that are necessary for civilian populations including food, crops, livestock and drinkable water); THE CRIME OF STARVATION, *supra* note 54, para. 3 (explaining that the starvation is a result of deliberate plans and is catastrophic).

195. *Civilians in Ethiopia's Tigray Speak of Horror as Blackout Lifts*, *supra* note 106 (stating that civilians in Tigray spoke of fear and deprivation after not having power and phone connections for six weeks).

196. *Conflict in Ethiopia*, COUNCIL ON FOREIGN RELATIONS (last visited Sept. 29, 2021), <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (asserting communication is necessary for aid: "communications blackouts . . . hamper needs assessments"); THE CRIME OF STARVATION, *supra* note 54, paras. 7–8.

197. *Hundreds of Buildings Burned Around Tigray Town*, *supra* note 105 (reporting how in one reprisal against civilians for guerilla resistance, the occupiers of Tigray burned over 500 homes in a town).

198. See *Conflict in Ethiopia*, *supra* note 196 (expressing concern over the blockade of communications and humanitarian aid amidst rising violence and famine).

*ii. Ensuring the harvest failed*

Ethiopia's destruction of Tigray's harvest is particularly harmful. Widespread looting<sup>199</sup> meant hard times for the population. For example, people were forced to go from three meals a day to two, and then from two to one.<sup>200</sup> But if the Tigrayans could plant and harvest their crops this year, then they might have avoided a mass-death famine.<sup>201</sup> By destroying the harvest after widely looting the people's food, Ethiopia ensured the food insecurity became permanent hunger.<sup>202</sup> Whether to conquer, punish, or eliminate the Tigrayan population, the conduct and the result are clear. Ethiopia started a famine.

Armies ruining the harvest in other countries have been found to starve the civilian population, and these other cases demonstrate what conduct is a violation of Protocol Additional II. In South Sudan, the HRC found displacing an agrarian population put them at risk of hunger because they depended on farming to survive.<sup>203</sup> When government soldiers were stationed in the area, people from villages were not farming because the government troops would attack them if they tried.<sup>204</sup> Moreover, government forces timed attacks against villages to coincide with planting and harvest schedules, aggravating hunger for months after because of the loss of the harvest.<sup>205</sup>

The General Assembly noted that the 2006 Lebanon War happened during the peak harvest time for the area of fighting, and the displacement and violence against farmers exacerbated food losses.<sup>206</sup> Throughout the genocide in Syria, the Baathist regime and

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199. See *Fear of Mass Starvation*, *supra* note 104.

200. See *Fear and Lack of Farming Supplies*, *supra* note 101 (addressing how agriculture is how many people get food in Tigray, but that farmers are dependent on fertilizer which has been unavailable).

201. *Irish Aid Contributes to Improving Food Security in the Tigray Region*, *supra* note 107 (reporting, in 2015, about eighty percent of Tigrayans are subsistence farmers, and food security is rising, with the harvesting producing around forty percent of the food the region needs on average).

202. See *id.*

203. *There is Nothing Left for Us*, *supra* note 72, at paras. 9, 15, 64, 75.

204. *Id.* paras. 98–99.

205. *Id.* para. 9.

206. See *Human rights in Lebanon*, *supra* note 78, para. 20 (noting the impact that the war will have on livelihoods and access to food and water).

Russia have burned crops, which heightened food insecurity and caused besieged populations to starve.<sup>207</sup>

Ethiopia ensured the harvest would fail. A lot of the looting—from the outset—targeted the upcoming harvest. Abiy’s axis destroyed farming equipment and stole the planting seed and fertilizer.<sup>208</sup> By blocking farmers from planting, Ethiopia took direct action to ruin the harvest.<sup>209</sup> Along with these direct attacks, Abiy’s armies committed massacres in rural areas, terrorizing the population and indirectly keeping farmers from trying to plant during the spring season.<sup>210</sup> Eritrean and Ethiopian soldiers killed rural people who did not flee their villages.<sup>211</sup> Like in Lebanon and South Sudan, Ethiopia’s attacks on farmers coincided with the planting season, ensuring the harvest would fail and there would be hunger.

When the Russians and Baathists destroyed crops in Syria, they were using hunger as a weapon.<sup>212</sup> Abiy is similarly using hunger as a weapon, except instead of destroying the crops, he is killing the farmers and destroying their seed so that they never even get to plant in the first place.<sup>213</sup>

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207. See Salim & El Deeb, *supra* note 80 (explaining that fires have deprived farmers of valuable crops and are used as a way to destroy the population).

208. See *Fear and Lack of Farming Supplies*, *supra* note 101 (noting that the looting of fertilizer will be devastating to livelihoods in rural Tigray); see also Muhumuza, *supra* note 102 (elaborating that soldiers have been accused of blocking and stealing food aid, stopping farmers from plowing or harvesting, stealing seeds for planting, killing livestock, and looting farm equipment).

209. See *id.* (explaining that both Eritrean and Ethiopian forces were chasing farmers from their fields).

210. See *Ethiopia: Eritrean Forces Massacre Tigray Civilians*, *supra* note 112 (quoting a survivor saying, “People were scared because of the terror in Shire,” said a man who fled to Axum. “No one opened their shops or the market”); see also Muhumuza, *supra* note 102 (noting that convoys with food and medical aid are turned away by Ethiopian military officials).

211. See Paravicini & Houreld, *supra* note 110 (describing the actions of Eritrean soldiers in the Tigray region).

212. See Kanfash & al-Jasem, *supra* note 80 (revealing how Bashaar used a “kneel or starve” strategy to reduce opposition).

213. See Muhumuza, *supra* note 102 (showing that Ethiopian soldiers are keeping farmers from their fields and stealing their seeds and equipment); see also Paravicini & Houreld, *supra* note 110 (explaining how some Tigrayans have recounted Amhara forces chasing them from their farms and stealing their crops and animals).

Acting to prevent a subsistence rural population from reaping a successful harvest means the civilian population will go hungry. As an act of armies during war, ruining the people's harvest will cause them to starve, and this is therefore a war crime. Unlike in South Sudan or Lebanon, Ethiopia also blockaded the region. Without the intercession of humanitarian aid, the destruction of food and supplies and ruination of the harvest would inevitably result in the Tigrayan people starving.

By destroying essential farming supplies, displacing and killing farmers, and stopping farmers from working their fields, Ethiopia ensured the harvest would fail. A failed harvest is disastrous for the food supply of a population made up of mostly subsistence farmers. Thus, these actions satisfy element 5 of Protocol Additional II's Article 14.

### *iii. Blockade*

Blockading territory containing a civilian population satisfies element 5 of Article 14. One of the two primary methods of the Russian-Baathist genocide against Syrians was to systematically blockade all liberated regions and towns.<sup>214</sup> Russia and the Baathists' strategy in Syria was "starve or kneel," so all liberated populations would die or submit.<sup>215</sup> It worked. The blockade meant neither food nor other indispensable objects like medicine could get through. As a result, these populations ran out of food and medicine.<sup>216</sup> Because the point was to force surrender by starving the population, this strategy clearly violates Article 14 of the Protocol Additional II. Among others, the United Nations has found this strategy is a war crime.<sup>217</sup>

Ethiopia is similarly blockading all supplies, especially food, from

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214. See generally *Syria: 'Surrender or Starve'*, *supra* note 83 (recognizing that the other primary method was constantly bombing residences, schools, markets, and hospitals with bomber planes and barrel bombs).

215. *Id.*

216. See *id.* (arguing that the Baathist government committed crimes against humanity by besieging civilians, depriving them of food and medicine).

217. E.g., *Syria War: War Crimes Committed in Eastern Ghouta Battle* – UN, BBC (June 20, 2018), <https://www.bbc.com/news/world-middle-east-44548298> (exposing the crimes against humanity and war crimes committed by Syrian pro-government forces).

Tigray. Back in February 2021, the United Nations said Ethiopia was widely blocking humanitarian deliveries to hungry Tigrayans.<sup>218</sup> The United Nations reiterated this warning again in May.<sup>219</sup> From almost the beginning of the war, at least some Tigrayans have needed humanitarian aid to avoid imminent starvation,<sup>220</sup> and the number in need grew to almost the entire population by September 2021.<sup>221</sup> Yet, throughout this time, Abiy's armies have maintained the blockade. For example, between mid-July and early September, Ethiopia allowed less than ten percent of the trucks needed to avoid mass death.<sup>222</sup> The ten percent that were allowed in does not mitigate the war crime.<sup>223</sup> Months later, the blockade continues.<sup>224</sup> Like Russia and the Baath in Syria, Abiy appears to be conducting a type of kneel-or-starve campaign.<sup>225</sup>

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218. See Schlein, *Ethiopian Government Blocking Aid in Tigray, UN Says*, *supra* note 117 (noting that the Ethiopian government is blocking aid to non-government-controlled areas).

219. See Mackintosh & Roth, *supra* note 120 (explaining the United Nations' response to the humanitarian crisis in the Tigray region).

220. Marks & Nagourney, *supra* note 116 (noting that prior to the war, the Tigray region was home to up to 200,000 refugees and other displaced people).

221. See Ioanes, *supra* note 126 (explaining that ninety percent of Tigray's population are in need of assistance).

222. See Schlein, *Millions Face Hunger Crisis as Conflict Engulfs Northern Ethiopia*, *supra* note 125 (reporting that the World Food Programme had only managed to get 355 trucks into the region between July and September 2021).

223. Cf. Prosecutor v. Radovan Karadžić, Public Redacted Version of Judgment Issued on 24 March 2016, IT-95-5/18-T, Volume I of IV, ¶ 4562 (Mar. 24, 2016) (holding "The fact that some humanitarian aid was coming into Sarajevo during the conflict and that the encirclement of Sarajevo was not complete does not change the reality of that situation.").

224. See Gladstone & Walsh, *supra* note 128 (reporting how Ethiopia forced U.N. flights to abandon attempted landings in Mekelle; along with turning away U.N. planes, Ethiopia jets bombed the city and killed civilians).

225. See Alex De Waal, *The World Watches as Abiy Loses It – and Risks Losing Ethiopia, Too*, TUFTS WORDPRESS BLOGS & WEBSITES: REINVENTING PEACE (Sept. 17, 2021), <https://sites.tufts.edu/reinventingpeace/2021/09/17/the-world-watches-as-abiy-loses-it-and-risks-losing-ethiopia-too> (explaining Abiy conflates the TPLF and all Tigrayans together as "hyenas," "cancer," and "weeds," revealing he is apparently conducting the war against all of them, not just the TPLF/TDF or its military forces); see also Cara Anna, *EU Envoy: Ethiopian Leadership Vowed to 'Wipe Out' Tigrayans*, AP (June 18, 2021), <https://apnews.com/article/europe-ethiopia-africa-ffd3dc3faf15d0501fd87cafe274e65a> (reporting government officials saying they were trying to "wipe out the Tigrayans for 100 years").



Saudi Arabia has acted the same way in Yemen.<sup>226</sup> As a result of Saudi Arabia's air, land, and sea blockade of Yemen,<sup>227</sup> food has run out, and what little is left is prohibitively expensive.<sup>228</sup> The blockade caused a famine which has killed at least tens of thousands of civilians.<sup>229</sup> For these reasons, the European Parliament found that maintaining this blockade was committing the war crime of starvation of civilians.<sup>230</sup> A Security-Council-appointed Panel of Experts found the blockade was causing the starvation of civilians.<sup>231</sup>

Ethiopia's conduct is comparable to Saudi Arabia's conduct. Ethiopia has blockaded Tigray with its army during a war,<sup>232</sup> letting through almost nothing.<sup>233</sup> Ethiopia's blockade is causing and exacerbating acute hunger among the civilian population.<sup>234</sup> For months Tigrayans have been dying of hunger, and it is starting to kill them in mass.<sup>235</sup> Like Saudi Arabia,<sup>236</sup> Ethiopia is preventing

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226. See *Yemen: Coalition Blockade*, *supra* note 87 (“The coalition has imposed a naval and air blockade on Yemen since the current conflict began in March 2015 that has severely restricted the flow of food, fuel, and medicine to civilians, in violation of international humanitarian law.”).

227. See *id.* (noting the disproportionate impact on civilians' access to essential goods).

228. See Letter dated 26 January, *supra* note 90 (“Yemen has a liquidity problem. Salaries throughout the country often go unpaid, meaning that medicine, fuel and food, when available, are often prohibitively expensive.”).

229. See Karasz, *supra* note 90 (estimating that 85,000 children may have died of hunger between 2015 and 2018).

230. *European Parliament Resolution of 11 February 2021 on the Humanitarian and Political Situation in Yemen*, *supra* note 89 (calling on Saudi Arabia to stop its blockade, which breaches the Rome Statute).

231. Letter Dated 26 January 2018, *supra* note 90 (finding that Saudi Arabia used the threat of starvation as an instrument of war).

232. See *Catastrophe ‘Unfolding Before Our Eyes’*, *supra* note 124 (classifying Tigray as a *de facto* humanitarian blockade).

233. See Schlein, *Millions Face Hunger Crisis as Conflict Engulfs Northern Ethiopia*, *supra* note 125 (explaining that the Tigray region receives less than ten percent of needed supplies).

234. See *Abiy Loses It*, *supra* note 225 (finding that “Abiy continue[s] to use his most potent weapon—starvation,” and Ethiopia's blockade is the cause of the hunger in Tigray).

235. See Anna, *‘I just cry’: Dying of hunger in Ethiopia’s blockaded Tigray*, *supra* note 1 (reporting that “in parts of Ethiopia's Tigray region, people now eat only green leaves for days. At a health center last week, a mother and her newborn weighing just 1.7 pounds died from hunger. In every district of the more than 20 where one aid group works, residents have starved to death.”).

humanitarian relief from reaching the population, and people are dying because of these acts.

The ICC prohibition on starving civilians similarly includes depriving civilians of objects indispensable to survival, and an army can do this by willfully impeding relief supplies.<sup>237</sup> During the global pandemic, various medical supplies, in addition to more traditional forms of vital aid like food, are necessary because of the threats from the Covid-19 pandemic's twin crisis of public health disaster and economic devastation. Human Rights Watch noted the Saudi blockade of Yemen was a war crime, and the effects on threatened populations will increase because of the blockade during the pandemic.<sup>238</sup> Similarly, the war and Ethiopia's blockade has taken place entirely during the pandemic, and the blockade could be exacerbating the public health and food insecurity twin emergencies the pandemic has already caused in Tigray.<sup>239</sup> Ethiopia is blockading Tigray, and the blockade is causing starvation and depriving the population of objects indispensable for its survival.

Moreover, Abiy is fulfilling element 5 of Article 14's war crime of starvation—starving or destroying objects indispensable to survival for the civilian population—because he perpetuates the starvation of a civilian population for months beyond the clear warning of the reality and the imminent consequences.<sup>240</sup> Continuing the blockade shows Ethiopia is starving the Tigrayan people on purpose, because its conduct has been unchanged even after being put on notice and told to allow emergency aid.<sup>241</sup> The United Nations declared a famine on July 2, 2021.<sup>242</sup> Naturally, the United Nations called for

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236. See *Yemen: Coalition Blockade Imperils Civilians*, *supra* note 87.

237. *Accord*. THE CRIME OF STARVATION, *supra* note 54, at 4–5 (saying Article 8 on starvation criminalizes “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions”).

238. *Deadly Consequences*, *supra* note 91.

239. *UN Fears ‘Massive’ COVID Transmission in Ethiopia’s Tigray*, AL JAZEERA (Jan. 8, 2021), <https://www.aljazeera.com/news/2021/1/8/un-fears-massive-covid-transmission-in-ethiopia-tigray>.

240. See *supra* Part II.B.2.

241. See e.g., Gladstone & Walsh, *supra* note 128 (describing how Ethiopia forced a humanitarian flight to abort a landing in Tigray).

242. See *Threshold into Famine*, *supra* note 121 (noting the U.N. Acting Under-

unrestricted aid; yet the Ethiopian blockade continued unabated.<sup>243</sup> In August, the Secretary-General confirmed Ethiopia was still maintaining the blockade and preventing aid from reaching Tigray.<sup>244</sup>

The blockade continued through September and October. Instead of allowing U.N. aid flights into Mekelle, Ethiopia's fighter jets forced them to turn away, and then they bombed the city.<sup>245</sup> In early November the United Nations reported Ethiopia had not allowed any aid delivery—not even a single truck—since mid-October.<sup>246</sup> Instead of stepping back from the abyss and from carrying out the famine to its inevitable catastrophe, Abiy called on all Ethiopians to arm themselves to “bury” the “rats”—the Tigrayan people—in “a pit.”<sup>247</sup>

Abiy's conduct shows an armed coalition determined to see a famine through, from catastrophic hunger to exterminating death. Abiy has made his position on these atrocities clear by calling all Tigrayans weeds and cancer.<sup>248</sup> The philosophy of totalitarianism and fascism show this kind of rhetoric is regularly taken to its logical

Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator recognized that the situation in Tigray now qualifies as a famine).

243. See Nichols, *supra* note 127 (quoting the U.N. aid chief Martin Griffiths, who said a “de-facto blockade” meant less than ten percent of the aid needed was reaching Tigray, where ninety percent of the population needs help (for example, in September the United Nations found “70% of some 11,000 pregnant or breastfeeding women are acutely malnourished”) and Griffiths concluded “[t]his is man-made, this can be remedied by the act of government”).

244. See *Catastrophe ‘Unfolding Before Our Eyes’*, *supra* note 124 (warning Mekelle needs around 100 trucks a day but none have entered for over a week because of Ethiopia's blockade).

245. See Gladstone & Walsh, *supra* note 128 (reporting threats to a U.N. flight and airstrikes in the Tigray region).

246. ETHIOPIA-NORTHERN ETHIOPIA HUMANITARIAN UPDATE, SITUATION REPORT, *supra* note 123.

247. See *Ethiopian Leader, Marking Year of War, Says He Will Bury Foes ‘with Our Blood,’* REUTERS (Nov. 3, 2021), <https://www.reuters.com/world/africa/ethiopian-leader-marking-year-war-says-he-will-bury-his-foes-with-our-blood-2021-11-03> (quoting Abiy saying: “The pit which is dug will be very deep, it will be where the enemy is buried, not where Ethiopia disintegrates.”); see also Anna, *Ethiopia Compares Tigray Forces to ‘Rat’ as War Marks 1 Year*, *supra* note 129 (“A rat that strays far from its hole is nearer to death.”).

248. See *Abiy Loses It*, *supra* note 225 (noting that Abiy has significantly increased his use of nationalist-populist rhetoric).

conclusion—extermination.<sup>249</sup> Ethiopia has carried out three campaigns in just a few months to starve as many Tigrayans as quickly as possible.

Ethiopia's actions during the first year of the current Ethiopian civil war show Abiy and his armies have satisfied element 5 of Article 14, starving a population or destroying objects it needs to survive. Three systematic campaigns mean Ethiopia has more than met this element. First, Abiy's forces looted and destroyed food and fertilizer, ruined farming equipment, killed livestock, cut off the population from communication, ransacked hospitals, and razed homes.<sup>250</sup> Ethiopia also destroyed objects indispensable to the civilian population's survival.

Additionally, Ethiopia acted to ruin Tigray's harvest by destroying or stealing essential supplies—like equipment, livestock, seed, and fertilizer—stopping farmers from working their fields, and displacing or killing farmers to keep even more of them from planting.<sup>251</sup> Depriving a subsistence agrarian population of its harvest means the population will starve. Finally, Ethiopia has blockaded the region for the entire war. Even after military defeat and months of U.N.-declared famine, Abiy continues to allow almost no aid into Tigray, pushing more and more people into greater and greater hunger.<sup>252</sup>

With this behavior Ethiopia overwhelmingly satisfies element 5 of

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249. See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 457 (1968) (finding ideological hatred inevitably leads to exterminatory violence; the logical conclusion of identifying a group of people as dangerous and subhuman is necessary self-defense, which means killing them en masse); see also MARIO VARGAS LLOSA, *THE FEAST OF THE GOAT* 164 (Edith Grossman trans. 2000) (reflecting on his ethnic cleansing campaign, when he had the army slaughter at least 40,000 Haitians in the Dominican Republic, dictator Rafael Leonidas Trujillo Molina says the massacre was ““For the sake of this country . . . To keep the blacks from colonizing us again. There were tens of thousands of them, and they were everywhere. If I hadn't, the Dominican Republic would not exist today.””); *contra Act Now to Avert a Bloodbath in Ethiopia*, *THE ECONOMIST* (Nov. 4, 2021), <https://www.economist.com/leaders/2021/11/04/act-now-to-avert-a-bloodbath-in-ethiopia> (reporting those who have met Abiy recently say he has a messianic zeal and cannot understand why the West is not supporting him in his war to deliver Ethiopia from the darkness and into the light—by destroying the Tigrayans).

250. See *supra* Part III.B.1.

251. See *supra* Part III.B.2.

252. See *supra* Part III.B.3.

Article 14, because Ethiopia has destroyed objects indispensable to the civilian population's survival and has caused the population to starve. All other elements are met as well,<sup>253</sup> so Ethiopia has committed the war crime of starvation of a population under Article 14 of Protocol Additional II.

#### IV. RECOMMENDATIONS

To protect Tigrayans and the world of the future, the international community should take three concrete and practical steps. Each of these steps are within the mandate of the international community. Although wars of aggression may never end—as with Russia's current genocide of Ukrainians—the international community should continue its efforts in ending mass starvation during them.

##### A. U.N.: ESTABLISH A CRIMINAL TRIBUNAL FOR THE ETHIOPIAN CIVIL WAR

First, the United Nations should establish a tribunal to investigate and prosecute Ethiopia's violations of Protocol Additional II. International criminal tribunals are important for human rights and international law. To recognize victims and uphold the law, avoiding impunity is necessary.<sup>254</sup> International tribunals “herald a major step in the implementation of IHL.”<sup>255</sup> Impunity means more crimes. Justice means less crimes someday, and at least history is moving in the right direction.

The Security Council initiated the U.N.'s creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) during the war and Serbian genocide against Bosnians.<sup>256</sup> Again, the

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253. See *supra* Part II.A.2 (concluding Article 14's elements are (1) during an NIAC, (2) a civilian population (3) is starving (4) because an armed force (5) through act or omission causes starvation or destroys objects indispensable to survival for the civilian population (with no specific intent to starve requirement)); *supra* Part III.A (holding Ethiopia meets elements 1–4).

254. See Report of the Special Rapporteur, *supra* note 22, paras. 31, 57, 103 (describing the negative effects of amnesties).

255. *Ad Hoc Tribunals*, INT'L COMM. OF THE RED CROSS (Oct. 29, 2010), <https://www.icrc.org/en/document/ad-hoc-tribunals>.

256. Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, para. 10 (May 3, 1993) (saying the Security Council is “determined that this situation constituted a threat to

United Nations should establish a tribunal, because Ethiopia and its coalition are committing “widespread violations of international humanitarian law,” like in the Serbian genocide of Bosniaks.<sup>257</sup> Under Chapter VII of the U.N. Charter, the Security Council may take actions to “maintain or restore peace and security.”<sup>258</sup> The Security Council established the ICTY because it believed the ad hoc tribunal “would contribute to the restoration and maintenance of peace.”<sup>259</sup>

Like the ICTY, the United Nations should create an ad hoc tribunal with the jurisdiction to try individuals for criminal responsibility under international law for crimes committed during Ethiopia’s Civil War. The problem is the Security Council is virtually guaranteed to fail to do so because both Russia and China—two governments committing genocide at this moment—systematically veto humanitarian measures.<sup>260</sup> For eight months of aggression and death, Russia kept the Security Council from even discussing the Ethiopian Civil War.<sup>261</sup> Unfortunately, the General Assembly, a body more representative of the people of the world and less inclined to permit mass crimes, has no authority to create and mandate a binding tribunal on its own.<sup>262</sup> But the General Assembly can refer to the Security Council questions about appropriate actions in response to threats to peace.<sup>263</sup> Moreover, the General Assembly

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international peace and security, and stated that it was determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible”).

257. *Id.*

258. U.N. Charter ch. VII, art. 39.

259. Resolution 827 (1993), Security Council, S/RES/827 (May 25, 1993).

260. *E.g.*, Faruk Zorlu, *Russia, China Vetoes in UN Security Council Aided Assad*, ANDALU AGENCY (July 18, 2020), <https://www.aa.com.tr/en/middle-east/russia-china-vetoes-in-un-security-council-aided-assad/1914580> (reporting the finding by the Syrian Network for Human Rights that “the Security Council’s most serious and potentially effective draft resolutions in deterring the Syrian regime have been repeatedly thwarted by Russia and China through the use of their veto power in defense of the Syrian regime,” causing the mass murder of “nearly a quarter of a million Syrians and the arrest of nearly 150,000 others”).

261. *See UN Security Council: End Inaction on Ethiopia*, HUM. RTS. WATCH (July 2, 2021), <https://www.hrw.org/news/2021/07/02/un-security-council-end-inaction-ethiopia#> (reporting the “council’s abdication of responsibility”).

262. *See generally* U.N. Charter chs. IV, VII.

263. *Id.* art. 11(2) (establishing that the General Assembly should refer questions

should pass a resolution calling for this tribunal in the strongest words. This would show that the nations of the world oppose war grave crimes governments commit against their own people, and it would go a long way towards solidifying the laws of war as customary international law, even during NIACs. When the Security Council fails, the General Assembly can still act.

#### B. U.N.: MILITARILY INTERVENE

Second, the Security Council should order an armed intervention by a global coalition—with a core of forces from African, European, and American states—to stop the fighting, protect the Tigrayan region's autonomy until the people of Tigray and all of Ethiopia get a just political resolution implemented, and establish unlimited access for aid. Grave violations, the risk of Abiy killing hundreds of thousands or millions through the violent actions and famine he continues, and Ethiopia's failure to end its criminal conduct or allow relief meets the threshold for Responsibility to Protect.<sup>264</sup>

Armed international interventions have achieved clear successes in ending horrors, even in seemingly intractable conflicts which the world tried to tolerate. In Sierra Leone, the Economic Community of West African States (ECOWAS) and the United Kingdom stopped the rebels' decade of rampage and achieved a lasting peace by armed intervention—alongside informed-but-determined negotiation.<sup>265</sup> An African Union force has ended civil war and famine in Somalia and helped establish a functioning society (if not a functioning state).<sup>266</sup> And in Bosnia and Kosovo, initial armed intervention backed by diplomacy and armed peacekeeping ended imperialism, genocide, and war crimes in a regional war many cynically wrote off as historically destined.<sup>267</sup>

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on which action is necessary to maintain international peace and security to the Security Council).

264. See BELLAMY, *supra* note 47 (explaining the criteria for using force to protect civilians from systematic abuses).

265. See generally Muhammed Mahdi Hasan, *The Role of the ECOWAS, the United Nations and the United Kingdom in Terminating Sierra Leone Civil War* (June 2015) (M.A. dissertation, University of Massachusetts Boston) (ProQuest).

266. See generally Paul D. Williams et al., *ACCESSING THE EFFECTIVENESS OF THE AFRICAN UNION MISSION IN SOMALIA (AMISOM)* (2018).

267. See generally Enika Abazi & Albert Doja, *The Past in the Present: Time*

Moreover, Ethiopia is destabilizing an entire at-risk region.<sup>268</sup> Abiy's war is increasingly likely to lead to the collapse of the Ethiopian state. This will destroy any modicum of stability in the Horn of Africa, an area where the world is vulnerable.<sup>269</sup> Therefore, Abiy's war is a threat to international peace and security. Given that international peace and the fundamental rights of human beings are the cornerstones of the U.N., this is the time for the United Nations to act effectively and not accept failure, or the many reasons for inaction.<sup>270</sup>

To do this, the Security Council should seize itself of the situation in Ethiopia and Tigray under Chapter VII.<sup>271</sup> Ordering all parties to cease hostilities and begin genuine peace negotiations, the Security Council should immediately prepare a force for armed intervention. It should quickly deploy this force to impose a cease fire and peace negotiations if any of the parties fail to follow the Security Council's orders. Finally, immediately after either forcing a ceasefire or the parties observing one themselves, the United Nations should deploy peacekeepers to guarantee the unlimited distribution of aid and facilitate the implementation of a peace agreement respecting popular sovereignty, human rights, and recognized principles of democracy and development.

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*and Narrative of Balkan Wars in Media Industry and International Politics*, 38 THIRD WORLD Q. 1012 (critiquing standard portrayals of various Balkan conflict narratives as selective, exoticized, and improperly assuming a tendency for conflict).

268. See Scott Neuman & Eyder Peralta, *Rebels Are Closing in on Ethiopia's Capital. Its Collapse Could Bring Regional Chaos*, NPR (Nov. 9, 2021), <https://www.npr.org/2021/11/07/1051940127/rebels-are-closing-in-on-ethiopia-capital-its-collapse-could-bring-regional-cha> (pointing out that if Addis Ababa falls, Ethiopia and the entire region could collapse into chaos).

269. See generally M. Mohaned Abshir, *Ethiopia, Eritrea, Somalia, Djibouti: The Constant Instability in the Horn of Africa*, AFRICA REP. (Apr. 20, 2021), <https://www.theafricareport.com/81417/ethiopia-eritrea-somalia-djibouti-the-constant-instability-in-the-horn-of-africa>.

270. See U.N. Charter pmbl., art. 1, ¶ 1 ("The Purposes of the United Nations are . . . to maintain international peace and security").

271. See *id.* chs. IV, VII ("The Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression . . .").



### C. STATES: SUE ETHIOPIA AT THE ICJ FOR GENOCIDE

Third, on behalf of their peoples, states should file a lawsuit at the ICJ against Ethiopia for genocide. Ethiopia's conduct suggests genocide and requires investigation. Along with the blockade of the entire Tigray region and its population, Ethiopia has allowed ethnic cleansing by an allied non-state party,<sup>272</sup> committed widespread rape, and targeted Tigrayans for internment throughout Ethiopia. Abiy's rhetoric has increasingly become hate speech and genocidal.<sup>273</sup> Further, the starvation campaign has targeted all of Tigray, and only Tigray. During fall 2021, as the TPLF/TDF advanced, Abiy, Ethiopia, and civilians began the mass internment of Tigrayans into internment camps.<sup>274</sup> States may bring proceedings at the ICJ against countries committing genocide.<sup>275</sup> To meaningfully uphold humanity's indignation at war crimes and the military destruction of civilian populations, states should do so against Ethiopia.

## V. CONCLUSION

Intentionally destroying resources essential for survival, ruining the harvest, and blockading almost all food from the Tigray population is a war crime under the Protocol Additional II, which bans the starvation of civilians during war.

The world is watching a man-made famine. Impunity here would begin years of impotence for international law and evaporated protections for populations subject to oppression, aggression, war,

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272. E.g., Cara Anna, 'Leave No Tigrayan': In Ethiopia, an Ethnicity Is Erased, AP (Apr. 7, 2021), <https://apnews.com/article/ethiopia-tigray-minority-ethnic-cleansing-sudan-world-news-842741eebf9bf0984946619c0fc15023> (reporting how Amhara armies have ethnically cleansed western Tigray through forced displacement, and Tigrayan identity is being officially erased).

273. See Anna, *Ethiopia Compares Tigray Forces to 'Rat' as War Marks 1 Year*, *supra* note 129.

274. See Abdi Latif Dahir, *Mass Detentions of Civilians Fan 'Climate of Fear' in Ethiopia*, N.Y. TIMES (Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/world/africa/ethiopia-tigrayan-detention.html> (explaining that thousands of Ethiopians have been rounded up and detained in camps).

275. See Genocide Convention, *supra* note 23, art. 9; e.g., *The Gambia v. Myanmar Application*, *supra* note 23 (suing Myanmar at the ICJ for committing genocide against the Rohingya people).

crimes against humanity, genocide, or other atrocities. To mitigate these heinous crimes, the international community must end the Tigrayan people's suffering, and hold Ethiopia, its partners, and Abiy accountable under international law. Ethiopia is not permitted to destroy Tigrayan society and annihilate its population; yet it is trying to, so the world must stop it.

The United Nations and the institutions of international law have all the tools required to stop—practically, concretely, and on the ground—the ocean of atrocities in which Abiy and Ethiopia are drowning Tigray. Abiy and Ethiopia's acts shock the conscience of every person who values humanity and human rights.<sup>276</sup> Failure here means millions more dead—in both this war and others after it—in the climate of impunity and atrocity which insufficient action will inaugurate.

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276. *Cf.* Rome Statute, *supra* note 46, Preamble (remembering victims of “unimaginable atrocities that deeply shock the conscience of humanity”).