

**ADDIS ABABA UNIVERSITY**  
**SCHOOL OF GRADUATE STUDIES**

**A CRITICAL EXPLORATION OF COMPLIANCE WITH  
INTERNATIONAL HUMANITARIAN LAW IN THE NORTHERN  
ETHIOPIAN ARMED CONFLICT (2020-2022)**

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**ADDIS ABABA**  
**MAY, 2024**

**ADDIS ABABA UNIVERSITY**  
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**COLLEGE OF SOCIAL SCIENCE**  
**DEPARTMENT OF POLITICAL SCIENCE AND INTERNATIONAL**  
**RELATIONS**

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## List of Acronyms

ADP	Amhara Democratic Party
ASF	Amhara Special Forces
AU	African Union
EDF	Eritrean Defense Forces
EHRC	Ethiopian Human Rights Commission
EHRCO	Ethiopian Human Rights Council
ENDF	Ethiopian National Defense Forces
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERCS	Ethiopian Red Cross Society
FDRE	Federal Democratic Republic of Ethiopia
ICHREE	International Commission of Human Rights Experts on Ethiopia
ICRC	International Committee of the Red Cross
IDPs	Internally displaced Persons
IHL	International Humanitarian Law
IL	International Law
IMTF	Inter-Ministerial Taskforce
JIT	Joint Investigation Team
MoD	Ministry of Defense
MoJ	Ministry of Justice
NSA	Non state actors
NSAGs	Non-state armed groups
OAU	Organization of African Unity
ODP	Oromo Democratic Party
OHCHR	United Nations High Commissioner for Human Rights
OLA	Oromo Liberation Army

PP	Prosperity Party
SEPDM	Southern Ethiopian People's Democratic Movement
SAF	State Armed Forces
TDF	Tigray Defense Forces
TJ	Transitional Justice
TJWGE	Transitional Justice Working Group of Experts
TPLF	Tigray People's Liberation Front
TSF	Tigray Special Forces
UN-HRC	United Nations Human Rights Council

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## ***Abstract***

*Compliance with international humanitarian law (IHL) has been subject to heightened examination, emphasizing the impact of armed conflicts and the challenge of implementing the legal principles of action. Despite the mechanisms of compliance under the law, the effectiveness of protecting civilians and their property requires careful evaluation in light of continuous violations of the law. The study critically examines compliance with IHL in northern Ethiopia's armed conflict (2020-2022) to understand the compliance challenges, given the reported humanitarian consequences. To accomplish this task, a qualitative approach is utilized, involving semi-structured interview with engaged individuals from relevant institutions to investigate the challenges to compliance. Humanitarian investigative reports were reviewed to include violations of the laws of armed conflicts and the overall toll on civilians. Interviews were conducted to probe the challenges to compliance with engaged individuals. The study has revealed an evolved character of warfare and a lapse in compliance mechanisms employed under IHL. The categorization of the conflict affects IHL and international law obligations. Ethnic rivalry was a factor in noncompliance. It has determined the challenges of emotional factors influencing fighters, such as anger and resentment. The role of humanitarian work has grappled with considerable security risks. The study emphasized that discontents have the potential to initiate violence among communities. It suggests the need for a neutral body for justice, addressing community grievances, and establishing deterrence mechanisms through political dialogue and peaceful negotiations.*

# Chapter One: Introduction

## 1.1 Background

Early in 2018, the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of four main ethnically-based parties governing since 1991, decided to restructure after years of demonstrations, state repression, and corruption (Wight, 2020). Abiy Ahmed was chosen as prime minister by Ethiopia's parliament in April 2018. The new administration undertook a series of political reforms. Hopes quickly gave way to sorrow when the Tigray People's Liberation Front (TPLF), which had long been the leading party for almost three decades in the EPRDF, entered into friction with the new administration (Pichon, 2022).

The Prosperity Party (PP) was formed to replace the EPRDF (Crisis 24, 2023), which the TPLF refused to merge with the new ruling party (Eritrea Focus, 2021). Abiy also made a historic move by calling for the normalization of the 20-year standoff with Eritrea. After an executive meeting of the EPRDF on June 5, 2018, it announced that it would accept and implement the Algiers agreement (Meressa, 2019). Tensions further escalated after the TPLF held a regional election in September 2020 in defiance of the federal government's decision to postpone it as a result of the Corona virus pandemic (Pichon, 2022).

On November 3, 2020, it was reported that the Tigray Special Forces (TSF) and allied militia had attacked the Northern Command of the Ethiopian National Defense Forces (ENDF), situated in the Tigray National Regional State (IMTF, 2022). The IMTF reported that this attack has caused the deaths of ENDF officers and taken over the armaments (IMTF, 2022). As a response to the TSF's attack, Prime Minister (PM) Abiy declared the beginning of military operations in the Tigray region, and he noted that the attack had pressured the federal government to be involved in a military conflict (Blanchard, 2021). This incident started an internal armed conflict consisting of the ENDF, Regional Special Forces, and Eritrean Defense Forces (EDF), confronting the TSF and allied militias (JIT, 2021). By the end of that month, the federal government stated that the operation was over after capturing Mekelle, the regional capital of Tigray (Crisis24, 2020).

On June 28, 2021, a dramatic turn of events occurred when the federal government unilaterally declared a ceasefire and withdrew its forces from Tigray region. The TPLF declared complete control of Mekelle. It then expanded the fighting into the neighboring regions of Afar and Amhara until November 2021, when federal forces retook control of the two regions (IMTF, 2022). After an intermittent ceasefire between March and September 2022, peace talks mediated by the African Union (AU) between the ENDF and TPLF in Pretoria, South Africa, began in late October 2022. The parties agreed on a “permanent cessation of hostilities,” which they signed on November 2, 2022. The two-year-old conflict, which has spread beyond Tigray into the neighboring regions of Amhara and Afar, has killed thousands of people, driven millions from their homes, and put hundreds of thousands on the verge of hunger (Aljazeera, November 10, 2022).

In this thesis, an effort is made to assess Northern Ethiopia’s conflict that took place from November 4, 2020, to November 2, 2022, in consideration of international humanitarian law (IHL), of which Ethiopia is a signatory state to the Geneva Conventions (GCs). It looks into the commission of violations by the parties to the conflict and the initiatives for accountability. However, most of all, it dives into an exploration of the challenges to compliance with IHL. This goal evaluates how compliance mechanisms under IHL are being practiced by conflicting parties, as well as the effectiveness of justice oversight bodies and humanitarian institutions in fulfilling their roles. Following the findings, includes recommendations for abating potential triggers of conflicts, ways of enhancing compliance with the IHL, and ways to mitigate the harm to civilians.

## **1.2 Statement of the Problem**

The world has undergone fundamental changes in the lanes of politics, economics, and society; however, the woeful realities of civilians as a consequence of armed conflicts persisted. The rapid and enduring effects of armed conflicts include human suffering, death, mutilations, despair, property destruction, and shattered social fabric (ICRC, 2003). Nicolas Lamp argues that the changing nature of armed conflict has put into question international humanitarian law (IHL)

compliance mechanisms. Compliance with the law by conflicting parties demands recognition of the realities of today's conflicts (Lamp, 2011). Armed conflicts are no longer mainly characterized by a traditional, state-centered paradigm in which they are fought between troops acting as agents of the state, but rather by the intermixing of different methods, creating complicated and confusing circumstances of violence. The advancement of technology, globalization, and the proliferation of internal conflicts all contribute to the current increasingly complex international system, which overrides the original purpose of international humanitarian law (IHL) (Kelley, 2013). Debates have been triggered in recent decades concerning the numerous blatant violations of IHL and to what extent the law has protected civilians from the calamities of warfare (Lamp, 2011).

Over the past decade or so, extensive conflicts have occurred in various regions. In Africa, notable examples include the Democratic Republic of the Congo (DRC), Nigeria, Rwanda, Somalia, South Sudan, Mali, and the Central African Republic (CAR). To the north, Libya and Yemen, while in the Middle East, Syria and Iraq have experienced as such. Additionally, in Eastern Europe, Ukraine has faced similar situations (Walter, 2017). Between 1990 and 2000, civilians' casualties were accounted for 90 percent of the four million deaths resulting from war. From 1989 to 2000, within a minimum of one hundred civil wars, intentional killings of civilians were committed, out of which 50 percent were by government forces and 60 percent by rebels. However, all civilian casualties do not result from direct violence; they may also be from indirect causes, like war-related poverty, hunger, and medical inadequacy (Council on Foreign Relations (CFR), 2023).

In the Tigray region of northern Ethiopia, an armed conflict began between the forces of the ENDF and TPLF on November 4, 2020, and lasted up to November 2, 2022. The fighting began in the Tigray region and subsequently spread to the adjoining regions of Afar and Amhara in July 2021. Since the onset of the conflict, institutional reports have consistently identified conflicting parties for violations of IHL. They stated that the conflict was characterized by widespread violations of the IHL. Among these claims are indiscriminate attacks, extrajudicial killings, conflict-related sexual violence, looting and destruction of civilian properties, torture, and other

cruel, inhuman, or degrading treatment, as well as forced displacement of the civilian population (U.S. Department of State, 2023).

An emergency report released on October 30, 2023, by the United Nations High Commissioner for Refugees (UNHCR) reported that the northern Ethiopian conflict (2020-2022) has unveiled a massive humanitarian and protection crisis in the regions of Tigray, Amhara, and Afar. According to the UNHCR emergency report (2023), the armed conflict has killed thousands and displaced millions. It also indicated that, across these three conflict-ridden regions, approximately nine million people lack access to adequate food (UNHCR, 2023). Despite these numerous findings about IHL violations and the subsequent humanitarian crisis, we appear to be having a research vacuum about factors that challenged warring parties from complying with the rules of war. In today's perplexed armed conflicts, it is utterly indispensable to investigate the challenges of compliance with IHL. Northern Ethiopia's armed conflict (2020-2022), being one of the more recent ones, necessitates discovering the compliance hindrances.

### **1.3 Core Argument**

The conventional application of IHL has come under increased scrutiny over the past decades, highlighting both the implications of armed conflicts on the world at large and how challenging it is to put legal theory into practice. Under the instruments of IHL, on which it lays down compliance-inducing mechanisms, imagine the protections of civilian populations and their properties. However, their potency needs to be examined, considering the persistence of violations of IHL. Further exploration of the challenges to compliance with IHL in northern Ethiopia's conflict (2020-2022) helps us understand how actors in contemporary warfare are failing to follow the rules of IHL.

### **1.4 Objective of the Study**

The overall objective of this study is to assess compliance with international humanitarian law in northern Ethiopia's armed conflict from 2020 to 2022. The study also has the following specific objectives:

- A. To investigate types of IHL that are applicable in northern Ethiopia's armed conflict;

- B. To examine violations of IHL in northern Ethiopia's armed conflict;
- C. To inspect the progress on the implementation of accountability;
- D. To analyze the factors that challenged warring parties from complying with treaties or norms of IHL in northern Ethiopia's armed conflict.

### **1.5 Research Questions**

The core research question of the study is: How is the compliance with international humanitarian law in northern Ethiopia's armed conflict from 2020 to 2022? The study attempted to address the following specific research questions:

- A. Which types of IHL are applicable in northern Ethiopia's armed conflict?
- B. What violations of IHL occurred in northern Ethiopia's armed conflict?
- C. What is the progress made in the implementation of accountability?
- D. What are the factors that challenged warring parties from complying with treaties or norms of IHL in northern Ethiopia's armed conflict?

### **1.6 Research Methodology**

There are two broad categories of research approaches: quantitative and qualitative. The former involves investigations that derive their results using statistical analysis. Its key characteristics are statistics and formal, systematic measurement. The latter, however, consists of research that does not make an effort to quantify its findings through statistical summary or analysis (Marczyk et al., 2005). To fulfill the objectives of this study, a qualitative methodology has been utilized. This approach is chosen for the following reasons, which Yin (2016, p. 9) discusses as the five features that distinguish qualitative research from other forms of social science research. In order to conduct this study, three of these characteristics triggered the need for a qualitative approach. Firstly, it expressly embraces the contextual circumstances, like the social, institutional, cultural, and environmental frameworks within which people's lives take place, which will have a significant impact on all human concerns. It has allowed exploring an unlimited assortment of concepts and to fully appreciate the contextual conditions. Secondly, it uses existing or novel ideas to explain social behavior and thought, providing an opportunity to explore fresh ideas that

could make an effort to describe social processes. Thirdly, it recognizes the need for compiling, combining, and presenting facts from many sources of proof. As a result, it has had the ability to triangulate among multiple sources to develop convergent routes of analysis (Yin, 2016).

Research methodology guides the implementation of research methods and instruments for data collection and subsequent data analysis. Instruments of data collection are the tools or devices that are utilized to collect information from sources. Sources of data include key informants, participants in focus group discussions, respondents to questioners, and observations. Each of these sources employs different techniques to collect data. The collection of primary data primarily entails conducting interviews with the sources identified. Interviews are designed in three ways: structured, unstructured, and semi-structured. The structured one utilizes a predetermined set of standardized questions, preserving fixed arrangements for all our respondents. On the contrary, unstructured interviewing lacks prearranged types of questions and depends on open-ended examinations. Whereas the semi-structured is the admixture of both, which allows the researcher to explore specific topics based on the study's objectives. Here, an interview guideline serves as a structured framework to help facilitate consistency while also allowing flexibility in interviewing (Berg, 2001).

This study has employed key informant interviews as the primary source of data collection. This method was selected because of its potency to obtain data, facts, or knowledge directly from the source or through direct personal experience. The information comes from someone who has expertise in the field of the study, someone who witnessed or participated in an event, or someone who has been directly involved in a situation. These informants can play a crucial role in providing valuable insights into the nature of problems in their separate fields. The study aimed to get varied observations about compliance with international humanitarian law in northern Ethiopia's conflict from 2020 to 2022. To procure this, a combination of purposive and snowball sampling techniques was employed. The former was chosen to ensure the incorporation of key informants with a direct bearing on the research area. The latter was utilized to identify supplemental informants in recognition of the hurdles associated with obtaining information related to the conflict study area.

Accordingly, interview questions were organized in a semi-structured format (which are attached in Appendix II) and were conducted with informants (the list of interviewees is in Appendix I) and were chosen from the Ethiopian Ministry of Defense (MoD), Ethiopian Human Rights Commission (EHRC), Ethiopian Human Rights Council (EHRCO), Ministry of Justice of Ethiopia (MoJ), International Committee of the Red Cross (ICRC), and Ethiopian Red Cross Society (ERCS). Interviews with members of the Tigray forces, or members of the self-proclaimed “Tigray Defense Forces (TDF),” are also included. Overall, the study has comprised opinions from ten informants. However, due to the sensitivity of the subject matter, most of the interviewees were highly reserved in addressing the questions. At its worst, even though an additional source was interviewed from one of the aforementioned institutions, owing to the informant’s reluctance to speak openly about the study area, the collected data lacked relevance and was excluded. Furthermore, initial efforts to forge connections with members of the Tigray forces took time, and interconnector personnel declined the interview out of fear that the thesis might be crafted to oppose their standing point.

Legal instruments of IHL are also categorized as primary sources in legal research. These include legal issues, cases, statutes, and other components of the law. The study utilized secondary sources to explain, examine, or review data obtained from the primary sources. They provide a secondhand viewpoint on a topic, situation, or field. They include books, journal articles, archival sources, official reports, news reports, and online sources. The collected data have been analyzed using descriptive and analytical techniques.

## **1.7 Scope and Limitation of the Study**

The scope of this study is limited to the discussion of compliance with international humanitarian law in Ethiopia’s northern conflict from 2020 to 2022. The study does not include an examination or analysis of legal aspects. Rather, it only describes what the legal document of the IHL declares and explores the challenges of compliance by the parties to northern Ethiopia’s conflict that started on November 4, 2020, and ended on November 2, 2022. The study does not encompass the period following the signing of the peace agreement between the ENDF and

TPLF on November 2, 2022. Additionally, it does not address any subsequent developments involving these two parties or any of the participants in the conflict.

Fundamental limitations in the event of conducting this research were the following: The first was that some institutions were unresponsive to an interview, particularly the Office of the United Nations High Commissioner for Human Rights (OHCHR). Secondly, to achieve a comprehensive understanding of the studied topic, it is important for the researcher to seek input and perspectives from all relevant parties involved. Considering that Ethiopia's Regional Special Forces had participated in northern Ethiopia's conflict (2020-2022), including one of the numerous actors involved, the Amhara Special Force, the researcher was unable to establish contact with the mentioned parties due to the unsettled security situation in the Amhara National Regional State at the time of preparing this thesis.

### **1.8 Significance of the Study**

Compliance with IHL by state and non-state actors in armed conflicts is challenged in a variety of ways by the evolving character of warfare. The current complexities of the international system and IHL's mechanisms for the inducement of compliance have come under intense criticism. It is essential to explore how existing rules of IHL are being practiced by warring parties and the factors contributing to their violations. Scrutinizing the practical challenges versus the legal expectations of compliance under IHL helps identify areas where operational realities may diverge from the rules, present understandings into areas where the law might need amendments, ensure accountability, and most of all, and find better ways to protect civilians from the havoc of armed conflicts.

### **1.9 Organization of the Study**

The study is organized into five chapters. The initial chapter, which we are currently exploring, introduces the study along with a description of the issue, the study's objectives, the methodology, and the tools of data collection employed. Additionally, the chapter covers the scope, limitations, and significance of the study. The second chapter comprises three subsections that encompass, firstly, a legal framework describing selected provisions from the IHL's legal

instruments. Next, a conceptual framework is presented. Following that, a theoretical framework for compliance and IHL is discussed. The final section of this chapter discusses a review of the empirical literature.

The third chapter provides Ethiopia's historical settings briefly, followed by an exploration of the events surrounding Ethiopia's northern conflict from 2020 to 2022. The fourth chapter deliberates on the collected data based on the general objective of the study. It is divided into four sections, each addressing specific questions posed by the study. The fifth chapter of the study narrates descriptive and analytical interpretations, primarily focusing on analyses of challenges to compliance with IHL in Ethiopia's northern conflict from 2020 to 2022. Finally, a shorter section is presented, which includes concluding remarks and recommendations.

## **Chapter Two: Literature Review**

### **2. Introduction**

This chapter proceeds as follows: The first section discusses the historical aspect of international humanitarian law. The second section is a legal framework that outlines relevant provisions concerning the specific area of study. The following section addresses a theoretical framework related to the idea of compliance and international humanitarian law. The final part provides an assessment of how the law has been practiced so far in a few selected conflicts on the African continent.

#### **2.1 The Historical Development of International Humanitarian Law**

International humanitarian law (hereafter IHL), also referred to as the laws of war (*jus in bello*), seeks to reduce the impacts of armed conflict by safeguarding those who are not or are no longer engaged in hostilities (*hors de combat*) and limits the means and methods of warfare (OHCHR, 2011). IHL is not meant to outlaw or put an end to war. Instead, it acknowledges the existence of armed conflicts and governs behavior there. The law applies once a conflict has begun and then equally to all sides, regardless of who started the fighting, why the warring parties are fighting, who is involved, or if the conflict is a lawful one (Diakonia, 2022).

IHL evolved from the traditional military procedures that emerged over time in all countries around the world. As early as 1000 BC, there were customs governing the means and methods of permitting and prohibiting warfare during battles (Bouvier, 2020). Such restrictions have existed in several traditions throughout history across the world. Some of these traditions are as follows: The Chinese author Sun Tzu stated in his book, titled “The Art of War,” published in 500 BC, that wars should only be fought from a military standpoint and that prisoners of war (POWs) and civilians should all be spared from this. The Code of Manu in India, written around 200 BC, also presents similar protocols for fighting. In Europe, the Greek philosophical school known as Stoicism guided many European leaders, from Roman emperors to modern military generals. Its core principle is about how soldiers could exercise restraint and emotional control while dealing

with fury and terror in the face of the adversary. By doing so, they will be better equipped to make moral judgments under pressure (Price, 2020). In Africa, there have been norms governing belligerents' behavior that protect civilians and civilian objects. Also, this custom limited the types of weapons and methods that might be used in battles. For instance, it was banned to use spears, poisoned arrows, and food poisoning (Mutuma, 2023).

Two men played an essential role in the creation of the contemporary codification of IHL: Henry Dunant and Guillaume Dufour (ICRC, 2014). Dunant, following his observation of a horrific conflict that took place in northern Italy in 1859, authored a book named "A Memory of Solferino." He provided solutions that would help to lessen the agony of war victims (Bouvier, 2020). General Dufour, who dedicated his time to organizing a diplomatic meeting in 1864 at the request of the five founding members of the International Committee of the Red Cross (ICRC), made Dunant's plan a reality. This conference marked the ratification of the first component of modern IHL, the Geneva Convention (GC), for the amelioration of the condition of the wounded in armies in the field (ICRC, 2014).

In 1868, a GC concerning the wounded in the Marine Corps was developed. Despite not being approved, this draft went on to become the Hague Convention of 1899 and the Xth Hague Convention in 1907 (ICRC, 2014). A 1929 conference resulted in the approval of a third GC relating to the Treatment of POWs (Bouvier, 2020). In 1949, just after the Second World War, three of the aforementioned conventions had to be revised. A Convention for the protection of civilians was also urgently needed since its absence throughout the world's conflicts had grave consequences (ICRC, 2014). As a result, the Fourth one, the GC for the protection of the civilian population, was adopted. What was unique about this conference was the adoption of Common Article 3 (CA3), common to the four GCs, the first international provision applicable in situations of internal conflicts or civil wars (Bouvier, 2020).

IHL categorizes two types of armed conflicts: international and non-international armed conflicts (NIACs and IACs). The former is a conflict fought between two state armed forces, to the minimum. The second one involves a conflict either between a state armed force and an organized armed group or organized armed groups rivaling each other in the territory of a state

(OHCHR, 2011). Two Additional Protocols to the 1949 GCs were approved in 1977. Protocol I, deals with protecting IACs victims, while Protocol II, deals with protecting NIACs victims. This Protocol II might be seen as somewhat extension of the common Article 3 of the four GCs (Bouvier, 2020). Further treaties that support the GCs and their APs include the Geneva Protocol prohibiting the use of gas (1925), the Ottawa Convention on the Prohibition of Anti-Personnel Mines (1977), and the 1980 Convention on Certain Conventional Weapons. Currently 196 states are party to the GCs.

A court that has jurisdiction over war crimes, the International Criminal Court (ICC), was created after the formulation of the Rome Statute in 1998. The ICC was the result of years of preceding efforts. The twentieth-century wars were marked by the perpetration of atrocious acts, many of which went unaccounted for. Two courts were formed in the post-Second World War era: the Nuremberg and Tokyo tribunals. In the year 1948, there was a desire for the establishment of a permanent international court to handle the types of crimes that had been inflicted, and this was recognized by the United Nations General Assembly. In the aftermath of the Cold War, the notion of an international court system resurfaced again. Yet, during this time, though deliberations on the ICC were ongoing at the United Nations, grave crimes were being committed in Rwanda and former Yugoslavia. In response, the UNSC formed ad hoc tribunals. These incidents played an essential role in organizing the conference in 1998, which formed the ICC in the city of Rome. The ICC is responsible for prosecuting individuals who commit major international crimes, including war crimes, crimes against humanity, genocide, and crimes of aggression. The Court will not exercise its jurisdiction in a situation where a state with the power is investigating and prosecuting the matter unless, in such a case, the state is unwilling or incapable of conducting it (ICC, 2020).

In addition to treaty laws, IHL is also governed by customary international laws (CIHL), rules not written on paper but, because of states' continued practices, have become obligatory. Secondly, it contains general principles of law recognized by civilized nations (peremptory norms), principles enshrined under the treaty laws from which no derogation is allowed. Other subsidiary sources of IHL are judicial decisions in which international courts have played a role in the interpretation and development of IHL. The arrival of the international courts and

tribunals, in particular the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Rwanda (ICTR) in the 1990s and, later, the ICC, are critical to mention (Governance, Social Development, Humanitarian, Conflict (GSDRC), 2013).

## **2.2 Legal Framework**

### **A. Qualification of Armed Conflicts**

Since different sets of rules apply to IACs and NIACs, it is important to begin by determining the nature of the conflict at hand. In case of IACs, Common Article 2(1) of the Geneva Conventions (GCs) encompasses situations when an outside power sends forces to support local rebellion or a conflict between two independent nation states. Common Article 2(2) pertains to provisions for either partial or total occupation. Additionally, Article 1(4) of Additional Protocol (APII) further elaborates on conflicts where people are fighting for self-determination against colonial domination, alien occupation, and racist regimes (GSDRC, 2013).

While CA3 of the GCs applies to conflicts either between a state and non-state armed groups (NSAGs) or between NSAGs, criteria are provided in CA3 and AP II to differentiate NIACs. Criteria under CA 3 stipulate a minimum threshold for the application of IHL. One is that the parties involved must demonstrate a “certain level of organization.” Variables to consider here encompass a command structure and disciplinary guidelines in a group; the establishment of a headquarters; the group’s authority in a territory; its capabilities to gain access to weapons, other military equipment, recruits, and military training; its proficiency to plan, organize, and perform military activities possessing army movements and operations; its ability to frame an allied military strategy employ tactics; and to speak up with a unified voice in negotiations and reach agreements like ceasefires or peace accords (GSDRC, 2013). It is presumed that government forces fulfill this requirement because it is anticipated that they have already established a military command responsibility, have military manuals providing legal responsibilities, and have the capability of accounting for perpetrators who have trespassed (Odermatt, 2013).

The second criterion is that the violence has to meet “a certain level of intensity” that distinguishes it from internal disturbances, turbulent situations such as riots and occasional acts

of violence. The elements to look into here are the seriousness of attacks and their recurrence, the spread of these armed clashes over territory and time, whether various parties were able to operate from territory under their control, an increase in the number of governmental forces, the mobilization of volunteers, and the distribution of weapons among both parties to the conflicts, as well as whether the conflict had attracted the attention of the United Nations Security Council (UNSC) and whether any resolutions on that matter had been passed (GSDRC, 2013).

AP II places a higher threshold than CA 3. AP II Article 1(1) requires NSAG be “under a responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.” Here, a command structure and the group’s authority over a territory are important to consider (Krieger, 2013)

#### B. Who are Combatants and Civilians?

A catalogue by the ICRC (2005) on customary rules of IHL (CIHL) differentiates civilians and combatants. Combatants are defined under Rule 3 of the catalogue as “all members of the armed forces of a party to the conflict.” Under Rule 5, civilians are defined as “persons who are not members of the armed forces.”

Guidance on direct participation in hostilities (DPH) by the ICRC (2009) defines armed forces as consisting of “state armed forces” and “organized armed groups.” The guidance defines “state armed forces” (pp. 30-31) to include “both regular armed forces and other armed groups or units organized under a command responsible to the state.” Whereas “organized armed force” belongs to a non-state party to an armed conflict. However, the non-state parties include not just an armed group but also political and humanitarian divisions of a society. The term “organized armed group” refers solely to the armed or military branch of a non-state party. This group includes (p. 32) “both dissident armed forces and other organized armed groups.” “Dissident armed forces” particularly refers to state armed forces that have mutinied against a state’s government.

### C. What are Military Objectives and Civilian Objects?

The ICRC's catalogue on customary rules of CIHL defines a military objective as "objects which, by their nature, location, purpose, or use, make an effective contribution to military action." And it further states that the object's full or half damage gives a military advantage. Under Rule 9 of the catalogue, civilian objects are "all objects that are not military objectives" (ICRC catalogue, 2005). Civilian objects include, but are not limited to, houses, hospitals, health centers, schools, places of worship, and so on.

### D. Guarantees of protection under IHL

Under IHL, fundamental guarantees are those rules commanding the minimum standards of protection for persons who are not or no longer taking part in hostilities. CA3 outlines prohibited acts and binds conflicting parties to respect them. A few of these prohibited acts include murder, cruel treatment and torture, taking of hostages, humiliating and degrading treatment, and execution without a proper trial. CA3 is identified as a rule of CIHL. APII further expands and complements this protection. The protocol envisages, in addition to what CA3 states, it intensifies protections the rights of children and the gender violence and from slavery. Fundamental guarantees are also provided in the CIHL catalogue of the ICRC. Rules starting from 87 to 105 constitute the divisions of fundamental guarantees (MSF, N.d)

IHL also stipulates cardinal principles that conflicting parties are obliged to follow during the conduct of hostilities. One of these is the principle of distinction, which states that "parties to a conflict shall at all times distinguish between combatants/military objectives and civilians/civilian objects and shall direct their operations only against military objectives" (IIHL, 2020). This principle is stipulated under AP II Article 13 (2), CA 3(1), and Rules 1 and 7 of the ICRC catalogue of CIHL. However, the DPH guidance by the ICRC (2009) provides that civilians will be devoid of this protection "unless and for such time as they take a direct part in hostilities." The principle distinction also protects the civilian from "indiscriminate attacks," to mean ignorance of an attack on protected persons, stipulated under Rule 11 of the ICRC catalogue of the CIHL.

Secondly, the principle of proportionality, under Rule 14 of the ICRC catalogue of the CIHL prohibits an attack that would cause superfluous injury or unnecessary suffering to civilians or damage civilian objects as compared to an expected military advantage (IIHL, 2020). A third principle, military necessity, allows parties to a conflict to use means and methods permitted by IHL for gaining victory over the opposing force, while also prohibiting the application of force by a party to not cause inhumane and unnecessary suffering to the civilian population or injury and destruction of civilian property. These two are stipulated under Part C (IX (2)) of ICRC's interpretive guidance of DPH. Last but not least, the principle of precaution sets down parties to a conflict under Rule 15 of the ICRC catalogue on CIHL to take on constant measures to protect civilian populations or civilian objects during military combat.

#### E. Violations of IHL

A war crime involves serious violations of IHL. While the definition of war crimes was initially specified for IACs, violations of CA3 were confirmed as crimes by international jurisprudence 1995. Following that, the adoption of the Rome Statute of the ICC in 1998 dealt with the legal gap that surrounds the international definition and persecution of war crimes within NIACs (Medecins Sans Frontieres (MSF) N.d). In NIACs, the Statute specifies under Art. 8 Paragraph 2(c) stipulates that violations of CA3 constitute serious violations, and Art. 8 Paragraph 2(e) provides laws and customs that would constitute serious violations in NIACs (GSDRC, 2013). These crimes can be prosecuted within states' courts where they have occurred, as well as by international courts, tribunals, or courts of third states. States that are engaged in conflicts bear the responsibility to cease violations of IHL and deter future violations. Individuals may be held criminally responsible for their commission of war crimes. When these crimes are committed by an individual representing the state, it is expected that the state will look for, prosecute, or extradite those responsible for serious violations (Diakonia, 2022).

## 2.3 Conceptual Framework

To understand the complexity of some relevant terms, it is essential to build upon a conceptual framework that delineates the intricacies and interrelationships among diverse phenomena. Accordingly, this framework aims to provide clarity by defining and interpreting phrases such as “armed conflict,” “war,” “conflict,” and “warfare” within a cohesive framework. It seeks to clarify their meanings, explore their interdependence, and frame their importance within the study.

A conflict is a broader term that involves confrontations between individuals, and/or groups, at national or international levels resulting from differences in thought processes, attitudes, understandings, interests, needs, and perceptions. It is a contest between adversaries over values and claims to status, power, and resources. Conflicts are also negotiation scenarios where one actor’s success in achieving their goals relies on the choices or decisions made by the other actor (Khan, N.d). Another definition of a conflict is a mismatch of interests, goals, values, needs, expectations, and social ideologies (van der, 2005). However, a conflict could be violent or non-violent. It could arise between individuals in all types of human relationships and social environments. Due to the vast array of potential differences among individuals, a lack of conflict typically indicates a lack of significant interaction. A conflict involves a mixture of sources. This includes economic competition, power struggles, and different political values (Fisher, 2000).

Referring to Clausewitz definition of the term “war”, Bosio described it as a true political instrument, a continuation of political intercourse, carried on with other means.” Other means is to refer to predominantly “violence.” Although such violence may be lethal and non-lethal, it is always physical and extends beyond the nation-state. However, political intercourse can take place at community, group, tribal, cultural, national, and international levels (Bosio, 2022). Within the genus of violence, war is a type; more specifically, it is defined as organized, institutionalized, personal, purposeful, direct, manifest, and controlled violence. It is the means for settling disputes between entities of the highest order of political organizations (van der, N.d). Synthesizing the phrase, war is the continuation of a group’s policy, be it a tribal element,

community, nation-state, or super-state, using violence as the primary means of coercion. The author further notes that it exists in a complex relationship with both conflict and competition, being both separate from and intertwined with them (Bosio, 2022).

The range of techniques or strategies employed in war is warfare. It is described as the “means by which war has to be fought.” However, here, the significance of context is important to mention. Technology plays a major role in shaping warfare, yet factors like doctrine and military structure are equally significant. Shifts in the nature of warfare can unfold gradually across generations or swiftly. These transformations notably impact how units and weapons are strategically employed tactically, and to a lesser extent, how military objectives are connected to achieve broader strategic goals (U.S Army Maneuver Center of Excellence (MCoE), 2018). Storr (2014) gives a simplistic definition of what is meant by warfare as “how it is done.” For instance, a significant portion of military history encompasses the accounts of warfare, explaining how armed conflicts have been conducted (Storr, 2014).

Whereas, armed conflicts are defined as open, armed confrontations between two or more organized groups, occurring continuously and involving disputes over control of government and territory (MCoE, 2018). As per Bizau and Stanciulescu, (2022), an armed conflict is a structured, joint, and violent conflict between two or more actors, whether state or non-state actors. The authors also add another definition by introducing the term “war,” characterizing armed conflicts meant for wars in their plurality and other forms of violent protest through lethal weapons that oppose social groups or a social group and a state (Bizau and Stanciulescu, 2022). On the other hand, the legal document of IHL states that an armed conflict exists when there is an armed confrontation between the armed forces of States, between governmental entities, organized armed groups, or among such groups within a State (GSDRC, 2013). In conclusion, grasping the concepts of the terms discussed above, conflict encompasses diverse confrontations, while war represents organized violence for political ends. Warfare involves strategies shaped by context, including technology and doctrine, which played pivotal roles in the Ethiopian conflict.

In this thesis, “armed conflict” specifically refers to weaponized confrontations, providing a tangible lens for analysis.

## **2.4 Theoretical Framework**

Compliance with international law (IL) encompasses a wide range of factors operating at several levels of assessment, which include a nation’s incentives, type of government, subjective opinions, and extent of enforcement (Lutmar and Carneiro, 2018). IHL’s concept of compliance is built upon two major conditions: the expectation of voluntary compliance and enforcement mechanisms for non-compliant actors (Lamp, 2011).

One of the elements of voluntary compliance is a consent-based approach. The idea behind this approach is that nations cannot be obliged to any agreement if they have not given their consent to it. It underlines that a state’s agreement to be bound creates a legal duty that they are expected to respect. One proponent of this consent principle is the managerial theory by Chayes and Chayes (Guzman, 2001). For them, reasons for non-compliance are related to outside factors, such as uncertainty about the treaty and governments’ institutional and/or financial incapacity to implement them. A significant critique of the managerial approach was raised by Downs et al. (1996), as stated in Lutmar and Carneiro (2018), asserting that states comply with international agreements because they would have followed them regardless of the treaties. However, the challenge here is that, in the absence of an authoritative body, there is a chance of cheating. Unlike the consent-based theories, the legitimacy theory by Thomas Franck theory extends beyond the idea that treaties are merely supposed to be complied with. Rather, it posits that treaties have originated from a right process, and four factors drive for compliance: determinacy, symbolic validation, coherence, and adherence (Guzman, 2001).

A rather dull theorization of compliance has been debated by several political theorists. Typical of this is realism, which notes that the decentralized structure of the international legal system is the major contributing factor to non-compliance with IL (Lutmar and Carneiro, 2018). There are constraints within the legal system, as states implement them selectively. Another interest-driven

IR theory is the rational functionalist, which views IL as a way to fulfill a nation's demands (Krieger, 2013). Functionalism underlines the importance of institutions in the creation of proper behavior. However, both realists and functionalists begin with the concept that states turn over their sovereignty reluctantly (Lutmar and Carneiro, 2018).

The recognition of non-state actors (NSA) is a key factor in the discussion compliance within IHL, as asserted by Lamp (2011). He argues that states cease to be the only or even principal actors in an armed conflict, by which it featured militias, paramilitaries, gangs and loosely organized rebel groups instead of organized militaries as the main actors (Lamp, 2011). Instead of viewing nation states as a unitary actor, transnational legal process and liberalist theories share a similar assumption in incorporating the role of NSA in the compliance debate. Harold Koh's approach, named the transnational legal process, broadens the scope of decision-makers in compliance, like multinational corporations, non-governmental organizations, private individuals, and others. Also, advocates of liberalism theory from IR are interested in the particulars of domestic politics in addition to the interaction of states. Focusing on subordinate entities directs scrutinizing into institutions like courts, legislatures, and administrative agencies (Guzman, 2001).

The concept of consent-based compliance within IHL disappears in what Lamp (2011) calls the "New Wars." According to him, IHL assumes that a war is waged primarily by soldiers of a state who are trained and ruled under it (Lamp, 2011). The motivating factors for fighting are to defeat their rivals and possess territory. However, in a contemporary war, participants consist of both state and non-state actors, and their objectives for fighting, among others, are ethnic rivalry and economic gain (Odermatt, 2013). To make state and non-state actor's complaint with IHL, it expects states for its application. In these new wars, governments frequently deny its application. In these circumstances, the notion that the law is consensual is no longer met, and IHL's ability to ensure non-state actors' compliance is compromised (Lamp, 2011).

Domestically, the nature of a government and its structure are significant factors in compliance with IHL (Lutmar and Carneiro, 2018). Warring parties need to be aware of the law and have

established legal structures for its enforcement (Lamp, 2011). Harold Koh underlines the importance of norm absorption. “Transnational legal process” (p. 5) is considered important for the adoption and spreading of norms. Domestic actors and their means highly contribute to norm dispersion (Lutmar and Carneiro, 2018). However, contemporary conflicts are linked to state failure, feature non-state armed groups rather than professional armies, and don’t receive formal training on the law. Secondly, actors in these types of conflicts seldom function within an institutional structure suitable for enforcement mechanisms. The problem is associated with the lack of official complaint means, which civilians and co-belligerents may use as reparations if they encounter or witness violations of IHL. This sort of enforcement also lacks any possible deterrence for violations because of the lack of clarity about the acts and the punishment that comes with them (Lamp, 2011).

The author further notes that parties in the new wars rarely adhere to the principles of IHL, even if the stated constraints related to knowledge gaps and institutional enforcement mechanisms are resolved. Voluntary compliance with IHL is also based on the compatibility of the law with the interests of the warring parties. This compatibility depends on balancing the principles of distinction and proportionality. In the new wars, the principle of distinction fades away because the very purpose of the use of force is targeted at the civilian population. Secondly, since most of the measures to attain military advantage are in themselves illegal, the principle of proportionality appears to lose its importance (Lamp, 2011).

In the context of civil war or rebellion, grievance is sometimes described as a justice-seeking motivation (Syed). Although there are variants of grievance-based theory, its central thesis is rooted in a deprivation claim, where the stimuli for war were owed to either “greed” or “grievance.” According to the greed theory, rebels are motivated by the desire for material benefits, while from the grievance perspective, rebels’ act is to acquire a socio-political asset they view as being denied to them (Paolo). Rebellions arise when grievances are severe to the point where people are driven to participate in violent protests, and the impetus includes ethnic or religious hatred, political repression, political exclusion, and economic inequality (Paolo). The idea of relative deprivation, which traces back to the work of Ted Gurr (1970), as stated in Syed

(2009), indicates a mismatch between what people think they deserve and what they realistically get, and this deprivation is regarded as a primary factor in causing a civil war, for sectarian and regular violence (Syed, 2009).

Heffes, in his short essay, argues that compliance with IHL depends on the emotions of fighters. He underlines that soldiers' actions are in part dependent on "past experiences and learning processes," and given that they are human beings, after all, their compliance with the law leans on their emotions. According to the author, "shame, disgust, resentment, and anger" initiated the use of force targeting civilians. Communities that were victimized by IHL violations, whether in the past or present, if their "grievances" are not addressed carefully, might even persist in breaches of IHL. It necessitates curing past violations carefully (Heffes, 2022).

International mechanisms of compliance with IL, above all, focus on nation states. Within the realm of these, nonreciprocal mechanisms are performed by power asymmetries among states for adhering to a law. Coercion is a common example of a non-reciprocal method of compliance. While employed by powerful nations, it can involve positive incentives such as a raise in foreign aid for signing a treaty or negative ones like sanctions, a reduction in aid, and even the use of force in the form of military intervention (Lutmar and Carneiro, 2018). Internationally, enforcement of IHL is exercised by institutions such as the ICC and the UN Security Council. As stipulated in Art. 27(3) of the Rome Statute, the ICC is authorized to step in and take on the role of national judicial systems only if they are unable to carry out their mandates. The UN Security Council, under Article 39 of the UN Charter, provides that if a violation of the law constitutes a breach of or a threat to peace, it has the right to enforce IHL. Among the tools employed by the UN Council are targeted sanctions, peacekeeping missions, and a technique of reporting and supervising serious violations committed against children at the time of war (Krieger, 2013).

Other mechanisms, which are rather gentle forms of inducing compliance with IHL, are largely provided by institutions like the ICRC and Geneva Call, among others. It has been indicated that vertical systems of compliance mechanisms are not well-chosen by nations as they are agitated by outside powers meddling in internal affairs. Some of the actions practiced by the ICRC

include enlightening the armed forces and the wider public about IHL, holding private meetings with pertinent officials related to violations, and pushing for the proper execution of the law. In contrast to the UN-reliant and state-regulated IHL enforcement mechanisms, the ICRC and Geneva Call function with less rigidity (Krieger, 2013).

#### 1.4.1 A selected approach underpinning the study

Theories are essential in every discipline because they help to: understand a myriad of phenomena; contemplate their interrelatedness; guide research; and recommend sound policy action. However, it is vital to underscore their placement within the area and period of the study. In light of this, the study enters the debate from the perspective of the New Wars theory, favoring the theory's ability to thoroughly understand and analyze the intricacies implicit in today's armed conflicts. The theory, as explored by Kaldor ("New and Old Wars," 2012) and Lamb (2011), aids in understanding the distinction between old and new wars. One is that the former types of wars were fought between standard state forces, while contemporary wars consist of diverse groups of state and non-state actors such as freelancers, paramilitaries, and private military companies. Secondly, the theory underlines that the goal has evolved. New wars are fought for the sake of identity politics, which includes ethnicity, religion, nationality, and gender, among others. Following that, the theory demonstrates its' importance in discovering how the evolved character of warfare, as raised by Lamb (2011) and Kelly (2013), is posing a challenge to compliance with IHL. Particularly, it helps to explore why there is a continued blatant transgression of the law, despite the established mechanisms under IHL for its enforcement.

## **2.4 Empirical Review: Armed Conflicts in Africa and the Application of International Humanitarian law**

In the contemporary landscape of conflict, the New Wars theory proposed by Mary Kaldor offers a compelling framework for understanding the intricate dynamics and drivers of armed conflicts. This theory posits a departure from traditional interstate conflicts toward intrastate conflicts characterized by complex networks of non-state actors, identity politics, and the erosion of state

sovereignty. Nowhere is the relevance of the New Wars theory more apparent than in the ongoing conflicts ravaging regions such as Sudan, South Sudan, the Democratic Republic of the Congo (DRC), and the Central African Republic (CAR). In these contexts, ethnic tensions, competition over resources, and weak state institutions have fueled protracted violence, with civilians bearing the brunt of the suffering. By examining these conflicts through the lens of the New Wars theory, we gain insights into the multifaceted nature of modern warfare. Below, the researcher presents some selected cases of NIACs on the continent.

#### A. Democratic Republic of Congo

According to the Council on Foreign Relations (CFR), an armed conflict that began in 1996 in the central African country of the Democratic Republic of the Congo (DRC) has resulted in an estimated six million deaths (CFR, 2023). Currently, more than 120 militias and armed groups are operating in the DRC's eastern regions of Kivu and Ituri provinces (R2P, 2023). Violence in the DRC initially began in the mid-1990s. The first Congo War erupted as a result of the genocide in neighboring Rwanda. Numerous armed groups crossed the border, mostly Hutus from Rwanda, namely, Democratic Forces for the Liberation of Rwanda (FDLR), in the aftermath of the Rwandan genocide. War ultimately broke out as the Congolese government was unable to keep the numerous armed factions under control and destroy them. A number of regional armies also took part in the Second Congo War (1998-2003), which resulted in an estimated three million deaths. The March 23 Movement (M23), backed by the Rwandan government, was one of the most well-known rebel groups to appear in 2012 (CFR, 2023).

Over the recent years, various groups have continued to emerge that have further escalated violence, like the Allied Democratic Forces (ADF) and the Cooperative for the Development of Congo (CODECO). Indiscriminate killing and assaults on civilians continued despite military offensives carried out by the government armed forces (FARDC), with the UN peacekeeping operation (MONUSCO). While fighting the armed groups, the FARDC has been implicated in widespread violations of IHL. The rebel groups ADF, CODECO, and M23 have all been implicated in systematic and widespread attacks on civilians. Since the conflict got worse in

March 2022, clashes and the indiscriminate use of explosive and heavy weaponry have caused hundreds of civilian deaths, forced more than 1.16 million people to flee, and caused at least 6.3 million people to become internally displaced (IDPs) (R2P, 2023).

Violence is also fueled by the vast resource riches of the nation, which is thought to possess \$24 trillion in unused natural resources. The mineral trade gives groups the money they need to operate and purchase weapons. Disputes over natural resources are also significant contributors to instability in Angola, Sudan, and Liberia. Minerals are utilized as a profitable strategy to unnecessarily prolong the battle (Ferreira, 2010).

Following a referral by the Congolese government, the ICC launched its first investigation in the DRC in 2004. Six people were accused in the cases; all of them were once active rebel commanders. Despite the fact that these cases led to notable successes, such as the historic conviction of Bosco Ntaganda, the leader of M13, in 2019, the ICC has also received a great deal of criticism for case selection. For instance, the investigation appears to have focused on Kivu province, and the cases of two rebel leaders were also omitted. In addition, it has failed to prosecute senior political and military officials (Vignoli, 2020).

## B. Central African Republic

To the north, bordering the DRC, the Central African Republic (CAR) is also tormented by conflict involving several regional and international actors. Since the nation's independence, nearly all of its leaders have either seized power in a military coup. Conflicts in the surrounding countries of Sudan, Chad, and the DRC have also had an impact on the CAR. Both rebel groups and government troops were able to conduct military operations in isolated rural regions (HRW, 2007). International powers such as France (the former colonial power) and Russia play a dominant role in CAR. Violence erupted in 2013 when the Seleka, a coalition of Muslim rebel groups, ousted President Francois Bozize and forcibly seized power. By the end of 2013, the conflict had gotten worse as the predominantly Christian anti-Balaka movement started using violence against Muslims. Fighting between government forces supported by Rwandan troops and Russian mercenaries from Wagner on the one side, and armed groups on the other, escalated into carnage (sipri, 2020).

Though the government and 14 armed factions reached a peace accord in February 2019, the security situation in the nation is still uncertain, as all parties are targeting civilians indiscriminately as the fighting continues (UNICEF, 2023). In late 2015, a new rebel group the Return, Reclamation, Rehabilitation group (3R) was formed which has killed and displaced millions (Essa, 2016). Wagner is accused of forming anti-balaka militias to engage in combat with other armed rebels. As of September 2022, more than 1.3 million Central Africans were either IDPs or refugees in the surrounding countries (Hassan, 2022).

A former Seleka leader named Mahamat Said was turned up to the ICC by CAR authorities in 2020. An arrest warrant for Nouredine Adam, the former Seleka number two, has also been made public by the court. According to rumors, Adam is hiding in Sudan. The failure to arrest a fugitive is the other challenge to the ICC, which perpetuates the violations of IHL by rebels (Mudge, 2022). Patrice Ngaissona and Alfred Yekatom, two former anti-balaka leaders are being charged at the ICC (France24, 2022).

### C. Sudan

In east Africa, Sudan has been going through multiple civil wars over the years (1955-1972 and 1983-2005). The most recent one is the Darfur War (2003-2011). The root causes of this war stretch over periods that refer to cultural, religious, historical, ethnic, and political diversity between the North and South (Ferreira, 2010). Despite having a mostly Muslim population, the Darfur area has economic and tribal/ethnic differences (Holocaust Memorial Day Trust (HMDT), 2023). The Sudan People's Liberation Army (SPLA) and the Justice and Equality Movement (JEM), both made up primarily of non-Arabs, took up arms against the then-ruling regime of Omar al-Bashir in 2003, expressing discrimination and a lack of development. The government retaliated by mobilizing rebels named Janjaweed to counter fight them (Hashim, 2022).

The Janjaweed troops would launch a burning campaign, destroying communities, while the government launched an aerial strike (HMDT, 2023). From 2003 to 2004, it was reported that the Janjaweed fighters had killed approximately 500,000 and displaced over two million (Mahdi and Maunganidze, 2021). The hybrid UN-African Union operation (UNAMID), which was established by the UN in 2007 to maintain peace in Darfur, was reported to be ineffective in

protecting civilians. From 2014 through 2018, the Janjaweed, who were supported by government troops, continued to commit acts of violence in Darfur, though sporadically (World without Genocide, 2021).

The ICC was unable to effectively discharge its obligations in Sudan as a result of a decade-old standoff between the Sudanese government and ICC prosecutors. For war crimes committed in Darfur and later expanded to include genocide, the ICC had issued an arrest warrant for Bashir in 2009. Though the transitional cabinet agreed to turn over Basheir to the ICC in 2019, the decision was later reversed. He is being detained at Kober jail, north of Khartoum, along with other former high leaders who are suspected of crimes (Aljazeera, August 12, 2021).

Sudan is currently dealing with another NIAC that is directly connected to the former Janjaweed forces and the now Rapid Support Forces (RSF) commanded by Hamdan Dagalo, also named as “Hemeti.” On April 15, 2023, an internal conflict broke out as a result of a fierce power struggle between Hemeti and Abdel Fattah al-Burhan, the commander of the Sudan Armed Forces (SAF) (Aljazeera, 15, June, 2023). With only two months of conflict, the death toll rises to more than 600 (VOA, 2023), and more than 2.2 million people have been displaced (Aljazeera, 15, June, 2023). While the ICC hasn’t accused the two present generals, Burhan and Hemeti, of being complicit in alleged war crimes in Darfur and elsewhere, both have been under pressure from victims and international Community to stand trial (Smith & Hanspal, 2022).

#### D. South Sudan

South Sudan gained independence from Sudan in 2011 following a referendum. Subsequently, the SPLA and other blocks established a new government, appointing Salva Kiir as president and Riek Machar as his vice president. In December 2013, a power struggle precipitated the collapse of the government, resulting in a civil war. In the beginning, it centered on Kiir and Machar, who led the SPLA-In Opposition (SPLA-IO), and then it progressed into a complex war characterized by widespread inter-ethnic and intra-ethnic conflict. Army forces associated with the Dinka ethnic group supported Kiir, while his deputy was supported by the Nuer ethnic group. Adjoining

countries such as Uganda and Sudan had been directly or indirectly engaged in the conflict, demonstrating long-lasting competition and varying interests (Mack and Slijper, 2016).

Since the start of the conflict, civilians have been deliberately attacked on the basis of ethnic origins. Violations by the parties include sexual violence, looting and destruction of property, and enrolling children to join the conflict. Though a peace agreement was signed in 2015 and mediated by the Intergovernmental Authority on Development (IGAD), military conflict again erupted between government forces and rebel forces. There were also intermittent ceasefire agreements during the ensuing years; reports indicated repeated attacks. According to the news report by the CFR, throughout a five-year war, the approximate number of casualties was 400,000 and around 4 million were either IDPs or refugees (CFR, August 8, 2023)

According to news from Amnesty International (2023), since the armed conflict began in 2013, no one has been held accountable for violations (Chagutah, 2023). By quoting an OHCHR chief, Mack and Slijper (2016) indicated in their study that the country lacks a comprehensive legal system. For instance, it stated that a major contributing factor to the commission of rampant sexual violence in the country is the culture of impunity. Perpetrators from the police, army, and militias are aware of this weak judicial apparatus. The study also narrated that relatable outcomes were implicated by the African Union's Commission of Inquiry on South Sudan (AUCISS), which was formed in 2014 to investigate human rights violations and other abuses during the conflict (Mack and Slijper, 2016).

In this chapter, we have looked into the we have delved into the complex landscapes of conflict in regions such as the DRC, the Central African Republic, Sudan, and South Sudan and. Through the lens of the New Wars theory, proposed by Mary Kaldor, we've gained valuable insights into the intricate dynamics driving these conflicts. From the emergence of numerous armed groups to the exploitation of natural resources, ethnic tensions, and weak state institutions, the New Wars theory provides a compelling framework for understanding the multifaceted nature of modern warfare. These armed conflicts, marked by violence and suffering endured by civilians, underscore the urgent need for comprehensive approaches to look into compliance with IHL.

# **Chapter Three: The Armed Conflict in Northern Ethiopia (2020-2022) Background**

## **Introduction**

In our exploration of the armed conflict (2020-2022) in northern Ethiopia, this chapter undertakes a probe into three distinct sections. The initial part deliberates on Ethiopia's historical instances, providing an overview of key events and developments that have shaped the country's political landscape. The second segment explores the immediate factors that played a pivotal role in catalyzing tensions, including verbal altercations in the lead-up to the armed conflict. Finally, the chapter concludes by offering a timeframe for the armed conflict and the humanitarian impact it has had.

### **3.1 Pre-2018 period**

With an estimated 123 million people as of 2022, Ethiopia is the second-most populated nation in Africa. Despite experiencing rapid economic development during the last decade, the nation's economy is still among the least developed in the world (World Bank, 2023). Ethiopia is an admixture of more than 80 different ethnic groups consisting of various cultures and languages. The Oromo and the Amhara constitute over 60% of the country's population, and the Tigrayans make up about 7% of the population (Walsh and Dahir, 2022).

Ethiopia's centuries-old Solomonic dynasty ended after the demise of Emperor Haile Selassie I. Then, the military regime, Derg, came in 1974, which was commanded by Mengistu Hailemariam. The Derg was overthrown in 1991 by an alliance of four ethnically-based political parties that made up the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), of which the Tigray wing, i.e., the Tigray Peoples' Liberation Front (TPLF), held a dominant position. Ethiopia passed a new constitution in 1994 that established a federal form of government (JIT, 2021).

When the TPLF-led EPRDF coalition, under the leadership of the late Prime Minister (PM) Meles Zenawi, took control in Ethiopia, Eritrea gained independence from Ethiopia in a 1993

referendum. Isaias Afewerki was chosen as president of the provisional government of Eritrea. Despite a brief period of peace after independence, the bonds between Eritrea and Ethiopia started to weaken in the mid-1990s. The major source of contention involved the village of Badme, a 160 sq km of area of land that both sides claimed as part of their territory (The Washington Post, 1998). PM Meles and President Isaias, once comrades-in-arms united against the military Derg regime in the 1980s, eventually became adversaries. In May 1998, Ethiopia accused Eritrea of unlawful annexation of this disputed town after the latter's soldiers controlled the area. The border skirmish rapidly turned into a full-blown armed conflict. From May 1998 to 2000, the two states were involved in an extensively catastrophic interstate war adjacent to their shared borders (Lyons, 2006).

Both sides suffered considerable casualties during the conflict. A report indicates that the combined number of combatant and civilians killed was estimated to be around 70,000, and approximately 1.2 million people were displaced (Kebebew, 2018). According to another source, the lost lives were estimated to be 70,000 to 100,000 (Lyons, 2006). The war also had a devastating impact, leading to the expulsion of each other's nationals by both states. Ethiopia expelled approximately 75,000 residents with Eritrean origins, while Eritrea similarly removed around 70,000 inhabitants from its territory (Kebebew, 2018).

Following a period of military standoffs and unsuccessful negotiations, in May 2000, Ethiopia initiated a military attack that pushed Eritrea to retreat from the territory it had controlled (Lyons, 2006). Upon Ethiopia's taking over Badme, a variety of peace talks mediated by the Organization of African Unity (OAU) and other international organizations concluded with the signing of an agreement between the two conflicting nations, the Algiers Peace Agreement, on December 12, 2000. The two conceded to an "Agreement on Cessation of Hostilities" and also to form a neutral Boundary Commission vested with the power to delimit and demarcate their boundaries. In April 2002, the Boundary Commission announced its final decision that the Badme area should be given to Eritrea, which Ethiopia declined to comply with and rejected the rule (Awol, 2018). In the following two decades, both parties assimilated hundreds of fighters into their borders and also backed one another's insurgent groups, where threats of conflict frequently rose (The Economist, June 10, 2018).

In a 27-year ruling, the EPRDF's role in Ethiopia was largely criticized for politicizing ethnicity, violating rights and freedoms, narrowing political space, and impeding a free and fair election. A massive popular resistance against the ruling party began in 2014 (IMTF, 2022). The demonstrations, which first started in Oromia National Regional State and then spread to Amhara National Regional State, led to the resignation of then-PM Hailemariam Desalegn in 2018. In the same year, Abiy Ahmed, chair of the Oromo Democratic Party (ODP), the other wing of the EPRDF, was elected as the new PM (JIT, 2021). Immediately after taking office, Abiy made several notable political and institutional changes and began to liberalize the political landscape. He invited several opposition groups that were abroad and freed political prisoners (Endalcachew, 2022). PM Abiy also made a historic move by calling for the normalization of the 20-year standoff with Eritrea. After an executive meeting of the EPRDF on June 5, 2018, it announced that it (p. 125) "will accept and implement the Eritrea-Ethiopia boundary commission ruling without any precondition." President Isaias reciprocated the peace call, and the two countries also signed a "joint Declaration of Peace and Friendship" on July 9, 2018 (Meressa, 2019). For his efforts to initiate peace negotiations with Eritrea, Abiy was given the Nobel Peace Prize in 2019 (Walsh and Dahir, 2022).

### **3.2 The Political Transition and Prelude to Armed Conflict**

The post-2018 reform period has encountered an increasingly complex internal political landscape, marked by the emergence of contradictory political goals between the federal government and the TPLF. A few aspects of this divergence centered on differing perspectives about the balance of power, reform measures, the formation of a new political party, election issues, the question of centralization versus decentralization, ethnic federalism, and others (Blanchard, 2021). A few of these are discussed below.

As part of the post-2018 reform actions, prominent Tigrayan government figures convicted of corruption and persecution were ousted (BBC, 29 June 2021). Leaders in Tigray condemned the move for being partial justice against their ethnic community while disregarding similar wrongdoing by individuals from other regions (Wight, 2020). The two parties were also at

variance in late 2019, when PM Abiy set up a new party by merging the constituencies of the EPRDF. The Prosperity Party (PP) was formed from the coalition of the Oromo Democratic Party (ODP), Amhara Democratic Party (ADP), Southern Ethiopian People's Democratic Movement (SEPDM), and affiliated parties (Crisis24, 2023). Abiy asserted that his proposal for the new party aims to strengthen national unity and diminish the emphasis on ethnic distinctions. The TPLF contradicted the establishment of the PP and declined to join, reasoning that it was an outright dismissal of the federal principle (Eritrea Focus, 2021). These actions brought Abiy praise from the general public but raised concern among TPLF rulers (BBC, 2021). The escalated and strained relationship between the TPLF and the EPRDF (which eventually became the PP), along with other myriad social forces and actors, provoked worry among the Tigrayan elites in general and the TPLF rulers in particular. For instance, PM Abiy's move to sign the Algiers agreement back in 2018 has sparked distress among them because they were not adequately consulted (Tofa et al., 2022). According to Pichon (2022), Tigrayan rulers considered this disputed border area part of their territory.

The ensuing tension reached its peak when the National Electoral Board of Ethiopia (NEBE) announced the postponement of the Sixth General Election as a result of the Covid-19 pandemic. This national election was supposed to take place in June 2020. However, the Tigray region defied the decision and went ahead with conducting its own regional election on September 9, 2020. The TPLF was announced as the winner of all seats. The federal government ruled the election invalid, and the TPLF retaliated by claiming it no longer acknowledges PM Abiy's administration. A decision passed on October 7, 2020, by the House of Federation (HoF) was made to break off ties with the Tigray region's government, which included suspending funds and opting to communicate with the lower administrative levels. Friction grew and even further escalated on both sides with military publicity (JIT, 2021).

Relations between Tigray and its neighboring Amhara National Regional State were also tense as a result of the decades-old disputes over areas along their borderlines. These included the districts of Welkait, Humera, Tsegede, Tselemte, and Raya, hereafter referred to as the "disputed areas between the Amhara and Tigray National Regional States." As per an expert's argument in Foreign Policy magazine, Addisu (2021), regional boundaries in Ethiopia were redrawn

following the formation of new administrative units in 1994, after the Derg was toppled. The expert's writing stated that the aforementioned contested territories, or the disputed areas between the Amhara and Tigray National Regional States, were "apportioned" from the earlier provinces of Gonder and Wollo, which were inhabited by Amharas (Addisu, February 11, 2021). According to a Crisis Group (2020), the Amhara claim that the TPLF, amidst its drive to remove the Derg (p. 3), "began to occupy some of their lands." The text further stated the Amhara's claim that they want these contested areas returned to them (Crisis Group, June 12, 2020). Addisu (2021) mentions that the disputed areas between the Amhara and Tigray National Regional States are intensely debated by the Amharas, who claim these areas as their own (Addisu, February 11, 2021). On the contrary, as per the argument in the writing by Omna Tigray (2021), Tigrayans also claim a historical right to these disputed areas (Omna Tigray, August 2021).

### **3.3 Course of the Northern Ethiopia's Conflict (2020-2022)**

The dispute between the federal government and the Tigray regional government turned into an armed conflict following an attack on the Northern Command of the Ethiopian National Defense Force (ENDF) on November 3, 2020, by Tigray Special Forces (TSF) and allied militia (IMTF, 2022). The IMTF reported that this attack has caused the deaths of ENDF officers and taken over the armaments (IMTF, 2022). As a response to the TSF's attack, PM Abiy declared the beginning of military operations in the Tigray region, and he noted that the attack had pressured the federal government to be involved in a military conflict (Blanchard, 2021). On that same day, the Federal Council of Ministers declared a six-month state of emergency in the Tigray region (JIT, 2021).

The federal government stated on November 28, 2020, that it had seized Mekelle, the capital city of Tigray, and created an interim administration to control the region. During this period, there were attempts by the federal government to repair infrastructure, resume services, and provide humanitarian aid. Though a conventional armed conflict ended in early December 2020 and

guerilla warfare had commenced, TPLF forces retreated from Mekelle, and they continued to fight in other areas of Tigray (Tofa et al., 2022). On May 8, 2021, the House of Representatives (HoPR) named the TPLF and another armed group, which named itself the Oromo Liberation Army (OLA), “Shene” by the federal government (p. 21), as “terrorist groups” (JIT, 2021). On June 28, 2021, the federal government announced a unilateral ceasefire and pulled back its forces from the region to allow farmers to cultivate their land, deliver aid, and find a political agreement to end the war. However, the TPLF refused to accept the ceasefire; instead, they issued requests for it (IMTF, 2022). On the same month, TPLF forces controlled Mekelle (Council on Foreign Relations (CFR), December 19, 2023).

In July 2021, TPLF forces expanded the armed conflict into the Amhara and Afar regions. Around the final period of October 2021, TPLF forces captured the cities of Dessie and Kombolcha, around 350 km northeast of Addis Ababa, with the help of the self-proclaimed group OLA, also recognized by the federal government as “Shene” (Tofa et al., 2022). However, in November 2021, TPLF forces evacuated these areas following a counteroffensive by the federal forces (CFR, December 19, 2023). Upon gaining control of the Afar and Amhara regions, the federal government opted not to move into the Tigray region (IMTF, 2022). As of August 2021, it was reported by the JIT (2021) that the conflict has resulted in severe humanitarian conditions. From the time the armed conflict started, at least 50,000 people have fled to Sudan, and a minimum of 1.7 million people have been internally displaced in Tigray. It was also indicated in the report that, approximately, 5.7 million people were requiring aid (JIT, 2021).

On March 24, 2022, the federal government announced (p. 9) “an indefinite humanitarian truce” with the intent of providing humanitarian assistance and supporting the humanitarian circumstances there, and the TPLF agreed to the call (IMTF, 2022). The ceasefire also permitted the initiation of peace talks by the African Union (AU) Special Envoy for the Horn of Africa, the former president of Nigeria, Olusegun Obasanjo, by navigating from Addis Ababa to Mekelle. The federal government announced that it was ready for talks without any prerequisites; the TPLF also accepted the request for it, though it refused mediations led by the AU (Addis, 2022). By June 2022, although both of the conflicting parties could not reach a consensus on who

should be the mediator; there were constructive signs for peace negotiations (Agence France Presse, (AFP), 2022).

However, in August 2022, a five-month truce collapsed as the two sides renewed their military confrontation, with both sides blaming each other for breaking the truce. Although the armed conflict persisted, TPLF officials stated on September 11, 2022, that they were prepared to engage in an AU-mediated peace process (AFP, 2022). On November 2, 2022, the TPLF and the federal government signed an agreement on a “permanent cessation of hostilities” in Pretoria, South Africa (Al Jazeera, November 10, 2022). The two sides discussed the implementation of the peace process in Nairobi, Kenya, which included disarming the Tigrayan forces, allowing complete humanitarian access to Tigray, putting an end to the conflict, and restoring the federal government’s authority over the region (CFR, 2023).

According to a report by the Financial Times, which cites an interview with the AU’s peace delegate, Olusegun Obasanjo, it is indicated that around 600,000 people may have been killed due to the armed conflict in northern Ethiopia from 2020 and 2022. The report also mentions that a few Ethiopian authorities estimate the death toll to range from 80,000 to 100,000 (Pilling & Schipani, 2023). Across Tigray, Amhara, and Afar, the armed conflict has affected a minimum of 20 million people, and 5.5 million have been displaced (Africa up close, 2023). UNHCR reported that the armed conflict has unveiled a massive humanitarian and protection crisis in the regions of Tigray, Amhara, and Afar. According to the UNHCR emergency report (2023), the armed conflict has killed thousands and displaced millions. It also indicated that, across these three conflict-ridden regions, approximately nine million people lack access to adequate food (UNHCR, 2023).

## **Chapter Four**

### **Navigating International Humanitarian Law Compliance: Insights from Northern Ethiopia's Armed Conflict (2020-2022)**

#### **Introduction**

This chapter presents collected data based on the specific objectives of the study, all falling under the general objective of assessing compliance with international humanitarian law in northern Ethiopia's armed conflict from 2020-2022. Data was collected from interviewees and published sources. The chapter proceeds as follows: The first section describes the applicable treaties and norms of international humanitarian law (IHL) in northern Ethiopia's armed conflict (2020-2022). The second section presents violations of IHL during this period of the armed conflict. The subsequent section explores how accountability for these violations is being addressed so far. The last section discusses the challenges to compliance with IHL during the specified period of the armed conflict.

#### **4.1 Applicable Rules and Norms of IHL in Northern Ethiopia's Armed Conflict**

Identifying the nature of the armed conflict (2020-2022) in northern Ethiopia is a preliminary step to identifying the rules and norms of IHL applicable to it. Its nature has been critically assessed in various reports based on the criteria used to determine the existence of armed conflict, thereby categorizing it as an international or non-international armed conflict (IAC and NIAC). Based on the thresholds to trigger a NIAC, the criteria stipulated under Common Article 3 of the Geneva Conventions (CA3) and Article 1 of Additional Protocol II (APII) were used.

The lower threshold of requirement under CA3, i.e., "organization" and "protracted" (intensity of the violence), was utilized. Northern Ethiopia's armed conflict (2020-2022) involved the Ethiopian National Defense Force (ENDF), a state-armed force (SAF), combating the Tigray People's Liberation Front (TPLF), a non-state-armed group (NSAG). The first criterion, i.e., "organization," is assumed to be fulfilled in the case of SAF; in this case, ENDF is assumed to

have fulfilled it. TPLF has also fulfilled the criteria based on the following indicators, among others: located in Mekelle, the capital of Tigray National Regional State, TPLF had the power to administer the region and to train and arm the region's forces, i.e., the Tigray Special Forces (TSF), especially since 2018. The TPLF had paramilitary and militia forces of around 250,000. The November 3, 2020, attack on the ENDF's northern command benefited the group with tanks, missiles, and rocket launchers. The TPLF was ruled by former high-ranking members of the ENDF and deposed leaders of the Tigray regional state. The group showed the ability to employ methods of warfare and voiced similar ideologies.

The second criterion of "protracted armed violence" was also found to have been fulfilled based on some of the following indicators, among others: There was extensive fighting between the ENDF and the TPLF in the Tigray National Regional State that accompanied airstrikes during the first month of the conflict. In the same month, TPLF forces launched rockets in a neighboring regional state of Amhara and an adjacent country, Eritrea. The conflict involved the aligned forces of the ENDF, Regional Special Forces and allied militias, and Eritrean Defense Forces (EDF) on one side and the Tigray Special Forces (TSF) and allied militias on the other. The armed conflict between these two groups persisted in the months after the federal government controlled the capital city of the Tigray National Regional State, Mekelle (Hamza, 2021). A situation report by OCHA on May 6, 2021, indicated that, six months into the conflict, 4.5 million people were estimated to be in need, and 63,087 people fled to Sudan (OCHA, 2021).

According to Hamza (2021), the higher threshold under Article 1 of APII has also been implicated as having been fulfilled. In addition to the aforementioned indicatives, we can add the following to trigger APII: The fact that the conflict was being conducted under the territory of Ethiopia (a high contracting party to the GCs). Secondly, Article 1 of APII necessitates that a conflict be waged between government forces and dissident armed forces. As noted above, forces of the TPLF were instructed by ex-commanders of the ENDF and ousted leaders of the Tigray National Regional State who had the potency of controlling the territory of the Tigray region (Hamza, 2021).

Accordingly, it was determined that the criteria stipulated under CA3 and APII were fulfilled and that the whole body of treaties and customary rules of IHL (CIHL) of a NIAC were deemed to be applied in northern Ethiopia's armed conflict of 2020-2022 (Hamza, 2021). The involvement of an intervening state in the armed conflict, i.e., Eritrea, cannot change its nature, because the EDF was in alignment with a state party fighting against the NSAG, the TPLF (Hamza, 2021; Human Rights Watch (HRW), November 25, 2020).

#### **4.2 Violations of IHL in Northern Ethiopia's Armed Conflict 2020-2022**

Since the armed conflict began in the Tigray National Regional State of northern Ethiopia on November 4, 2020, there have been several allegations of violations of IHL by all parties to the conflict. Several investigative reports have corroborated the allegations and have been publicized. Some of these reports were released by the following institutions: the United Nations Human Rights Council (UN-HRC); Human Rights Watch (HRW); Amnesty International; Joint Investigation Team (JIT) of the Ethiopian Human Rights Commission (EHRC) and United Nations High Commissioner for Human Rights (OHCHR); Ethiopian Human Rights Council (EHRCO); Ethiopian Human Rights Commission (EHRC); and the Inter-Ministerial Taskforce (IMTF) under the Federal Democratic Republic of Ethiopia (FDRE), among others.

An interview with Tadesse, former head of the secretariat office of the IMTF and the current chairman of the Transitional Justice Working Group of Experts (TJWGE), narrated the commission of myriad types of crimes, and a significant portion of them entail violations of IHL. He further noted that some of the violations, considering "the plan and operation of them, implicated the commission of war crimes." (Addis Ababa, November 22, 2023). Below, the researcher presents a few selected acts committed by the parties to the armed conflict that have been categorized by the aforementioned institutional reports to constitute violations of IHL. They are thematically presented as follows:

#### A. Indiscriminate Attacks or the Failure of Precautionary and/or Proportional Measures on Civilians and Civilian Objects

On November 28, 2020, the report by the Joint Investigation Team (JIT) of the Ethiopian Human Rights Commission (EHRC) and United Nations High Commissioner for Human Rights (OHCHR) (hereafter referred to as the JIT report) released on November 3, 2021, reported that shelling in the city of Mekelle by ENDF killed 29 civilians; 34 were injured, and 15 civilian properties were destroyed (JIT, 2021). A report by the UN-HRC (A/HRC/51/46) stated that the investigation conducted by the International Commission of Human Rights Experts on Ethiopia (ICHREE) corroborated the shelling attack in Mekelle, which took place on November 28, 2020. According to the report (A/HRC/51/46), in this incident, the injuries exceeded one hundred (UN-HRC, 19, September 2022).

From July 2021 onwards, it was reported by EHRC that TPLF forces conducted military attacks around the neighboring regions of Afar and Amhara and seized many parts of the two regions until October 2021 (EHRC, March 2022). In Afar National Regional State, Galicoma town, on August 4, 2021, EHRC reported the indiscriminate killings of 107 civilians during combat by TPLF forces (EHRC, March 2022). On this same incident, on August 4, 2021, in Galicoma town, EHRCO reported the killing of more than 200 civilians during a combat operation of TPLF forces (EHRCO, August 2022).

On January 7, 2022, the UN-HRC (A/HRC/51/46) reported that a camp of internally displaced persons (IDPs) located around the Dedebeit town of the Tigray region was attacked by a drone. The UN-HRC reported that 60 civilians were killed or wounded (UN-HRC, 19, September 2022). A news report by Human Rights Watch, in this incident, announced on January 7, 2022, the killings of 57 civilians and 42 wounded (HRW, March 24, 2022).

#### B. Extrajudicial Killings

On November 9, 2020, EHRCO's report titled "Preliminary Investigation Report on major human rights violations in and around Maikadra," released on December 25, 2020, reported that a Tigrayan youth group from Samri and other kebeles carried out killings of civilian residents in

Maikadra town, in the northwestern part of Ethiopia (EHRCO, 25 December 2020). The EHRCO report stated that (p. 2) the youth group was supported by armed members of the TSF and militia (EHRCO, 25 December 2020). Various estimates have been reported regarding the number of residents killed, varying from 200 to more than 1000. According to the JIT report (p. 30), identifying the exact number of killings in Maikadra was challenging because the victims were mainly undocumented seasonal agricultural workers. However, it further stated that (p. 30), over 200 civilians were verified to have been dead (JIT, 2021).

The report by EHRC titled “Rapid Investigation into Grave Human Rights Violations in Maikadra Preliminary Findings,” released on November 24, 2020, noted that (p. 3), although it is impossible to confirm the precise number of the dead, it stated that, based on an estimation by representatives of a Burial Committee, observers, and local sources (p. 3), 600 civilians may have been killed, at the very least (EHRC, 24 November 2020).

According to the preliminary investigation report of EHRCO (p. 3), it has stated that, as per its field observations and data collection, in the town of Maikadra, the killing of approximately 1,100 civilians (EHRCO, 25, December 2020). In addition to Maikadra, it stated (p.3) that civilians were also killed in the towns of Humera and Dansha. In Humera, it reported the deaths of six people. The report stated that, during these events, there were Tigrayans who participated in humanitarianism by safeguarding and protecting individuals and giving them information to help them escape the area (EHRCO, December 25, 2020). According to the JIT report, after the ENDF and the Amhara Special Force (ASF) had controlled the town of Maikadra, it reported (p. 30) retaliatory killings of a minimum of five civilians by members of Fano militias (JIT, 2021). The report noted that extrajudicial killings in the towns of Maikadra and Humera have exacerbated hostilities between members of ethnic Amharas and Tigrayans (JIT, 2021).

Between November 28 and 29, 2020, in the city of Axum, in the Tigray National Regional State, Amnesty International (AFR 25/3730/2021) reported the killings of hundreds of civilians by members of the EDF (Amnesty International, February 26, 2021). On this incident, on November 28, 2020, the report by the Joint Investigation Team (JIT) of the EHRC and OHCHR released on

November 3, 2021, reported (p.30) that members of the EDF were involved in the killings of more than a hundred civilians in Axum, Tigray National Regional State (JIT, 2021). The report also noted that, according to the informants who told the JIT (p. 31), “although the ENDF was also present in Axum during the killings, it did not intervene” (JIT, 2021).

In Tigray National Regional State, in the southern part of the region, in Bora town, the comprehensive findings report published by the UN-HRC (A/HRC/54/CRP.3) reported the killings of scores of civilians by members of the ENDF on January 8, 2021, and in the succeeding few days (UN-HRC, October 13, 2023). As per the report by the JIT released on November 3, 2021, it reported that in Bora Amedwha, Bora Chemala, and Mai Liham in Southern Tigray National Regional State, the killings of at least 70 civilians by members of the ENDF occurred on January 8 and 9, 2021 (JIT, 2021).

Between August 31 and September 4, 2021, Human Rights Watch news reported that in Chena village, in the Amhara National Regional State, 26 civilians were killed by members of the Tigray forces (Human Rights Watch, December 9, 2021). As per the report by EHRC, titled “Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia Executive Summary,” between August 30 and September 4, 2021, in Chena, Amhara National Regional State (p. 47), there were at least 47 killings of civilians by members of the Tigray forces (EHRC, March 2022).

On September 9, 2021, Amnesty International (AFR 25/5218/2022) reported the killings of at least 24 civilians by members of Tigray forces in and around the surrounding areas of Kobo town, Amhara National Regional State (Amnesty International, February 16, 2022). As per the IMTF report, as documented by the Investigation and Prosecution Committee (IPC), in Kobo town, in the Amhara National Regional State, between September 9 and 10, 2021, it stated (p. 28) the killings of 200 civilians by members of Tigray forces (IMTF, 2022).

### C. Gender-Based Violence (GBV)

The report by the Joint Investigation Team (JIT) of the EHRC and OHCHR, which was released on November 3, 2021, stated that information collected from interviews and from files of one-stop centers (OSCs) and hospitals indicated that young girls and older women were victims of sexual violence. The report stated that, the majority of the affected were exposed to rape, with various reports of gang rape. However, it also underlined that, because of the stigma and trauma attached to sexual violence, the report advised that the frequency of rape might be considerably higher than that recorded by the JIT (JIT, 2021).

According to the report (JIT, 2021, p. 40), perpetrators of these acts consisted of individual members of the ENDF, EDF, and Tigray forces. The report stated acts of sexual violence by individual members of the ENDF in Mekelle, Wukro, Bora, Mekoni, Shire, and Bizet; by individual members of the EDF in Ahferom Samre, Werie-Leke (in Edega Hamus), Shire, Tembien, Adet, and Humera; and by individual members of the TSF in Adi Hageray, Mai Laha (in Shimelba); and Mekelle. It also added that, as per the information that it has received from OSCs, such acts were also committed by civilians and by individual members of the ASF (JIT, 2021). It further noted that acts perpetrated by the members of the EDF (p. 47) “were marked with extreme brutality.” It discussed a few cases of survivors victimized by members of the EDF, which constituted (p. 42) victims who were gang raped, inserted foreign objects into sexual organs, and raped while detained for longer days (JIT, 2021).

In Tigray region, as per the report by the UN-HRC (A/HRC/51/46), it stated that the International Commission of Human Rights Experts on Ethiopia (ICHREE) registered acts of rape, and the majority of them were gang rape. The report stated (p. 9) that individual members of the ENDF, EDF, and Fano militia participated in such acts. Mixed approximations appeared about victims of GBV in the Tigray region, ranging from several hundreds to thousands. The report by UN-HRC (A/HRC/51/46), has not presented the precise number of victims, it stated that it was significantly higher than 1000 when the report was released by the UN-HRC on September 19, 2022.

In another report by the UN-HRC (A/HRC/54/CRP.3) on released October 13, 2023, it was stated (pp. 25-26) that there is not enough information on the number of victims of conflict-related sexual violence in the Tigray region. However, it reported that the ICHREE gathered data about rape and other sexual violence in Tigray from November 3, 2020, and June 2023. It has stated that the data indicates approximately ten thousand survivors needed help from seven OSCs (UN-HRC, 2023).

The report by the UN-HRC (A/HRC/51/46) indicated that acts of rape and sexual violence were perpetrated (p. 9) by members of Tigrayan forces in the Amhara National Regional State, starting in August 2021, when they captured the region (UN-HRC, September 19, 2022). The other report by the UN-HRC (A/HRC/54/CRP.3) stated that in the Amhara National Regional State from July to December 2021 (p. 52), sexual violence, including rape, was committed by members of Tigrayan forces in eleven different locations. The report also indicated similar acts of violence (p. 57) perpetrated by members of the Tigray forces in four different locations in the Afar National Regional State (UN-HRC, October 13, 2023). However, the report does not provide a scaled estimation of the number of victims of GBV in both the Amhara and Afar regions.

According to reports by EHRC (March 2022) and IMTF (September 2022), similar acts were also committed by members of the Tigrayan forces in the Amhara and Afar National Regional States. As per the IMTF report stated (p. 34), in different towns and woredas in Northern Shewa of the Amhara National Regional State, members of the Tigray forces “brutally raped” people. It presented (p. 34) a few cases of survivors, which constituted gang rape and rape while pregnant.

Various approximations have also emerged about victims of GBV in both the National Regional States of the Afar and Amhara. The EHRC report outlined (p. 11) that victims of rape and gang rape were at the very least in the hundreds in both regions, while also underscoring that the number is considerably higher than that documented in the report. On the other hand, the report by the IMTF mentioned that it has documented over two thousand cases in both regions; however, it noted that it cannot affirm that it has identified all the victims. Furthermore, the reports by EHRC (March 2022, p. 10) and IMTF (September 2022, p. 35) have stated that, in the

Oromo nationality zone of the Amhara region, specifically in Kemise Town, a few of the rape cases documented by them were committed by individual members of the self-proclaimed group, the “Oromo Liberation Army (OLA),” referred to by the Ethiopian federal government as “Shene.”

In alignment with the aforementioned reports and in reference to the specific regions and locations they have investigated, all reports indicate that the actual number of sexual violence cases surpasses the figures identified in their respective findings. Among others, the reasons for the low records of survivors are a lack of services for medical treatments and societal stigmatization of the victim. They have noted in the affected regions that survivors are left with enduring physical and mental problems; they have encountered unwanted pregnancy and sexually transmitted diseases, including HIV.

Additional IHL violations committed by all parties to the armed conflict include, but are not limited to: pillage, looting, and destruction of properties; torture and other cruel, inhumane, or degrading treatment; arbitrary detentions, abductions, and enforced disappearances; forced displacement; and attacks on refugees (JIT, 2021).

### **4.3 Accountability**

One of the many JIT recommendations underlines establishing accountability for the violations committed in Northern Ethiopia’s armed conflict (2020-2022) (IMTF, 2022). During an interview Tadesse chairman of the TJWGE, has said that the establishment of the IMTF envisioned conducting a criminal investigation into allegations of violations committed by all parties in the armed conflict and delivering justice. He recited that the task force investigated the alleged violations of IHL in the Afar and Amhara regions and released a report. However, it was unable to access large parts of the Tigray region due to the then-unstable security situation for any serious investigation (Interview, Addis Ababa (A.A). November 22, 2023).

To this extent, the chairman stated that, based on the investigations conducted so far, criminal proceedings for the Maikadra massacre have already progressed into the prosecution phase, while the case of the Axum massacre is still pending. Although he has not disclosed the number

to the interviewer, he has narrated that some of the suspects in the Maikadra case have already been convicted, and some are proceeding in absentia (Interview, A.A. November 22, 2023). The September 2022 IMTF report has implicated that in this case, 202 suspects were identified.

Tadesse has noted that the investigation into the Axum massacre commenced, before the formation of the IMTF. Although this investigation has not finished yet, an early report of the findings implicated the “killings of large numbers of civilians in a way that violated IHL” (interview, A.A., November 22, 2023). Here again, the September 2022 IMTF report stated that the investigation has identified the deaths of 124 people (IMTF, 2022).

The Ministry of Defense (MoD) is the other governmental body handling investigations and prosecutions in the context of northern Ethiopia’s armed conflict (2020-2022). An interview with a legal advisory team leader of the Justice Main Directorate at the MoD, Shaleka Getenet, has noted that the bureau has been handling several cases in relation to the commission of extrajudicial killings, rape, looting, and distraction of civilian property. A criminal investigation has been initiated against individual members of ENDF suspected of committing these crimes, and some have already been convicted and some are still pending. He has narrated that his office has submitted nearly forty reports, detailing the perpetrators’ profiles and other related information, to pertinent national and international institutions (interview, A.A., October 30, 2023).

Tadesse recalls that northern Ethiopia’s armed conflict (2020-2022) was complex and constituted violations in a “scale and systematic fashion.” As a result, ambiguities arose as to whether they could be handled through the standard judicial system. He described that, in the midst of all this, after the IMTF ended its investigative task, the Pretoria peace agreement was signed between the ENDF and TPLF on November 2, 2022. The agreement brought fundamental changes, including the desire that the issue of accountability is to be addressed under the umbrella of Transitional Justice (TJ). The TJ, in addition to addressing accountability, secures truth, reconciliation, and healing. With this, a policy for implementing the TJ has since been in the process of being drafted, which will enable handling issues related to accountability through judicial measures that the TJ policy dictates (interview, A.A., November 22, 2023).

However, the JIT (2021) report indicated that it was “concerned” (p. 90) about the criminal investigations being carried out by the national institutions, stating that they do not adequately match the range and breadth of the violations it has found through its investigations. The report also added that it had doubts that these institutions would follow international standards with regards to transparency in their work (JIT, 2021). The joint team of EHRC and OHCHR (with the objective of advising the TJ policy framework) conducted consultations with the affected communities in northern Ethiopia’s armed conflict (2020-2022). According to the preliminary report released on December, 2022, participants in the consultations stated that the national judicial system necessitates a reform if they are to bring credible justice to the victims of the armed conflict (EHRC and OHCHR joint advisory note, 2022).

#### **4.4 Challenges to Compliance with IHL in Northern Ethiopia’s Armed Conflict (2020-2022)**

The fact that a government force was combating with a “bandit force” was what challenged the ENDF for non-compliance with IHL, according to a statement by Shambel Addisu, the head of human resources (HR) at the ENDF Main Operational Department (interview, A.A., October 31, 2023). Shambel Addisu recited that the MoD gives continuous training to its soldiers to forbid them from violating the principles of IHL. Along with the training, the MoD has provided pocket-sized Rules of Engagement (RoE) booklets that contain guidance on the use of force by soldiers in the armed conflict. He also noted that not only were the members of the ENDF couched on IHL, but also regional Special Forces were offered assistance from the MoD whenever they requested it. According to him, ENDF has been cautious in its operations against the TPLF forces. However, as per Shambel Addisu’s comments, the compliance challenge was that the banditry attacks by TPLF forces created a feeling of non-submissiveness among the junior ENDF soldiers. He noted that, just like any other armed conflict, it is more or less common to encounter violations, as was the case in northern Ethiopia’s armed conflict (2020-2022) (interview, A.A., October 31, 2023).

Shambel Addisu further explained that the establishment of regional Special Forces created the problem of noncompliance in the first place. Launching the unprecedented attack on the northern command was attainable for the TPLF because it had the control of the region's armed force, i.e., the TSF. It thought that it had built a force that would be comparable to the ENDF and decided to raid it. The right to bear arms by an organized party, such as the TSF, distinct from the Ethiopian national army, initiated the conflict and created the conditions for violations during the combat operation. Hereof, recalling the decision by the federal government to dismantle regional Special Forces, he noted that there would not be much of a threat to the national military from any of the country's regional constituencies. This provides assurance of non-recurrence of violations in the future (interview, A.A., October 31, 2023).

According to Werede, who is a Corps leader on the side of the self-proclaimed "Tigray Defense Forces (TDF)," noncompliance with the IHL was not because soldiers of the ENDF lacked training and awareness about the RoE. In fact, he gave an affirmation to the interviewer that "the training and military manuals of the ENDF are laudable ones," as he had the rank of Colonel in the Ethiopian MoD War College and had held leadership roles there and served for many years before the armed conflict. Similarly, he noted that the TSF have been equipped with these manuals. The primary compliance challenge for him was that it was all about an "ethnic-driven conflict." Before the armed conflict started, both the federal government and the Tigray region were releasing propagandas that forced the army to choose sides based on ethnic origins. What has been done by the ENDF and allied forces during the first few months of the armed conflict has initiated a "fury" within TPLF forces. He added that what ENDF soldiers have been trained through all those years about IHL has turned to ashes. These forces, i.e., ENDF's, which he knew well before the armed conflict, became a "horror" all of a sudden, while also admitting the commission of violations by TPLF forces (Phone interview, A.A., December 15, 2023).

Nestanet, who was also a former Colonel at the ENDF's Anti-Terrorist Commando and a current Division leader at the self-proclaimed "TDF," underscored that opposing forces used the opportunity to let out their long years of "vengeance" on ethnic Tigrayans. The youth of Tigray have never wanted to be a part of any sort of armed conflict scenario; however, the initial abuses

have left them with enragement. Ethnic tension was a primary factor that has initiated the armed conflict and has also contributed to it lasting two years (Phone interview, A.A, December 20, 2023). Teklu (name changed), who was a regular TPLF soldier during the armed conflict, has said that non-compliance with IHL among their forces was primarily motivated by the desire for revenge. He said that during the initial periods of the law enforcement operation, “federal forces were good.” But things got worse as they started to commit violations. Above all, it was painful to comprehend that ENDF aligned with Eritrean soldiers. He also underlined that the armed conflict was ethnic-based, which contributed to non-compliance with IHL (Phone interview, A.A., November 18, 2023).

Shaleka Getenet is a legal advisory team leader at the ENDF Justice Main Directorate. To him, the primary factor in compliance failure is the pursuit of winning. During the event of the hostilities, precautions taken on both sides to protect civilian or civilian objects were very weak because of the race to win the battle. In addition, he noted that both of the conflicting parties were downplaying their offenses. Perfidy was also a challenging factor for compliance with IHL. Shaleka Getenet underscored that during combat, members of ENDF soldiers had major difficulties identifying a combatant and a civilian (interview, A.A., October 30, 2023). The soldier from the TPLF, Teklu, has also narrated that he encountered similar perfidious acts during the period when the TPLF controlled the neighboring Amhara National Regional State (Phone interview, A.A., November 18, 2023).

The role of inducing compliance by humanitarian organizations has also been crippled as a result of perfidious acts of warring parties. Interviews conducted with a legal advisor at the International Commission of the Red Cross (ICRC), Gashaw, and an IHL senior executive at Ethiopian Red Cross Society (ERCS), Asmamaw, both described that their organization’s emblems have been repeatedly used illegally (A.A., October 26, 2023, and October 13, 2023, respectively). Asmamaw has noted that there have been repeated incidents where a conflicting party has been moving ammunition with ERCS’s ambulances. And because of this, the civilian population was losing faith in them. Delivering aid has also been a hurdling task on many bases (interview, A.A., October 13, 2023). The ICRC’s legal advisor, Gashaw, has mentioned the

following as factors: looting and diversion of humanitarian aid; intrusive and intensive security checks; direct attacks and arrests of field officers; and attacks on convoys (interview, A.A., October 26, 2023). The informant from ERCS, Asmamaw, has added what they encountered, such as assaults, burning and stealing of ambulances, and a field officer's death (interview, A.A., October 13, 2023).

According to the interviewees from the ERCS (A.A., October 13, 2023) and ICRC (A.A., October 26, 2023), both have been playing a decisive role in alleviating humanitarian crisis in the affected areas. They have, in all three regions, been: providing support in cash and in kind; reunifying families; and engaging with governmental and non-governmental organizations to support victims. Gashaw has noted that the ICRC has made repeated visits to detention centers and looked up rape and sexual violence survivors. It has had confidential dialogues with relevant governmental bodies and civil organizations regarding the troubling IHL violations committed during the period of the conflict (interview, A.A., October 26, 2023).

A third challenging factor for compliance, as noted by Albab, director of the Chief Commissioner at the Ethiopian Human Rights Commission (EHRC), is the proliferation of non-state armed groups. Northern Ethiopia's armed conflict (2020-2022) has constituted many informal armed groups, which have also enticed civilians to participate in it. She underscored that there will not be the same level of disciplinary measures amongst these actors as within a standard military forces. What is presumed is that in a national military, in this case, the ENDF, mainly because of the existence of a command structure, perpetrators among its members are expected to be held accountable for their acts. With the extensive participation of informal armed groups in northern Ethiopia's armed conflict (2020-2022), the supposed structure for delivering accountability is nonexistent within them. The command structure is indispensable for credible accountability, which will guarantee compliance with IHL. The Commissioner underscored that it is important to address the question of accountability through an impartial, independent, and competent body for addressing responsibility for IHL in the future (interview, A.A., September 14, 2023).

Not only has the armed conflict created a safe ground for informal armed groups to escape liability, but ensuring accountability among state armed groups has been impossible on some occasions. Shaleka Getenet explained that his bureau had a myriad of difficulties in this regard. Primarily, since the federal government's presence in the Tigray region was short-lived, it was challenging to pinpoint all suspects who had committed crimes and bring them to justice. For instance, when federal forces withdrew from the region, suspects from the ENDF side were left there (in Tigray), and it challenged the Justice Directorate office to hold them accountable for their crimes. And since the offences were multiplexed, it had its own contribution to crippling a proper investigation. Plus, evidences were destroyed, and perpetrators may escape liability (interview, A.A, October 30, 2023).

On a similar note, Tadesse, chairman of the TJWGE, has outlined two principal barriers that the IMTF has grappled with. One is related to the widespread offenses committed in all three Regions of Tigray, Amhara, and Afar. The level of unprecedented violations had impacted the criminal proceedings, particularly in victim identification, witness locations, and the supposed investigations. Secondly, investigating all of the armed conflict areas was also difficult. The chairman has recited that the then-security situation in the Tigray region prevented any kind of serious investigation (interview, A.A., November 22, 2023). In addition to the IMTF, the report of EHRCO (2022) stated that there was not any means to carry out investigation in the region.

Factors of non-compliance among both parties to northern Ethiopia's armed conflict are also attributed to a lack of awareness about IHL, according to Azaria, a legal analysis expert at the Ethiopian Human Rights Council (EHRCO) (interview, A.A., October 19, 2023). He further noted that violations among both state and non-state actors were also committed out of negligence or renunciation, even if they were well-equipped with the law. He underscored that the lack of credible accountability further aggravates the commission of violations by all actors. As the TJ is under way, other elements that constitute the TJ should not undermine the process of accounting perpetrators of both state and non-state actors for their crimes. Otherwise, a culture of impunity prevails. Delivering proper justice only through an independent and impartial body is important to avoid conflict of this kind and the many IHL violations that come with it. Azaria

noted that the government has the primary responsibility in this regard, even though other non-governmental actors could help in the execution of this process (interview, A.A., October 19, 2023).

Awareness creation has been very difficult on many levels, according to the interviewees from ERCS and ICRC. They have indicated that, in principle, they are indebted to give training to combatants on IHL, whether they are state or non-state armed groups. Although these trainings are continuously given to members of the ENDF, and regional Special Forces, engagement with non-state armed groups is unimaginable at all. IHL senior executive at ERCS, Asmamaw (A.A., October 13, 2023), pointed out that there several are problems. One of these could be the fact that the government would not permit access to the armed conflict areas. And secondly, even if the required permission is granted, non-state armed groups fear that their whereabouts might be compromised. Another challenge raised by Gashaw (A.A., October 26, 2023) from ICRC was that warring parties have been highly politicizing the institutions' humanitarian activities. They consider that they are spreading European agendas. Shaleka Getenet (interview, A.A., October 30, 2023), from the MoD Justice Main Directorate, has noted that the bureau is also facing challenges with training. He pointed out that all-inclusive and simultaneous training has become increasingly difficult due to the ministry's consecutive military engagements. Additionally, there is a shortage of resources to effectively carry out these training sessions.

Warping up this chapter, it is vital to point out that, as per the interview with Tadesse (A.A., November 22, 2023), while discussing the importance of accountability being the anchor of all, and if not provided properly, impunity will become the governing rule. This will, in turn, give people the “predisposition” to commit violations. On a second note, the chairman stressed that opting for violence could not be a solution for political discrepancies. Political dialogues should be cultivated, and differences could be solved through conversations. If we can develop this culture of dialogue, it is possible to decrease the likelihood of armed conflicts arising in the future (interview, A.A., November 22, 2023).

On another note, the former Colonel at the Ethiopian MoD War College and a current Corps leader at the self-recognized “TDF,” Werede (phone interview, A.A., December 15, 2023), has firmly emphasized that a country’s military force is a product of the prevailing political framework within that nation. It is entirely unimaginable to separate these two. The armed conflict in Northern Ethiopia (2020-2022) is a prime example of the lack of civil and political engagement in our country. The armed conflict and all of the IHL violations committed were just manifestations of how chaotic our political culture is. We all should be careful that we are not passing down this racial enmity, brutality, and incivility in our political dialogues to our children. What is done is done; we need to foster harmony for the coming generations to reap from it.

## **Chapter Five**

# **Unraveling the Compliance Challenges with International Humanitarian Law in Northern Ethiopia’s Armed Conflict (2020-2022)**

### **Introduction**

This chapter provides explanations for the study based on the data that has been gathered and presented in the preceding chapters, with the overarching goal of illustrating compliance with international humanitarian law (IHL) in northern Ethiopia’s armed conflict (2020-2022). Accordingly, the first three subsections of this chapter deliver a descriptive explanation, primarily utilizing information from the legal documents of international humanitarian law and the study’s collected data pertaining to applicable rules of IHL, violations committed, and the pursuit of accountability within the context of the stated armed conflict. The final section offers analytical interpretations grounded in extracted data on the theme of challenges to compliance with international humanitarian law in northern Ethiopia’s armed conflict (2020-2022).

### **5.1 Exploring Legal Dimensions of IHL in Northern Ethiopia’s Armed Conflict (2020-2022)**

#### **A. Applicable Norms and Treaties of IHL**

On November 4, 2020, the federal government of Ethiopia stated that, on the day prior, the Tigray Special Forces (TSF) and allied militia attacked the Northern Command of the Ethiopian National Defense Force (ENDF) stationed in the Tigray National Regional State. It was revealed that the raid by the TSF had killed members of the ENDF and also captured military weapons (IMTF, 2022). The federal government further announced that the attack forced it to take a “law enforcement operation measure” in the region. On the contrary, the Tigray Peoples’ Liberation Front (TPLF) said that “war” had been declared against them (Hamza, 2021). According to

Hamza (2021), the declarations of both parties were not based on the criteria provided under a law supposed to govern armed conflicts.

International Humanitarian Law (IHL) sets down rules that regulate the conduct of armed conflicts and aim to minimize calamities for civilian populations and the destruction of civilian properties. The law protects those who are not participating in a conflict and combatants who have ceded fighting as a result of sickness or wounds. Modern codification of IHL began with the ratification of the first Geneva Convention (GC) for the amelioration of the condition of the wounded armies in the field. It established the basis for the ensuing developments of IHL. In 1949, three other GCs were adopted, offering protection to: wounded armies in the marines, prisoners of war (POWs), and civilian populations. In 1977, two additional protocols (AP I and AP II) and additional treaties were enacted, further expanding the protections laid down under the four GCs.

IHL classifies armed conflicts into international and non-international armed conflicts (IACs and NIACs) and stipulates different rules applicable to each of them. IACs relate to: conflicts where at least between two independent states are fighting; conflicts for self-determination against colonial domination, alien occupation, and racist regimes. The second type of armed conflict, NIAC, is a conflict either between a state armed force and an organized armed group or whether these organized armed groups are rivaling each other in the territory of a state (GSDRC, 2013).

The rules of IHL that are used to qualify a situation as a NIAC are Common Article 3 (CA3) of the GCs and Article 1 of AP II. CA3 provides a lower threshold of requirements to qualify as such. One requirement is that parties to the conflict have a “minimum degree of organization.” A few indicators for the criterion of organization necessitate that the armed group possesses a command structure and disciplinary procedures; if the group can obtain military arms; recruit and train its military forces; plan a military strategy and launch an operation; and whether it is capable of negotiating and concluding agreements. State armed forces (SAF) are assumed to have met this requirement because it is expected that they have formed a military command structure, own military manuals outlining legal obligations, and have tribunals competent to prosecute personnel who have transgressed the law (Odermatt, 2013)

The conflict in Northern Ethiopia's armed (2020-2022) involved the ENDF, a SAF, and combating the forces of the TPLF, an NSAG. It was demonstrated that the ENDF, as it is a SAF, has satisfied the first criterion under CA3. As for the TPLF, a few of the factors that could achieve the stated criterion are the following: it was based in Mekelle, the capital of the Tigray region; had the authority to command the region; instruct and equip the TSF; with paramilitary and militia forces numbering around 250,000, the group benefited from the November 3, 2020, attack on the ENDF's northern command, acquiring tanks, missiles, and rocket launchers. Ex-senior members of the ENDF and ousted leaders of the Tigray National Regional State governed the TPLF. The group demonstrated the potency in employing warfare methods and had similarities in their ideologies (Hamza, 2021).

Secondly, CA3 necessitates the "intensity of the violence" to be fulfilled. The following indicators need to be put into consideration: the graveness and frequency of armed confrontations; if the violence have extended across time and space; if it accompanies additional government forces and volunteer fighters; the possessions of military weapons by the opposing forces; whether the military confrontation has enticed the United Nations Security Council (UNSC) attentions; and whether any resolutions on the subject have been passed. Accordingly, Ethiopia's northern conflict (2020-2022) has met these requirements by the following: It involved heavy combat operations between the ENDF and the TPLF, which also possessed airstrikes in the initial month of the fighting. Rockets were also fired by the TPLF forces into the border areas of the Amhara region and the country of Eritrea. Participants in the conflict were the ENDF, regional Special Forces and allied militias, and Eritrean Defense Forces (EDF), confronting the Tigray Special Forces (TSF) and allied militias. The conflict between the opposing groups continued for several months, and it was reported by OCHA (2021) that the assessed number of people in crisis as of May 3, 2021, amounted to 4.5 million, and about 63,087 people took off to neighboring Sudan.

Hence, the conflict met the threshold requirement to trigger IHL applicable in NIACs stated under CA3 and AP II. The whole body of treaty and customary rules of the IHL (CIHL) of a NIAC is viewed as applicable in northern Ethiopia's conflict of November 4, 2020-November 2, 2022 (Hamza, 2021).

## B. Violations of IHL

Political conflicts that lasted for months between the federal government of Ethiopia and the Tigray People's Liberation Front (TPLF) evolved into armed conflict on November 4, 2020. It involved the ENDF, accompanied by the EDF, regional Special Forces, and allied militias, confronting the TSF and allied militias. At the end of November 2020, during the initial offensive by the federal government, it was reported that it had controlled Mekelle, driving the TPLF forces into other areas of the Tigray region. A guerilla type of warfare continued in the ensuing months until June 28, 2021, when the federal government declared a unilateral ceasefire and removed its forces from the region. After swift control of Mekelle by TPLF forces, they stretched it into the adjoining regional states of Amhara and Afar till it backed off in November 2021, subsequent to retaliation by federal forces. Fighting continued then, though sporadically, up to November 2, 2022, when the ENDF and the TPLF signed an agreement on a "permanent cessation of hostilities" in Pretoria, South Africa.

IHL imposes constraints on the use of force by parties to a conflict to ensure the protection of the civilian population and civilian objects from the effects of the hostilities. For NIACs, prohibited acts are provided under CA3, AP II, CIHL, and the Rome Statute of the ICC. CA 3 offers international minimum protection to persons taking no active part in hostilities and to members of the armed forces who are no longer taking part in the hostilities. A few of these prohibited acts include murder, cruel treatment and torture, taking of hostages, humiliating and degrading treatment, and execution without a proper trial. APII expands this protection under Article 4 of the protocol. The protocol envisages, in addition to what CA3 states, it intensifies protections the rights of children and gender based violence. Under CHIL catalogue, Rule from 87 to 105, outlines the prohibited acts and provides the guarantees of fundamental protections of the civilian population and noncombatants.

CIHL also stipulates cardinal principles that conflicting parties are obliged to follow during the conduct of hostilities. This includes the prohibition of direct attacks against civilians or civilian populations and civilian objects under Rules 1 and 7; indiscriminate attacks under Rule 11; and

unnecessary suffering to civilians and civilian objects under Rule 14 and taking precautions at all times to minimize damage to civilians or civilian objects under Rule 15.

During this two-year period of armed conflict, governmental and non-governmental institutions disclosed in their reports that members of the conflicting parties were involved in acts that violated IHL. Based on a review of these investigative reports presented in the previous chapter, members of the conflicting parties were involved in acts prohibited under IHL. Such acts, as have been classified by the reports to violate IHL, included indiscriminate attacks or the failure of precautionary and/or proportional measures on civilians and civilian objects, extrajudicial killings, and Gender-Based Violence (GBV) by members of conflicting parties during the period of the conflict.

### C. Accountability under IHL

The 1998 Rome Statute stipulates under Article 8 that serious violations of the treaties and treaties of IHL applicable in NIACs incur individual criminal responsibility and constitute war crimes. The Statute grants the International Criminal Court (ICC) jurisdiction in situations where war crimes are committed. The court exercises its jurisdiction in the following cases: if the crimes were committed by a national of the signatory state, or in the territory of the signatory state, or in the state that has endorsed the jurisdiction of the ICC. The court also applies its authority when the United Nations Security Council (UNSC) refers the case to the ICC prosecutor. However, the Court will not apply its jurisdictional power in a situation where the state with the power is investigating and prosecuting the matter unless, in such a case, the state is incapable of conducting it on its own.

States have the power to investigate war crimes claimed to have been committed by their citizens or armed forces on their territory, and if possible, prosecute the offenders. The responsibility of investigating war crimes by the state concerned is laid under Rule 158 of the CIHL document. In addition, states supposed to repress other IHL violations not amounting to war crimes. Ethiopia is a signatory state to the four GCs of 1949 and the two additional protocols of 1977. The

Criminal Code of Ethiopia considers war crimes as prohibited acts applicable to the state armed forces and other individuals (JIT, 2021).

The federal government of Ethiopia (FDRE), through national institutions, is conducting criminal investigations into IHL violations committed in the context of Northern Ethiopia's armed conflict (2020-2022). In the earlier chapter of this study, as per the interview with Tadesse, it was noted that the Inter-Ministerial Taskforce (IMTF) under the Justice Ministry of Ethiopia (MoJ) had investigated the Maikadra killings, and he noted some have been convicted and some are proceeding in absentia (interview, A.A., November 22, 2023). In this case, according to the IMTF report released in September, 2022, the report stated that the investigation into Maikadra case has identified 202 suspects (IMTF, 2022). Again, according to the interview with Tadesse, he has recalled that the IMTF has also been investigating the Axum killings; however, it has not been completed. Tadesse also noted that, though the IMTF has been dissolved after the signing of the Pretoria peace agreement between the ENDF and TPLF on November 2, 2022, the MoJ is aspiring to address accountability through Transitional Justice (TJ) (interview, A.A., November 22, 2023).

The Ministry of Defense (MoD) is the other national institution handling investigations and prosecutions in the context of northern Ethiopia's armed conflict (2020-2022). It was indicated that under the MoD Justice Directorate, investigations are being conducted on individual members of the ENDF suspected of extrajudicial killings, rape, looting, and distraction of civilian property. Some have been convicted while others are awaiting their criminal proceedings.

## **5.2 Analyzing the Challenges of Compliance with IHL in Northern Ethiopia's Armed Conflict (2020-2020)**

Recalling our discussion in subsection 5.1(A) of this chapter, IHL presupposes the variance of armed conflicts into IACs and NIACs. Instruments of IHL are intended to govern these types of armed conflicts. Lamb (2011) argues that armed conflicts that have taken place since the end of the Cold War showed a detachment from what IHL's conception of armed conflict is built upon

and instead, a new variant of it that has emerged. “New wars” theory is what the advocates of this theory call it.

As the new war theory contends, Odermatt (2013) contradicts the Clausewitzian conception of armed conflict that correlates with IHL’s premises. For Clausewitz, war is one mechanism of political dealings marked by an armed confrontation. A state, in pursuit of its national interests, employs diplomatic and economic mechanisms alongside warfare. In contemporary warfare, as argued by Odermatt (2013) and Lamp (2011), war is no longer merely an instrument of politics or a tool of politics; it is itself a form of politics. Another characteristic of modern warfare is that it is no longer confined to conflicts between armies or entities representing nation-states and is not exclusively governed by them. The motivations for engaging in warfare have also evolved. The fundamental principle of IHL that governs hostilities is to grant the right to weaken the forces of the enemy and attack military objectives while simultaneously restricting the use of force if it is likely to cause unnecessary suffering to the civilian population and damage to civilian objects. New wars involve both state and non-state actors and are driven by various motivations. Driving motivations include ethnic and religious rivalries or economic gains (Odermatt, 2013).

The complexity of Northern Ethiopia’s armed conflict (2020-2022) aligns with the elements of the new war theory. For instance, it was influenced by ethnic identities. Tensions between ethnic groups and historical rivalries have played a central role in the violence and the motivations behind it. A second feature of the new war theory is the blurring line between combatants and non-combatants. Northern Ethiopia’s conflict (2020-2022) involved multiple armed actors beyond the national military forces of the ENDF and EDF; it included the Regional Special Forces, militias (comprising both formal and informal ones), and other armed groups. Moreover, the theory alleges the devastating impact on civilians and their being the target during armed conflicts. Across Tigray, Amahra, and Afar, the armed conflict has affected a minimum of 20 million people, and 5.5 million have been displaced (Africa up close, 2023). UNHCR reported that the armed conflict has unveiled a massive humanitarian and protection crisis in the regions of Tigray, Amhara, and Afar, which has killed thousands and displaced millions. It also indicated

that, across these three conflict-ridden regions, approximately nine million people lack access to adequate food (UNHCR, 2023).

Ethiopia and its adjacent northern country, Eritrea, have a deep-rooted and intricate history, particularly exemplified by the events from the past between Ethiopia's Tigray National Regional State and Eritrea. In the struggle to topple the Derg regime (1974-1991), the TPLF collaborated with affiliates of the Eritrean Peoples' Liberation Front (EPLF); the second mentioned was battling for Eritrean independence from Ethiopia. Both parties were countering the Derg rule and had common cultural and linguistic relationships; however, they had ideological variances. Their alliances were, in part, born out of necessity, yet tensions persisted and sometimes flared openly, despite their collaboration (Reid, November 30, 2020). According to Reid (2020), amid their struggle, their bonds started to degenerate due to ethnic and national identity. There were also disagreements between the TPLF and EPLF over the demarcation of borders, combat tactics, and ideology (Kirby, April 24, 2021).

In 1991, in collaboration with other armed groups in Ethiopia, the TPLF, being one of them, removed the Derg from power. The coalition was formed from four ethnically-based political parties that made up the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), of which the Tigray wing, i.e., the TPLF, held a dominant position (Plaut, November 4, 2020). In 1993, Eritrea gained independence from Ethiopia and established its own government. However, this was just the beginning of a long-standing enmity (Reid, November 30, 2020). One of the many factors in the quarrel between these two countries was that their borders had not been thoroughly demarcated. To address this, a border commission was formed in 1993 and operated until 1997; however, the border issue remained unresolved. Secondly, economic engagement between them was also not at ease. Ethiopia claimed that Eritrea charged an extremely high fee to export coffee via the latter's port. By the end of 1997, discontent had reached an unprecedented peak (Joireman, 2000).

A catastrophic interstate war was fought between Ethiopia and Eritrea from 1998 to 2000, centered on the border town of Badme in northern Ethiopia, and Ethiopia's subsequent refusal to sign the Algiers agreement left their friendship unsettled for nearly two decades. Nonetheless, according to Reid (2020), the matter was not solely about the border; the border issue was superficial. Instead, it was fundamentally linked to regional dominance and historical discord stemming from ethnic divisions (Reid, November 30, 2020). With the coming of Abiy to power in 2018, who decided to promptly accede to the Algiers agreement, the stalemate between these two countries subsided; however, alarmed TPLF rulers, accusing the federal government of a lack of consultation with them regarding the decision.

TPLF-led EPRDF's 27 years of ruling were largely criticized for politicizing ethnicity, violating rights and freedoms, narrowing political space, and impeding a free and fair election (IMTF, 2022). The adoption of ethnic federalism in Ethiopia has triggered numerous ethnic conflicts, leading to a significant rise in tensions and clearer divisions among different ethnic groups. Ethnicity has been leveraged as a means for political mobilization, exacerbating violence, fostering discord, and increasing separatist sentiments within the nation (ACCORD, February 25, 2020). Abiy's election came in response to growing pressure on the government after more than two years of protests that began in the Oromia, then in Amhara and were fueled by state violence and repression. The Oromo community perceived marginalization by the TPLF rule. The Amhara had grievances against the TPLF, including a territorial dispute with Tigray that dates back to the EPRDF's division of Ethiopia into ethno-regional states in the 1990s (Blanchard, December 1, 2020). Long-standing boundary disputes between the Tigray and Amhara National Regional States had also played a larger role in exacerbating tensions. These contested districts include Welkait, Humera, Tsegede, Tselemte, and Raya, which the Amhara accuses the TPLF of annexing upon seizing power in 1994 (Addisu, 2021; Crisis Group, 2020).

The election of Abiy by Ethiopia's parliament in 2018 initiated a political transition for the country, terminating 27 years of EPRDF rule. During this reform period, Ethiopia witnessed antagonistic political aims among various parties. One such discontent was between the federal

government and the TPLF. As a component of the reforms following 2018, influential government figures of Tigrayan descent who were convicted of corruption and oppression were deposed (BBC, 29 June 2021). Leaders in Tigray criticized this action, asserting that it was a selective justice targeting their ethnic group overlooking comparable misconduct by individuals from other regions (Wight, 2020).

The two parties were also at variance in late 2019, when PM Abiy set up a new party, Prosperity Party (PP), by merging the constituencies of the EPRDF (Crisis24, 2023). The TPLF contradicted the establishment of the new party and declined to join, reasoning that it was an outright dismissal of the federal principle (Eritrea Focus, 2021). Confrontation intensified after the decision by the federal government to reschedule the Sixth General Election as a result of the Covid-19 pandemic. The Tigray region defied the decision and went ahead with conducting its own regional election on September 9, 2020. The TPLF was announced as the winner of all seats. The federal government ruled the election invalid, and the TPLF retaliated by claiming it no longer acknowledges Abiy's administration. The federal government ceased the region's funding and terminated relations with its top leaders (JIT, 2021).

Also, during this time, verbal altercations flared up. Both parties were engaged in broadcasting provocative statements through their affiliated media outlets. Government-allied media, on the one hand, and TPLF-affiliated channels, on the other, showed content that opposed one another (Plaut, November 4, 2020). Additionally, both the federal government and the TPLF were involved in military preparations and displayed their forces in televised broadcasts (JIT, 2021). According to Plaut (November 4, 2020), these military parades were perceived as overt attempts to provoke or irritate each other.

According to Lamp (2011), IHL's paradigm of compliance also reflects the presumption that compliance could be fulfilled if the war meets the conception of it as stated under the law. IHL's paradigm of compliance presupposes, primarily, the voluntary compliance of warring parties and expects them to give their consent. States are considered to be capable of fulfilling their

responsibilities under international law and have international legal personality. However, this legal personality does not extend to non-state actors such as those of dissident armed groups, informal militias, and rebel groups. Expectations of compliance from these actors necessitate states to recognize and enforce the IHL in their national judicial systems. As the new war theory contends, when dealing with an armed rebellion, states are regularly reluctant to apply or enforce the law (Lamp, 2011).

In northern Ethiopia's armed conflict (2020-2022), the characterization of the conflict by the federal government as a "law enforcement operation" blocks the TPLF's legal responsibility. As discussed in the previous chapter, the use of the term "bandit force" by the informant from the MoD Main Operational Department to pinpoint the TPLF forces suggests that these forces are engaged in unlawful warfare or were seen as criminals. In these situations, IHL's capacity to secure compliance from this group is weakened by the fact that they have not given their consent to the law. Odermatt (2013) argues that states' desire to reject the applicability of IHL is initiated because of political reasons rather than legal ones. The issue arises from the fact that enforcing the law indirectly acknowledges the existence of autonomous power within a sovereign state. If it were used, these forces would acquire it. A proponent of the new war thesis, Lamp (2011), argues that during NIACs, states maintain that they are the only actors with the legal authority to use force. The domestic legal system allows it to engage force to quell rebellions or armed groups and bring legal action against them.

A second paradigm of compliance with IHL involves the expectation that preventive measures against violations are thoroughly implemented. These preventive measures are built on the dependability that the conflicting parties can exercise and enforce the law. One of the preconditions is that these parties have an understanding of the law (Lamp, 2011). This involves an in-depth knowledge of the legal provisions, principles, and norms governing armed conflicts. An understanding of the law enables warring parties to make knowledgeable decisions and examine their actions in combat operations.

The study has indicated that the Ethiopian Ministry of Defense (MoD) provides its members with adequate training in IHL and informs them about the appropriate use of force in conflicts, as was the case in its combat operation with the TPLF forces. It was narrated that the MoD assists

regional Special Forces with these trainings whenever they ask for them. Additionally, civil organizations like the International Committee of the Red Cross (ICRC) and the Ethiopian Red Cross Society (ERCS) provide education on IHL to the members of the ENDF and regional Special Forces.

Despite fighters being aware of the IHL rules, the study has found that violations of the law occurred during the conflict due the influence of emotional factors. Heffes (2022) contends that for fighters, whether belonging to state or non state groups, as long as they are humans, disposing of emotional elements and expecting them to adhere to the rules of IHL is impossible. It is common to observe emotions such as shame, disgust, resentment, and anger during the conduct of hostilities (Heffes, 2022).

In Northern Ethiopia's armed conflict (2020-2022), fighters' inability to control their emotions has resulted in non-compliance with IHL. The informant from the MoD Main Operational Department has noted that acts by TPLF forces have infuriated junior ENDF soldiers. He emphasized that the sense of defiance towards the opposing force led to violations of IHL. Three of the informants from Tigray forces, or the self-designated "Tigray Defense Forces (TDF)," have narrated that violations originated from feelings of anger. Initial abuses by the ENDF and allied forces at the onset of the conflict have sparked anger among them. They have also added that the ENDF's collaboration with the EDF stirred up feelings of resentment. As the commentary by Shaleka Getnet noted that, conflicting parties were prioritizing their military scores and disregarding the severity of their violations, which entails a transgression of the principle of precaution.

Thirdly, the strategy employed by humanitarian organizations' is to directly engage with states and non-state actors on their legal responsibilities to guarantee compliance with IHL. According to Krieger (2013), organizations like the ICRC employ two methods for this: the spread of knowledge about the law and convincing warring parties to observe it. They prioritize non-confrontational ways to persuade conflicting parties to abide by the rules of war. The other duty expected of the ICRC is to deliver aid to an affected populace. While the ICRC is an

international one, there are also national-based humanitarian organizations that operate under the principles its principles. In Ethiopia, it the ERCS assigned with carrying out the stated tasks.

The study has identified that the ICRC and the ERCS, both, have actively engaged in alleviating the humanitarian crisis in northern Ethiopia's armed conflict (2020-2022). Across the affected areas of Tigray, Amhara, and Afar, they have offered financial and material assistance, reunited families, and collaborated with governmental and non-governmental institutions to aid victims. An informant from the ICRC has highlighted the frequent visits to detention centers and informed the pertinent authorities of their conditions. However, it was determined that conflicting parties have consistently misused both the ICRC's and ERCS's humanitarian insignias. Ambulance units have been charred and looted. Those belonging to the ERCS have been forcefully used to carry military weapons. Deployed personnel of the ICRC and ERCS to deliver aid have been repeatedly attacked and detained. One member of the ERCS has been killed. There has also been the theft of humanitarian aid by conflicting parties. The informant from the ICRC has explained rigorous and stringent security examinations and checkups amid the conflict, even though the organization enjoys legal protections and immunities that derive from the treaties and norms of IHL to execute its mandate.

The study has also found that the ICRC and ERCS are not effectively fulfilling their duties regarding preventive measures, such as engaging with non-state armed groups. Informants have explained that it is unrealistic to establish contact with these groups (which also include those who were involved in northern Ethiopia's armed conflict from 2020 to 2022) because of a myriad of dilemmas. Out of the many reasons, they lack authorized entry to where they are located, and the groups are also concerned about the exposure of their locations. Lamb (2011), states in his article that the new wars comprise amateur soldiers who have not received formal training and education in IHL. The author underlines the absence of professional armies in contemporary warfare as a factor in non compliance with IHL.

Fourthly, IHL's paradigm of compliance calls for effective enforcement mechanisms. The law needs teeth if we are expecting compliance from state and NSAGs. Under IHL, the parties to an armed conflict are obliged not only to observe IHL themselves but also to enforce it against other

actors under their control. Compliance with the rules by warring parties also requires them to establish an internal disciplinary system to ensure their subordinates' compliance with the law.

In light of this, the federal government of Ethiopia has established an Inter-Ministerial Taskforce (IMTF) under the MoJ exclusively for investigating crimes committed in northern Ethiopia's conflict (2020-2022). The MoD is also conducting criminal investigations. As has been raised in subsection 5.2 (B) of this chapter, some of the criminal proceedings conducted by both of these governmental institutions have passed into conviction, while others are still in the process. However, the study has identified that these institutions are challenged by a multitude of setbacks. Among these factors, both the IMTF and MoD have been grappling with the task of investigating extremely broad and intricate crimes committed in the conflict. Secondly, during the period of the conflict, the federal government's supervision in the Tigray region was momentary; it obstructed an appropriate investigation that should have encompassed the whole region. Thirdly, according to a jointly published note from the EHRC and OHCHR on the TJ policy framework, conflict-impacted communities expressed their doubts that credible accountability could be achieved through state-owned institutions.

The study has also found that addressing the accountability of perpetrators among non-state armed groups is also very questionable. As has been clarified the previous chapter, the importance of command structure and institutional mechanisms for the enforcement of the law. It was noted that the involvement of various informal armed groups in the conflict and the nonexistence of an institutional framework within these groups are the other hurdling tasks to secure accountability. As Ethiopia continues its political changes, its transitional justice initiatives should seek to rectify past violations of human rights and advance national reconciliation. This process entails compensating victims, enacting extensive institutional improvements to deter future crimes, and holding offenders responsible through the judicial system. Important components should include efforts aimed at finding the truth, such as creating truth commissions to record mistreatment and recognize the experiences of victims. To ensure long-term peace and stability, these initiatives aim to mend deeply ingrained social divisions, advance justice and accountability, and lay the groundwork for a more democratic and inclusive Ethiopia.

On our last note for this chapter, as Heffes (2022) emphasizes, IHL violations can lead to discontent among communities, irrespective of the timeframe of those violations. These discontents have the potential to contribute to cycles of violence. However, employing skillful approaches to address these issues could break the cycle of violence or help diminish its effects. Accordingly, in Ethiopia, it is utterly important to establish measures for a potent deterrence of similar IHL violations in the long run. One is related to ensuring justice through a neutral and unbiased body. It has been underscored in this study that ensuring reliable execution of accountability through the TJ is crucial to curbing violations in the future.

It also requires addressing the grievances of affected communities, promoting peaceful coexistence, and addressing both historical and current issues to soothe interethnic tensions. In the context of civil war or rebellion, grievance is sometimes described as a justice-seeking motivation. Although there are variants of grievance-based theory, its central thesis is rooted in a deprivation claim, where the stimuli for war were owed to either “greed” or “grievance.” Rebellions arise when grievances are severe to the point where people are driven to participate in violent protests, and the impetus includes ethnic or religious hatred, political repression, political exclusion, and economic inequality.

To address grievances among communities, it is important to explore methods that can deter factors potentially igniting conflicts. For instance, it could be related to addressing the claims of residents living in the disputed areas of the Amhara and Tigray National Regional States. Secondly, compensating affected communities involves alleviating the harm, losses, and injustices they have gone through. Thirdly, initiating and conducting political dialogues could also be another deterrent mechanism. All-inclusive dialogues representing Ethiopia’s diverse ethnic groups, political parties, civil societies, and other stakeholders are needed to bring about a sense of resolution and find a prompt compromise before hostile rhetoric evolves into violence.

## **Conclusion**

International Humanitarian Law (IHL) commands the conduct of armed conflicts aimed at guarding the lives of civilians, non-combatants, and civilian belongings by limiting the means and methods of warfare. Instruments of IHL include the four Geneva Conventions (GCs) of 1949, two additional protocols (AP I and AP II) of 1977, and other treaties. Numerous treaties of IHL, due to consistent state practices, have become customary rules (CIHL). The law classifies armed conflicts into international and non-international armed conflicts (IACs and NIACs) and stipulates different rules applicable to each of them. The rules of IHL applicable in NIACs include Common Article 3 to GCs (CA3), AP II, and CIHL. CA 3 lays down a minimum protection warranty, among others, to civilians, combatants who have ceased fighting, and civilian properties. AP II further expands the protections stipulated in CA3.

The 2018 reform in Ethiopia, led by Prime Minister Abiy Ahmed, followed a series of political contradictions with the Tigray People's Liberation Front (TPLF), a party that dominated the country's politics for nearly thirty years. On November 3, 2020, it was declared that Tigray Special Force (TSF) and allied militia attacked the Ethiopian National Defense Forces (ENDF) Northern Command located in the Tigray National Regional State. On the next day, a "law enforcement operation" was instructed by the federal government against the TPLF and allied forces. Conversely, the TPLF announced that a "war" was being waged against it. Controversies had arisen with regards to the categorization of the situation between the two parties. Nevertheless, it has been determined that northern Ethiopia's armed conflict (2020-2022) has fulfilled the criteria established under CA3 and AP II, namely, an "organization" and "intensity of the violence" for the application of IHL, thereby categorizing it as NIAC.

Parties to the conflict involved: the ENDF supported by the Eritrean Defense Forces (EDF), regional Special Forces, and allied militias confronting the TSF and allied militias. According to institutional investigative reports, members of the conflicting parties have been involved in actions that violate the minimum protection guaranteed by IHL for safeguarding civilians and civilian properties. Based on a review of those investigative reports, in the three regions of Tigray, Amhara, and Afar, the reports determined that acts such as indiscriminate attacks or failures of precautionary and/or proportional measures, extrajudicial killings, and gender-based

violence, particularly rape in the form of gang rape, were committed by members of warring parties. The Ethiopian federal government, through federal entities, is currently engaged in criminal investigations concerning IHL violations that occurred in northern Ethiopia's armed conflict (2020-2022). The Inter-Ministerial Taskforce (IMTF) had been tasked with this mandate up until the signing of the peace agreement between the TPLF and the federal government. The Ministry of Defense (MoD) is the other entity involved in this effort.

There were a myriad of challenges to compliance with IHL in northern Ethiopia's armed conflict (2020-2022). The study identified the following: It has highlighted how warfare has evolved, involving state and non-state actors with varied motivations. Firstly, the construction of categories about the conflict influences the application of IHL and the obligations it entails under international law. The study has explored the struggle with the practical implementation of rational factors for inducing compliance with IHL, such as the knowledge and internationalization of the law. For instance, emotional factors such as anger and resentment among combatants have resulted in violations of IHL, illustrating the impact of psychological factors on compliance with the rules of the war. Secondly, evidence of the collected data underscores the substantial influence of ethnic animosity in contributing to noncompliance with IHL. Humanitarian institutions have also been engaged in influencing compliance with IHL. One was related to aiding affected communities, and the other was to engage with stakeholders regarding violations. Nonetheless, various factors have hindered their preventive measures, like perfidy, assaults, and plundering of aid.

Enforcement of IHL requires effective mechanisms. The federal government is facing drawbacks such as the broad and intricate nature of crimes, temporary federal supervision of the armed conflict areas, and doubts of affected communities about credible accountability through state-owned institutions. Addressing accountability among non-state armed groups is also challenging due to the absence of institutional frameworks. Ensuring justice through a neutral body, addressing community grievances, promoting peaceful coexistence, and establishing political dialogue are crucial for deterrence and preventing future violations.

## **Recommendation**

Upon conducting a close examination of the challenges to compliance with international humanitarian law in northern Ethiopia's armed conflict (2020-2022), the researcher offers the following remedies to reduce the likelihood of future armed conflicts and, in case they do occur, mitigate the humanitarian impact and ensure compliance with IHL. The solutions listed below require, primarily, the federal government of Ethiopia to take the lead responsibility for their execution.

First off, addressing the root causes and motivations that lead to armed conflicts among communities is important, with a specific emphasis on ethnic enmity. It needs to identify and understand the historical circumstances of ethnic relationships in Ethiopia. The federal government should establish fair and inclusive political participation for the country's multiethnic society. This could help in suppressing feelings of exclusion and cultivating national solidarity. It should also be noted that reconciliation programs are crucial in post-armed conflict periods. The peace agreement between the federal government and the Tigray People's Liberation Front (TPLF) signed on November 2, 2022, is a promising move towards long-lasting peace. However, an all-encompassing peace necessitates programs that include efforts to promote healing and build bridges between groups and/or communities that have been in the armed conflict. Organizing dialogues and community healing events should be cultivated to develop civil discourse and to acknowledge and appreciate the beauty in the diversity of ethnicities.

Following that, tackling grievances and injustices is also a fundamental step towards warranting compliance with IHL and the avoidance of frequent armed conflicts. This constitutes dealing with accountability through a fair and unbiased body. The government needs to take charge of designing an entity with the legal expertise of IHL, upholding the principles of independence, impartiality, transparency, and delivering justice through well-conducted investigations. Victims in all of the armed conflict-ridden regions should be compensated, acknowledging the harm they have endured and supporting the reconstruction of their lives.

On a third note, measures should be enacted to enhance the security of humanitarian workers operating in armed conflict zones. Collaborative work between national and international institutions is needed to tackle the challenges faced by humanitarian missions. For instance, this collaboration may involve dispatching independent protection units to guard aid workers, ensuring the safe allocation of support to those affected by armed conflicts. It is also imperative that vouching for compliance with IHL requires that humanitarian agencies also execute their parallel mandates. One of these is facilitating unimpeded access to armed conflict areas for their effective engagement with conflicting parties. Engaging with all actors be they state or non-state, has paramount importance to the likelihood of conflict occurrences. Furthermore, federal and regional authorities should exercise strategic patience when addressing political issues. It is worth mentioning that the use of offensive language towards an ethnic group has the potential to create social division and may initiate violence. Not only governmental bodies but also the broader community should bear the responsibility for the use and promotion of derogatory terms concerning a certain ethnic community. As well, in the event of escalating political disputes, it is critical to regard military engagements as a last and undesirable option to be carried out only after substitute ways for peaceful solutions have been extensively explored.

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## **Appendix 1**

### **List of Interviewees**

1. Interview with Albab Tesfaye, Director of the Chief Commissioner at the Ethiopian Human Rights Commission (EHRC), conducted in her office on May 23, 2023.
2. Interview with Asmamaw Setegn, International Humanitarian Law Senior Executive at the Ethiopian Red Cross Society (ERCS), conducted in his office on October 13, 2023.
3. Interview with Azaria Solomon, a Legal Analysis Expert at the Ethiopian Human Rights Council (EHRCO), conducted in his office on October 19, 2023.
4. Interview with Gashaw Tamir, a Legal Advisor at the International Committee of the Red Cross (ICRC), conducted at a cafe on October 26, 2023.
5. Interview with Shaleka Getenet Kinde, a Legal Advisory Team Leader at the Ethiopian Ministry of Defense in the Justice Main Directorate department, conducted at a cafe on October 30, 2023.
6. Interview with Shambel Addisu Seyoum, a Human Resource Leader at the Ethiopian Ministry of Defense Main Operational Department, conducted in his office on October 31, 2023.
7. A Phone Interview with an Anonymous, a former soldier of the Tigray forces conducted on November 18, 2023.
8. Interview with Dr. Tadesse Kassa, Chairman of the Transitional Justice Working Group of Experts (TJWGE) under the Ethiopian Ministry of Justice, conducted in his office on November 22, 2023.

9. A phone interview with Werede Abreha, a Corps leader at the self-proclaimed “Tigray Defense Forces,” was conducted on December 15, 2023.
10. A phone interview with Nesatnet Berihe, a Division leader at the self-proclaimed “Tigray Defense Forces,” was conducted on December 20, 2023.

## **Appendix II**

### **List of Interview Questions**

#### **A. Interview questions prepared for the Ethiopian Ministry of Defense Operational Department**

1. Does the Ministry of Defense provide training on IHL to members of the armed forces? Is the training applicable to regional government security or armed groups? Can you share your view or can you give an example of the content and structure of the training? What are the mechanisms for monitoring compliance with the rules?
2. Are there national institutions and international organizations involved in the training, directly or indirectly? How can we explain the role of national and international institutions in aiding these trainings?
3. Were members of the armed forces adequately informed about the rules of engagement in the conflict in Tigray and the adjacent regions in Northern Ethiopia?
4. Were members of the regional security forces and militias supporting the National Defense/ Armed Forces informed about the code of conduct or IHL during the engagements?
5. How do you regard the use of force during the conflict in Northern Ethiopia and allied forces while also preserving the delicate balance between humanitarian concerns and military necessity?
6. How do you explain the treatment of war prisoners, members of the national defense forces, who were held in Tigray? How about the treatment by national defense or national

security forces of the TPLF and allied groups' combatants once they were taken into custody?

7. In your opinion, what factors contributed to the problem of non-compliance with IHL on the part of all forces that took part in the hostilities in northern Ethiopia during the 2020–22 period?
8. Do you have suggestions about the ways of enhancement of compliance with the rules of IHL on the part of combatants?

## **B. Interview questions prepared for Tigray Forces**

1. Do the special forces of the Tigray regional government receive training on International Humanitarian Law (IHL)? Can you share your view, or can you give an example of the content and structure of the training? What are the mechanisms for monitoring compliance with the rules?
2. How do you explain the role of the Ethiopian Ministry of Defense in these trainings?
3. Are there national institutions and international organizations involved in the training, directly or indirectly? How can we explain the role of national and international institutions in aiding these trainings?
4. Were members of the armed forces adequately informed about the rules of engagement in the conflict in Tigray and the adjacent regions in Northern Ethiopia?
5. How do you regard the use of force by the Tigray armed forces during the conflict in Northern Ethiopia while also preserving the delicate balance between humanitarian concerns and military necessity?
6. What do you say about the concerning allegations about the violations of IHL by the Tigray armed forces?
7. How do you explain the treatment of war prisoners, members of the national defense forces, who were held in Tigray? How about the treatment by national defense or national security forces of the Tigray combatants once they were taken into custody?

8. In your opinion, what factors contributed to the problem of non-compliance with IHL on the part of all forces that took part in the hostilities in northern Ethiopia during the 2020-2022 period?
9. Do you have suggestions about the ways of enhancement of compliance with the rules of IHL on the part of combatants?

**C. Interview questions prepared for Ethiopian Human Rights Commission (EHRC), Ethiopian Human Rights Council (EHRCO)**

1. What can you say about compliance with the rules of IHL during the conflict in northern Ethiopia?
2. Has your institution received reports concerning the allegations of violations of IHL in Ethiopia's northern conflict?
3. Does the data collected by your institution corroborate the said allegations? And which of these do you consider to constitute serious violations of IHL?
4. Would you discuss factors that may have impacted warring parties from complying with the rules of IHL?
5. How do you assess the role of domestic institutions in holding perpetrators accountable for the commission of violations and redressing victims?
6. What possible mechanisms do you suggest to guarantee the non-recurrence of violations of IHL in an internal conflict such as this?

**D. Interview questions prepared for the Inter-Ministerial Task Force (IMTF) under the Ethiopian Ministry of Justice, and Ethiopian Ministry of Defense Justice Bureau**

1. Have your institution received reports with regards to allegations of IHL violations in Ethiopia's northern conflict? Can you give examples of IHL rules/norms that were violated?
2. How did you respond to these allegations?

3. Would you please explain your role/mandate in regards to investigating and prosecuting violations of IHL?
4. How far have you come in redressing the suffering of victims and holding perpetrators accountable for the commission of these violations?
5. What do you think are the factors contributing to non-compliance with IHL by warring parties?
6. Are there factors which challenged your institution to execute its responsibilities freely?
7. In your opinion, what mechanisms should be put in place to guarantee the non-recurrence of such violations of IHL in internal conflict situations and beyond?

**E. Interview questions prepared for the International Committee of the Red Cross (ICRC) and Ethiopian Red Cross Society (ERCS)**

1. Have your institution received reports concerning allegations of violations of IHL during the conflict in Northern Ethiopia?
2. What are the concrete manifestations/examples of violations of IHL (which specific norms do you think are violated, and what are the examples about the claims).
3. How did your institution respond to these violations?
4. What roles have you played with regard to alleviating the suffering of the victims of violations of IHL and providing humanitarian support in the affected regions?
5. What challenges have you faced in responding to violations of IHL, including in the delivery of humanitarian aid in the affected regions?
6. What do you suggest as ways to prevent the reoccurrence of humanitarian crises in the future?