

# The Looming Genocide in Ethiopia – Overview of Facts and Available Legal Framework to Deal with Perpetrators

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## 1. Introduction

Genocide – or ‘barbarism’ as it was called before the term ‘genocide’ was first coined by a Polish lawyer Raphaël Lemkin in 1944 in his book *Axis Rule in Occupied Europe*<sup>2</sup> – is one of the heinous crimes of humanity. History tells us that genocide has been part of long-term human experience that occurred in various parts of the globe and in different types of civilizations and cultures – including early settler genocide and modern time genocide.<sup>3</sup> The massacre of the North American Indigenous Indians (at the hands of European settlers in the 18th and 19th centuries), the Armenian genocide, the mass killing of Jewish by Nazi Germany during the Holocaust, the 1994 Rwanda genocide, the 1995 Bosnian massacre, the Darfur genocide, and the recent State-led ethnic cleansing of Rohingya Muslims in Myanmar, to mention a few, are part and parcel of the historical experiences of genocide.<sup>4</sup> We have also witnessed a number of ethnic-targeted attacks and mass killings in the different parts of Ethiopia over the last quarter of the century, and particularly in the Oromia region in most recent times. This triggers debate as to whether these identity-targeted crimes qualify as genocide or not; and what purpose such characterization may have in dealing with perpetrators. This short commentary aims to shed some light on these points by examining the relevant instruments of international law regulating the crime of genocide and the Ethiopian legal framework.

## 2. What Constitutes Genocide?

Lemkin coined the term ‘genocide’ from the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing; thus referring to killings targeting a particular race, tribe, or ethnic group. Lemkin developed the term ‘genocide’ mainly in response to the mass atrocities committed by the Nazi Germany against Jewish during the Holocaust, but also in response to previous instances in history of targeted killings aimed at the destruction of particular groups

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<sup>2</sup> Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944).

<sup>3</sup> Norman Naimark, *Genocide: A World History* (OUP, 2017).

<sup>4</sup> Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (Yale University Press, 2009).

of people. Later, Lemkin led the campaign to have genocide recognized and codified as an international crime. The 1948 Genocide Convention,<sup>5</sup> the first human rights treaty adopted by the UN General Assembly, recognized and codified the crime of genocide. Unlike the narrow definition provided by Lemkin, Article II of the Genocide Convention defines the term ‘genocide’ broadly as follows:

[G]enocide means *any of the following acts* committed with *intent to destroy, in whole or in part, a national, ethnical, racial or religious group*, as such:

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

The 1998 Rome Statute of the International Criminal Court (ICC) has adopted this definition verbatim (Article 6), as do the 2014 UN Framework of Analysis for Atrocity Crimes<sup>6</sup> and the national criminal laws of many States.

The above definition makes plain that direct killing is not the only modality by which genocide can be perpetrated, but it also includes other systematic ways to destroy a national, ethnical, racial, or religious group. These systematic ways of genocide enumerated under Article II (b-e) are imprecise and open for interpretation; thus their existence should be assessed on a case-by-case basis. To constitute genocide, the victims must be deliberately targeted because of their real or perceived membership to one of the four groups protected under the Convention. This means that the target of destruction must be the group as a whole, or only a part of the group as long as that part is identifiable (including within a geographically limited area), and not its members as individuals. The Genocide Convention also makes clear that the crime of genocide can take place both in time of war and peace (Article I); and that the perpetrators can be both State actors and non-State actors, such as organized groups or private individuals (Article IV). The other important element worth noting is that international law does not put any standardized numeric requirement for the crime to be considered genocide.

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<sup>5</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, adopted in Paris on 9 December 1948 (entered into force 12 January 1951).

<sup>6</sup> UN Framework of Analysis for Atrocity Crimes: A Tool for Prevention (United Nations, 2014), available at: [https://www.un.org/en/genocideprevention/documents/about-us/Doc.3\\_Framework%20of%20Analysis%20for%20Atrocity%20Crimes\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf) (accessed, July 2020).

Proving the intention of the perpetrators to eliminate a group in whole or in part is the most difficult element of the definition. Yet, different evidences can demonstrate such intent. For example, the victim group must be the object of campaigns of mass killing, as well as other attacks on their very existence. In addition, the case law of the International Court of Justice (ICJ) has associated intent with the existence of a State or organizational plan or policy, even if the definition of genocide in international law does not include this element.<sup>7</sup>

The Genocide Convention imposes on State Parties the obligation not to commit genocide (negative obligation); and the obligation to take positive measures to prevent and to punish the crime of genocide, including by enacting relevant legislation to give effect to the provisions of the Convention and by punishing perpetrators (Articles I, IV & V). The Convention requires State parties to punish persons involved in the commission of genocide in different capacities: i.e. direct commission of genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide (Article III). Ethiopia ratified the Genocide Convention in 1949 and is duty-bound to comply with the obligations set out in the Convention. In fact, the ICJ has repeatedly stated that the obligations ‘not to commit genocide’ and ‘to punish perpetrators’ are parts of norms of customary international law, and therefore, binding all States, regardless of whether they have ratified the Genocide Convention. The ICJ and International Law Association (ILC) have also recognized that the prohibition of genocide is a peremptory norm of international law (*jus cogens*) and consequently, no derogation from it is allowed.<sup>8</sup>

The Ethiopian Criminal Code defines genocide in a similar, but in broader terms than that of the Genocide Convention. Article 269 provides that:

Whoever, in time of war or in time of peace, *with intent to destroy*, in whole or in part, *a nation, nationality, ethnical, racial, national, colour, religious or political group*, organizes, orders or engages in: (a) killing, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever or causing them to disappear; or (b) measures to prevent the propagation or continued survival of its members or their progeny; or (c) the compulsory movement or dispersion of peoples or children or their placing under living conditions calculated to result in their death or disappearance [commits the crime of genocide] (emphasis added).

It is evident that the Criminal Code gives protection to more groups than those protected under the Genocide Convention, including, for example, political groups. Simply, according to the

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<sup>7</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015 (I), p. 47.

<sup>8</sup> See for example, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2006, p. 32, para. 64; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015 (I), p. 47, para. 87; and ILC, Peremptory norms of general international law (*jus cogens*): Text of the draft conclusions and draft annex provisionally adopted by the Drafting Committee on first reading (August 2019), Conclusion 23.

Criminal Code, any mass killings and other systematic acts targeting members of any of the above-mentioned groups, not for what they do, but merely because they belong to that group is considered genocide. The Criminal Code makes the crime of genocide punishable with rigorous imprisonment from five years to twenty-five years, or, in more serious cases, with life imprisonment or death (Article 269). The amount of penalties depends on the degree of participation of the perpetrator in the commission of genocide – *organizing, ordering, or engaging* in acts listed above – and the consequences resulted from it. Being expansive in its definition and in terms of the severity of the penalties it imposes, the Criminal Code has a strong deterrence and retributive effect to the commission of genocide.

### **3. What Has Happened in Ethiopia: Tabling the Facts**

Genocide is not just a one-time act. It has its own historical emergence and involves a chain of acts. The roots of all the current evils in Ethiopia date back to the planting of an ethnic-centered federal system in 1991 where each regional State of the federation is primarily organized based on ethnicity. The natural consequence of such arrangement is that it creates a feeling that each regional State ‘belongs’ to the dominant ethnic groups, making minorities living within such territories ‘dependants’ (ሰፋሪ) having no/little role to play in the political, economic and social life of such regions. The political elites of the TPLF-led EPRDF regime also produced a number of false/half-true narratives that created animosity and make one ethnic group to stand in hostility against the other. The ‘neftegna’ narrative is one of the dominant misguided narratives. The true meaning of the term ‘neftegna’ refers to a ruling class, composed of persons of all identities including Oromos, Tigres, Guraghes, and Amharas, operative during the imperial periods in the 19th century. This was a historical development that ended in 1974 with the fall of Emperor Haile Sellasie and the rise of the Dergue regime to power. Nonetheless, the term ‘neftegna’ has been intentionally associated with the Amhara peoples to paint a wrong image that these peoples have historically been oppressors of the other ethnic groups (particularly the Oromos). This was how the term has been articulated over the past 30 years. This is crystal clear for anyone who knows the Ethiopian political history.

The overall effect of ethnic federalism and wrong narratives is producing frequent identity-targeted attacks and killings of members of various ethnic groups. During the era of TPLF-led EPRDF, there have been frequent allegations of commission of genocide against the Amhara people through systematic birth control methods in different parts of the Amhara region and a

systematic depopulation of the same people from Wolkait.<sup>9</sup> The 2003 massacre of the Anuak peoples in Gambella, where 424 persons were killed over the course of three days (13-16 December), was another tragic incident.<sup>10</sup> The recent identity-targeted attacks between the Amhara and the Gumuz in the Benishangul region mark the post-reform incident.<sup>11</sup> The 2018 and 2019 targeted attacks, burning of homes, and mass killings of members of the Kimant peoples by organized Amhara armed groups in complicity with the members of the Amhara Special Force in the Kimant neighborhood in Metema and Azezo respectively is another dynamic of the post-reform incident.<sup>12</sup> Sadly, some of these heinous crimes were intentionally shielded from the public until recently – a clear manifestation of a conspiracy by the media.

Ethnic-targeted attacks and killings have escalated in 2019, and have particularly become salient features of the Oromia region. Following government attempts to lift the security of Jawar (the then Oromo political activist who later joined the Oromo Federalist Congress (OFC) party) in October 2019, angry Oromo youth mobs (Qeroo) committed a mass destruction of property and 86 persons were killed as a result of the violence in different parts of Oromia. The attacks and killings were allegedly targeting members of the Amhara peoples.<sup>13</sup>

The recent (June/July 2020) mass destruction of property and killings of ethnic non-Oromos in different parts of the Oromia region, following the brutal murder of Artist Haccaluu Hundesa on June 29, have proved that identity-targeted attacks and mass killings moved to a severely violent phase. According to the Government's report, 177 persons were brutally killed,<sup>14</sup> more than 200 were injured and a huge amount of property was damaged.<sup>15</sup> As local media reports have revealed, the residential houses, business centers, schools, and other properties of ethnic non-Oromos (especially the Amharas and Ghuraghes) in some cities, towns, and villages in Ziway, Arisi, West Arisi, and Eastern Shewa zones of Oromia region have been looted and burnt into ashes. Addis Standard, based on onsite visits and interviews with survivors, has

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<sup>9</sup> Bekalu Atinafu, 'Ethnic Cleansing in Ethiopia' (2018) 50(1) *The Canadian Journal of Peace and Conflict Studies* 77; Assefa Negash, 'Perpetrating Genocide or Promoting Family Planning? The Unethical Use of Birth Control Program as Instrument of Amhara Ethnocide', *Satenaw News* (July 2017).

<sup>10</sup> Human Rights Watch, 'Targeting the Anuak: The December 2003 Massacre' (March 2005); Cultural Survival, 'Remembering the December 13th Massacre' (12 December 2013).

<sup>11</sup> Semir Yusuf, 'Drivers of Ethnic Conflict in Contemporary Ethiopia', *Institute for Security Studies* (December 2019).

<sup>12</sup> Amnesty International, 'Beyond Law Enforcement: Human Rights Violations by Ethiopian Security Forces in Amhara and Oromia', *Index Number: AFR 25/2358/2020* (May 2020); and Semir Yusuf, 'Drivers of Ethnic Conflict in Contemporary Ethiopia', *Institute for Security Studies* (December 2019).

<sup>13</sup> Human Rights Watch, *Justice Needed for Deadly October Violence: Credible Prosecutions, Redress Key to Preventing Future Abuses* (April 2020).

<sup>14</sup> Other sources indicate that the number of peoples killed are far more than what is reported by the Government. See The Washington Post: [https://www.washingtonpost.com/world/africa/ethiopia-week-of-unrest-sees-239-dead-3500-arrested/2020/07/08/8eb30952-c100-11ea-8908-68a2b9eae9e0\\_story.html](https://www.washingtonpost.com/world/africa/ethiopia-week-of-unrest-sees-239-dead-3500-arrested/2020/07/08/8eb30952-c100-11ea-8908-68a2b9eae9e0_story.html) (accessed, July 2020).

<sup>15</sup> 'We Have Nothing: Ethiopia's Ethnic Unrest Leaves Destructions in its Wake', <https://www.france24.com/en/20200716-we-have-nothing-ethiopia-s-ethnic-unrest-leaves-destruction-in-its-wake> (accessed, July 2020).

tearfully narrated the firsthand accounts of these devastating attacks, mass killings, and destruction of properties.<sup>16</sup>

According to this firsthand account, Oromo youth groups, armed with clubs, machetes, and guns, roamed from neighborhood to neighborhood and targeted ethnic minorities. For example, in Ziway (Batu) the Oromo youth mobs attacked the non-Oromos checking their ethnicity on their identity cards.<sup>17</sup> The attackers not only killed but also disfigured the dead-bodies and dragged them on the road.<sup>18</sup> In Shashemene and Dera, the local security forces and city officials were also complicit with, and supported, the Oromo youth mob when the non-Oromos were targeted. These government-actors supported the attack by giving the attackers ‘official information such as a list describing which properties belonged to who & what their ethnicity & religious affiliations were’.<sup>19</sup> In Shashemene, days after the violence stopped, the attackers also distributed a pamphlet written in Afaan Oromo which says: ‘Any native resident of the city who tries to help those who were affected, buy, sell or stand in proxy on behalf of them (the affected families), we will burn them & their entire families. The Qeeroo will take what’s theirs’.<sup>20</sup> Indeed, the Oromos who rented part of their business centers to ethnic Amhara families, or sheltered the target groups, or are Christians (giving the attack a religious dimension), or have mixed ethnic heritage were attacked.<sup>21</sup> While identity can be socially constructed, perpetrators operated in a pure primordial sense of ethnic identity, even ignoring peoples with mixed ethnic heritage – a proof that ethnicized politics is a dangerous game in Ethiopian reality.

The above, non-exhaustive, factual accounts clearly show that the Oromo youth mobs followed an approach similar to those of the ethnic Hutu Interahamwe militias who massacred hundreds of thousands of minority Tutsis and moderate Hutus during Rwanda’s 1994 genocide.<sup>22</sup> The hate speech and instigations to genocide through social and mainstream media also hugely contributed to the commission of such heinous crimes.<sup>23</sup> Sadly enough, those

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<sup>16</sup> Addis Standard, *In-depth Analysis: Spate of Targeted Attacks, Excessive Use of Force by Security in Oromia Leave Death Trails, Destruction*, available at: <https://addisstandard.com/in-depth-analysis-spate-of-targeted-attacks-excessive-use-of-force-by-security-in-oromia-leave-death-trails-destruction/> (accessed, July 2020).

<sup>17</sup> See Addis Standard, *In-depth Analysis: Spate of Targeted Attacks* (cited above).

<sup>18</sup> See Mail&Guardian, <https://mg.co.za/africa/2020-07-14-my-son-died-the-worst-kind-of-death-horrific-details-of-violent-unrest-in-ethiopia/> (accessed, July 2020).

<sup>19</sup> Addis Standard, *In-depth Analysis: Spate of Targeted Attacks* (cited above).

<sup>20</sup> Addis Standard, *In-depth Analysis: Spate of Targeted Attacks* (cited above).

<sup>21</sup> Addis Standard, *In-depth Analysis: Spate of Targeted Attacks* (cited above).

<sup>22</sup> See United States Bureau of Citizenship and Immigration Services, *Rwanda: Information on the Role of the Interahamwe [also Interahamwe] Militia and the Use of Roadblocks during the 1994 Rwandan Genocide*, 14 August 2001, RWA01001.0GC, available at: <https://www.refworld.org/docid/3decf4b24.html> (accessed, July 2020).

<sup>23</sup> The UN Special Rapporteur on the freedom of expression expressed its concern on increased hate speeches through different media outlets. See United Nations Special Rapporteur on the right to freedom of opinion and expression David

Oromos who held demonstrations in different Western countries condemning the killing of Artist Hacalu, also openly called for the ethnic cleansing of the Amhara peoples chanting: ‘Amhara is a terrorist! Amhara out of Oromia! Neftegna out of Oromia! Kill all the Amharas in Oromia!’.<sup>24</sup> These protestors publicly, in front of the whole world, displayed most of the signifiers of a genocidal process – classification, symbolization, discrimination, and polarization – while leaving the organization, preparation, persecution, and extrmination tasks to be completed by the receiving end back in Ethiopia (the youth mobs).<sup>25</sup> Aware of these dangerous maneuvers, the UN High Commissioner for Human Rights expressed concern that ‘the protests following [Haccaaluu] Hundessa’s killing have increasingly taken on an ethnic undertone. [And] call[ed] on all, including young people, to stop carrying out ethnically-motivated attacks and to stop inciting to violence, acts that only serve to exacerbate underlying tensions’.<sup>26</sup>

Surely, the political conspiracy relating to the murder of Hacalu is complex and has produced conflicting narratives. These narratives relate, *inter alia*, to the internal power struggle among the Oromo factions (as some call it ‘intra-Oromo war’), reform-driven center-periphery tensions, and the existence of Egypt’s invisible hand in Ethiopian politics to divert the ongoing tension on the river Nile. Yet, the targeted attack, mass killings, and unimaginable bloodshed committed on the innocent and poor non-Oromos, who have nothing to do with any of the above-mentioned scenarios, is unacceptable by any standard whatsoever.

All in all, what is happening in Ethiopia is so terrifying, but not surprising at all! The eruption of such heinous crimes is inherent in the ethnic-centered federal arrangement and the subsequent hateful narratives; so, ‘what we reap is what we sow’.<sup>27</sup> However, the future is more frightening as the trend of identity-targeted attacks and killings shows a speedy escalation, and as more and more extreme ethno-nationalist forces are emerging all over the country.

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Kaye, Visit to Ethiopia, 2-9 December 2019: End of mission statement, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E> (accessed, July 2020).

<sup>24</sup> There is huge collection of videos and written documents proving these hate speech and provocative chants, but not to spread the hate further, I prefer not to include those sources here.

<sup>25</sup> See Gregory H. Stanton, ‘The Ten Stage of Genocide’ (2020), available at: <https://www.genocidewatch.com/ten-stages-of-genocide> (accessed, July 2020). These genocidal processes resonate well with the risk factors and indicators for the commission of atrocity crimes outlined under the UN Framework of Analysis for Atrocity Crimes. See UN Framework of Analysis for Atrocity Crimes: A Tool for Prevention (cited above), pp. 9-25.

<sup>26</sup> See Spokesperson for the UN High Commissioner for Human Rights: Rupert Colville, Press Briefing Note on Ethiopia (Geneva, 3 July 2020), available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26034&LangID=E> (accessed, July 2020).

<sup>27</sup> It is worth noting here that, early in 2012, Genocide Watch International listed Ethiopia as one of a few countries at high risk of eruption of genocide (Red list). See Genocide Watch International, ‘Countris at Risk Report – 2012’, p. 6.

#### **4. Why the Reluctance to Call these Heinous Crimes Genocide?**

The aforesaid heinous identity-targeted attacks and mass killings clearly meet the criteria of genocide set out in instruments of international law and the criminal law of Ethiopia.<sup>28</sup> Yet, many peoples as well as the Government have shown reluctance to call those crimes genocide. Needless to say, the Government's reluctance mainly stems from politics. The country is literally speaking under 'reform', led by a Nobel Peace Laureate Prime Minister. It is a disgrace to him to say that the most serious crimes of humanity have been committed during his time. Thus, it is a 'better and simple option' for his government to deny that genocide has been committed. Indeed, in a misguided aim to claim that the crime of genocide has not been committed in the country, the government engaged itself in counting the dead based on their ethnicity (which I call it a dead-ethnic-quota). Both the 86 persons killed in the October 2019 incident and the 177 persons killed in the current violence in the Oromia region have been categorized along their ethnic lines. These dead-ethnic-quotas are not only allegedly distorted (as no independent investigation has been conducted), but also do not serve the purpose that the Government intends to achieve. The Government fails to realize not only that the act of genocide is beyond numbers, but also that, by allocating ethnic-quota for the dead, it affirms that the mass killings are identity-targeted (with the intention to destroy a certain ethnic group) – thus constitute acts of genocide by definition. These numbers may be helpful to scale the genocide as small, medium, or large scale, but do not change the nature of the crime!

The second possible reason for the reluctance to acknowledge the commission of genocide relates to a fear of 'self-incrimination'. Some government officials, who hide themselves in the veil of reform, would surely be accountable for some of the crimes committed over the last couple of years. This will also set a dangerous precedent for the future. Thus, it is common sense, and in their interest, that these officials deny that genocide has been committed.

The third factor of reluctance relates to the 'good intention' of the general public, who do not want Ethiopia to be called the battleground for genocide. Unfortunately, our unwillingness to call such heinous crimes genocide neither change the reality (as such crimes are already happening on the ground), nor does it help to prevent the further escalation of the crime to a large-scale genocide. It is also important to underline that the characterization of such crimes as genocide is beyond the self-serving interests of Government officials, but rather a matter of

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<sup>28</sup> For similar view, see Alemayehu Woldemariam, 'National pride, national shame', *Ethiopia Insight* (February 2020), available at: <https://www.ethiopia-insight.com/2020/02/09/national-pride-national-shame/> (accessed, July 2020).



protecting innocent lives and ensuring the survival of the Nation at large. Denial is the final stage of the genocidal process ‘that always follows genocide, [and is] among the surest indicators of further genocidal massacres’.<sup>29</sup> So, let’s all have the courage to embrace the bitter truth without sugarcoating and call the evil crimes – committed in many parts of the country over the last couple of years generally and the recent crimes against ethnic non-Oromos in the Oromia region particularly – in their true name, Genocide. This is the first step to take decisive action to stop it.

## **5. Does the Naming Matter?**

At face value, it is not the naming of the crimes as genocide that matters the most, but the effort to stop such horrendous crimes against humanity. Yet, the characterization of such crimes as genocide has a significant role in preventing its further escalation and in punishing the persons involved in the commission of the crime. According to the Ethiopian Constitution, the crime of genocide is not barred by the statute of limitations; and that it may not be commuted by amnesty or pardon of the legislature or any other state organ (Article 28). Thus, persons involved in the commission of genocide in different capacities will not escape justice due to the passage of time. The fact that such persons live in a foreign land does not also give them any shield. In this respect, Article VII of the Genocide Convention stipulates that involvement in the commission of genocide ‘shall not be considered as political crimes for the purpose of extradition’. All State parties to the Convention are obliged ‘to grant extradition in accordance with their laws and treaties in force’. Thus, the protection granted by international human rights law prohibiting refoulement where there is a real risk of flagrant human rights violations in the receiving State does not apply in the case of persons involved in the act of genocide. This is very important for the current Ethiopian context given that individuals and media outlets based in the foreign land openly instigate the act of genocide back in Ethiopia.

Alternatively, the Genocide Convention provides the possibility for perpetrators to be tried by an international penal tribunal that has jurisdiction with respect to those States parties, States that have accepted its jurisdiction (Article VI). Such tribunal is the International Criminal Court (ICC), established through the Rome Statute, with a mandate to prosecute individuals who commit the crime of genocide. The Statute gives universal jurisdiction for the prosecution of perpetrators of genocide; thus it leaves no hiding place and time for persons involved in an act

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<sup>29</sup> Gregory H. Stanton, ‘The Ten Stage of Genocide’ (2020), available at: <https://www.genocidewatch.com/ten-stages-of-genocide> (accessed, July 2020). For the initial model, see Gregory H. Stanton, ‘The 8 Stage of Genocide’ in Totten & Bartrop (eds), *The Genocide Studies Reader* (Routledge 2009) 127-129.

of genocide. Since Ethiopia has not ratified the Rome Statute, this option has limited utility to prosecute Ethiopian nationals before the ICC. Yet, this international avenue has its own significance. If a foreign national/ foreign national of Ethiopian origin directly involves, or spreads hate, or incites genocide back in Ethiopia, s/he could be tried before the ICC if her/his State of nationality/residence ratifies the Rome Statute. This is also without prejudice to the possibility that such persons would be accountable pursuant to the domestic laws of the State of nationality or residence.

Characterizing the crime as genocide has also a significant impact on invoking the international responsibility of the Ethiopian government. Given that the prohibition of genocide is a *jus cogens* norm of international law, all States have an interest, and indeed a duty, to invoke the international responsibility of the State for a breach of the norm. The nature and intensity of such international responsibility may also be more serious. According to Articles 40 and 41 of the ILC Draft Articles on State responsibility, ‘if a State fails to fulfill an obligation that has a *jus cogens* status in a *gross and systematic manner*, all other States are prohibited from recognizing as lawful the resulting situation, and from rendering aid or assistance in maintaining the situation’.<sup>30</sup> The imposition of such measures rests solely on proving that the Ethiopian government breaches the norm ‘in gross and systemic manner’, which must be assessed on a case-by-case basis.

The other significance of characterizing such crimes as genocide is that it allows the direct intervention of the international community to prevent and punish large-scale genocide. The international community has a responsibility to protect innocent civilians from large-scale human rights violations, including genocide. Responsibility to Protect (R2P) – a global political commitment to prevent and interdict gross human rights violations – was initiated in 2001 under the leadership of Canada, and endorsed by all UN member States in 2005 at the UN World Summit.<sup>31</sup> In fact, the direct involvement of the international community in Libya has shown us that R2P failed to address the purpose for which it was established. Thus, the direct intervention of the international community in Ethiopia should be considered in a worst-case scenario and as a last resort measure.

## **6. Conclusion: Breaking the ‘Conspiracy of Silence’**

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<sup>30</sup> International Law Commission’s Draft Articles on State Responsibility, with Commentaries, at Articles 40 and 41.

<sup>31</sup> See UN General Assembly Res 60/1, *2005 World Summit Outcome*, UN Doc A/RES/60/1 (25 October 2005), paras. 138-139; United Nations Office on Genocide Prevention and the Responsibility to Protect, available at: <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml> (accessed, July 2020).

History has shown us time and again that genocide can happen anywhere. Ethiopia is no exception. Despite our reluctance to call it genocide, a textbook definition of genocide is already happening in different parts of the country, no matter how we may scale them as small or medium scale genocide. Taking the traffic light metaphor, I think we are now on the Yellow light ready to turn to Red where the ‘small and medium scale’ genocidal crimes happening here and there would become large-scale and out of control. The recent mass killings in Oromia region are the last warning bells for the likelihood of large-scale multi-ethnic genocide in the near future.

Yet, we have the chance to turn the Yellow light to Green. This would be possible if and only if we collectively say ‘never again’<sup>32</sup> and solemnly promise and determine to prevent and punish the most serious crimes of all. In my judgment, our collective response to these heinous crimes has fallen far short of what is required. We feel the pain only when such crime is committed to peoples to whom ‘we belong’ to, while we remain insensitive when it happens to ‘others’. This is a reflection, and consequence, of the polarized and antagonistic political culture. The Government should ‘disarm’ or ‘demilitarize’ Ethiopian politics by taking measures against overt and clandestine ‘armed groups’ which are established to defend the ethnic groups they claim to represent and are allegedly connected to lawfully established political parties. This includes demobilizing the unconstitutional regional special forces. The Government should also ensure justice by bringing perpetrators, including those officials under its armpits, before a court; and rule of law shall prevail. Yet, the legal solution is just part of the equation and may not entirely solve the problem. Since the root cause of the problem is political, parallel political solutions through inclusive and sustained dialogue should be sought. There is also a huge ‘conspiracy of silence’ by the morally and intellectually rich (cultivated) elites. If these ‘good elites’ (those who care about innocent lives irrespective of which identities they belong to), from all corners, do not break their silence, the ‘layman’ elites will takeover, as is currently happening. It is the responsibility of the former category of elites, political or academics, to deeply rethink a ‘workable’ state structure for Ethiopia – a true federal system that fully recognize the diverse identities without making ethnicity the lifeline of the system – and to devise ways to address historical resentments and resituate the misguided narratives on their balanced position. Now is the time, before it is too late, for all of us to stand together and act to prevent the further escalation of the most heinous crimes of all.

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<sup>32</sup> Katrin Bennhold, ‘Never Again’: Fighting Hate in a Changing Germany With Tours of Nazi Camps’, *The New York Times* (March 2018).