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INTERNATIONAL CRIMINAL COURT AND ETHIOPIA: COMPARATIVE OVERVIEW AND TRENDS OF CURRENT DEVELOPMENT*

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Abstract

World War II (WWII) coupled with the following international criminal trials were blessing-in-disguise for giving birth to the Rome Statute regime, which established the International Criminal Court (ICC). Though most African States were in the first row in acceding to the aforenamed Statute, the Federal Democratic Republic of Ethiopia (Ethiopia) does not compose a signatory yet. The recent internal conflict in Ethiopia which grasped the international community's attention signifies the importance of revisiting and scrutinising the ICC vis-à-vis Ethiopia. In this vein, given Ethiopia's nonadherence to the Rome Statute, the article highlights the normative compatibility of the Rome Statute vis-à-vis the Criminal Code of Ethiopia (Criminal Code) coupled with its criminal proceeding practices. At the backdrop of Ethiopia's recent conflict amounting to war crimes and crimes against humanity, the article addresses whether there are feasible scenarios of – Ethiopia referring its case to the ICC, – the United Nations Security Council referring Ethiopia's case to the ICC, and/or – Ethiopia joining the Rome Statute or not? While addressing these issues, the article ascertains significant similarities and differences between the Rome Statute and Criminal Code. Apart from these, albeit – an assumption of Ethiopia referring its case to the ICC, – a high probability of the United Nations Security Council referring Ethiopia's case to the ICC, and/or – several pushing factors pressuring Ethiopia to join the Rome Statute, the article pins down the unlikely nature of either scenario.

Keywords: Crimes Against Humanity, Crimes of Genocide, Criminal Code, Ethiopia, International Criminal Court, International Core Crimes, Rome Statute, War Crimes.

I. Introduction

Although the genesis of international criminal justice can be traced way back to prior World Wars, significant developments took place upon the end of WWII (Bassiouni, 2010: 284 - 287). In connection with the foregoing war, the Allied Powers (the victories ones) established International Military Tribunals (IMT) to prosecute the prominent state officials of the Axis Powers (the losing ones) at Nuremberg and Tokyo, for the violation of crimes against peace, war crimes and crimes against humanity (Beigbeder, 2011). Moreover, for the widespread international criminal violation exhibited in Yugoslavia, Rwanda, Sierra Leone, Cambodia, Lebanon, Kosovo *et al., ad hoc* regional international criminal tribunals were also put in place to prosecute those responsible wrongdoers.

The above dramatic development and the intent of making the ICC a permanent one started gaining momentum (Vigorito, 2002). With this momentum, states adopted the Rome Statute in 1998, the legal regime which established the permanent ICC, and, so far, lots of countries have acceded to the aforesaid Statute.

In the drafting and ratification phases, despite most African states' active engagement at the forefront, the case of Ethiopia has remained behind the shadows. Though Ethiopia, – the only uncolonized member state of the League of Nations in Africa and – one of the founding member states of the United Nations (UN) and African Union (AU) *et al.*, is a party to lots of multilateral conventions and treaties, however, not a state party to the Rome Statute yet (Ram**,** 1997; Záhořík, 2012; Kuwonu, 2020; Tsegaye, 2012).

Although some theoretical justifications can be attributed to Ethiopia's non-accession to the Rome Statute, there is a dearth of official records indicating the position of Ethiopia towards the ICC, both during the negotiation phase and after entry into force of the Rome Statute, which makes it difficult to unambiguously discern the motivation behind Ethiopia's refusal to join the Rome Statute (Yilma, 2021).

Given the above facts and bearing in mind the recent conflicts in Ethiopia, which might amount to war crimes and crimes against humanity, this paper critically revisits and thoroughly scrutinises the interplay of the ICC and Ethiopia alongside its possible sequences. Accordingly, the immediate upcoming section deals with the general normative comparison of the Rome Statute and Criminal Code.[1] The next two respective sections thoroughly scrutinize the major

[1] The Criminal Code came into force in 2005 after repealing and replacing the Penal Code of Ethiopia (Penal Code), which was "the first codified penal law in the history of Ethiopia" enforced from 1957-2005 (Yeneabat, 2020: 50).

international criminal cases and contemporary developments in Ethiopia, while the last section highlights a concluding remark of this paper.

II. International Core Crimes Stipulation: The Normative Comparison of The Rome Statute and Criminal Code

According to Article 5 of the Rome Statute, the gravest international crimes are genocide, crimes against humanity, war crimes, and crime of aggression. Comparatively, Article 269-272 of the Criminal Code only stipulates genocide and war crimes as the most serious crimes.[2] In connection with the aforesaid facts, it is important to underscore that Ethiopia is praised not only for being "the first country to ratify" the UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) on 1 July 1949 but also for its contributory role in domesticating and criminalizing genocide crime under Article 281[3] and Article 269[4] of the Penal Code and Criminal Code respectively (Tulu, 2020: 11; Treaty Collection, 2022). However, unlike the Rome Statute[5] and Genocide Convention,[6] the Penal and Criminal Code includes political groups under its aforesaid provision. And, so far, Ethiopia is "[t]he only State who did not limit protection to those groups specified in the [Genocide] Convention" and Rome Statute (Haile-Mariam, 1999: 718). In a similar manner to international scholars' debate on the inclusion or exclusion of political groups into the Genocide Convention and Rome Statute, most

[2] Though the Penal Code stipulated crime against humanity under its Article 281, the Criminal Code, unfortunately, doesn't incorporate the aforenamed crime (Yeneabat, 2020: 55).

[3] Article 281 of the Penal Code stipulates that "Whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, religions or political group, organizes, orders or engaged in, be it in time of war or in time of peace: (a) Killings, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever; 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, is punishable with rigorous imprisonment from five years to life, or, in cases of exceptional gravity, with death."

[4] Article 269 of the Criminal Code 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, is punishable with rigorous imprisonment from five years to twenty-five years, or, in more serious cases, with life imprisonment or death."

[5] Article 6 of the Rome Statute defines Genocide as "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."

[6] Article II of the Genocide Convention spells out genocide as "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."

scholars appear concerned for the inclusion of political groups into the Penal and Criminal Code is diverse[7] (LeBlanc, 1988; Haile-Mariam, 1999: 717, 720; Tulu, 2020: 12).

Having all these as a backdrop, it is crucial to examine the principal and secondary penalties stipulated under the Rome Statute and the Criminal law of Ethiopia. Within the aforesaid scope and vein, the following sections provide a brief on the normative comparison of the foregoing legal regimes.

A. Applicable Penalties – Principal Penalties

The principal penalties are penalties entailing loss of liberty/life, pecuniary penalties, and compulsory labour. Those penalties that entail the loss of liberty and/or life can further be categorized into rigorous imprisonment, life imprisonment, and the death penalty. Bearing in mind the two types of sentences, i.e., simple, and rigorous imprisonment,[8] according to Article 108 and 124 (2) of the Criminal Code, rigorous incarceration not only stipulates prison sentences that range from one to twenty-five to life but also incorporate "deprivation of all civil rights."

In relation to genocide, according to Article 269 of the Criminal Code, the minimum penalty is "rigorous imprisonment [for] five years." When it comes to war crimes, as provided under Article 279-282,[9] the penalties differ depending on circumstances, as "some categories of war crimes such as denial of justice are (…) regarded as less grave and are punishable with simple imprisonment, [while] (…) some other war crimes are punishable with a maximum of five years of rigorous imprisonment" (Metekia, 2021: 385). As a result of these, the Criminal Code has been criticised for its failure in providing "(...) the same minimum penalty for core crimes, [and] (...) proportionate to the gravity of these crimes" (Metekia, 2021: 286).

Apart from the above, it is important to note that Ethiopia is characterized by its

[7] Some scholars applaud the inclusion of political parties by perceiving it "as a progressive act" and arguing "international instruments provide only minimum standards, and it is the duty of the Ethiopian Government to enact laws… which provides a wider range of protection than the international criminal law;" while Some other scholars criticise the inclusion of political parties arguing it "lacked permanence and specific characteristics," thus, the inclusion "makes it incompatible with the UN [Genocide Convention,] …hence it makes it impossible to be regarded as international crime" (Haile-Mariam, 1999: 717, 720; Tulu, 2020: 12; Hailegebriel, 2003: 16; Haile, 2000).

[8] As per Article 106 (1) of the Criminal Code, simple imprisonment is a sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society, while, as per Article 108 of the same statute, rigorous imprisonment is a sentence applicable only to crimes of a very grave nature committed by criminals who are particularly dangerous to society.

[9] According to Article 279-282, these are war crimes involving maltreatment of, or dereliction of duty towards, wounded and sick or prisoners, hostile acts against international humanitarian organisations, and abuse of emblems and insignia of international humanitarian organisations (Metekia, 2021: 385-386).

distinctive nature in the sense that with respect to both genocide and war crimes Article 108 of the Criminal Code provides "the [absolute] maximum prison term of 25 years, which judges are never allowed to exceed," even if it involves multiple concurrent counts (Metekia, 2021: 287). However, according to Article 77 of the Rome Statute, the maximum prison terms for core crimes are set to be 30 years of imprisonment. Thus, comparatively, the Criminal Code's prison term stipulation is lower than that of the Rome Statute.

Coming to life imprisonment, though both Rome Statute and Criminal Code stipulate the aforesaid imprisonment modality, compared to the Rome Statute,[10] the Ethiopian counterpart does not incorporate "(…) a clear guidance for the judges as to when a court should or should not impose a life sentence" (Metekia, 2021: 390). Though life imprisonment entails the stay of a criminal offender behind bars for life, in contemporary legal regimes, it can be subject to conditional parole. Accordingly, the preface's paragraph iv and Article 202 of the Criminal Code provide a parole right to be invoked after a criminal offender serves its 20 years of prison term, while Article 110 (3) of the Rome Statute requires five more years than the Ethiopian counterpart.

Aside from the penalties entailing loss of liberty, there is a death penalty that automatically encompasses loss of life. Saving all the arguments in support and/or against upholding the death penalty, it is important to note that Ethiopia is categorized under countries that still have retained a death sentence in its legal system (BBC, 2020). In Ethiopia, the death penalty has a constitutional basis, so once a verdict is rendered, as per Article 117 (2) of the Criminal Code, it will get effect upon the go-ahead affixing signature of the President of Ethiopia (President), unless granted amnesty or pardoned in accordance with Article 71 (7) of the Constitution and relevant Criminal Code provisions.[11]

Bearing in mind the stipulation of the death penalty for both genocide and war crimes in the Criminal Code, however, according to Article 28 of the Constitution of Ethiopia (Constitution), unlike domestic crimes, the aforenamed core international crimes "may not be commuted by amnesty or pardon." As such, the criminal offender might be on a death warrant continuously for 30 consecutive years before getting executed.[12] Let alone the general criticism

[10] Article 77 (1) (b) of the Rome Statute that restricts the imposition of life sentence to cases justified by the extreme gravity of the crime and the individual circumstances of the convicted person (Metekia, 2021: 390).
[11] As inferred from Article 71 and 74 of the Constitution, the President is the head of the State with nominal and ceremonial powers, unlike the Prime Minister of Ethiopia (Prime Minister) who is the head of the government with actual powers, including those of chief executive and of commander-in-chief of the armed forces (Metekia, 2021: 391).
[12] According to Article 118 and 224 of the Criminal Code, a criminal offender sentenced to death is required to

against death penalty abolishment, some scholars "(…) raise concerns regarding the existence of inhuman and degrading treatment of prisoners awaiting executions" (Mattimalla, 2018; Metekia, 2021: 392).

Comparatively, it is quite apparent that the Criminal Code incorporates harsher punishment than those convicted in accordance with the Rome Statute because the latter does not incorporate the death penalty and so far, the practice of its criminal proceeding is in line with this fact.

Coming to pecuniary penalties, as its name signifies, refers to fines and confiscation of property. In this vein, regarding the confiscation and return of property acquired through the commission of international core crimes, one can notice a very important dissimilarity between the Rome Statute and Criminal Code.

Although Article 98 (2) of the Criminal Code allows for the confiscation of property obtained through the commission of ordinary crimes,[13] this particular criminal legal regime, unlike the Rome Statute,[14] does not give a green light to be applied in the cases of core international crimes and where the rationale behind the non-stipulation of such a significant penalty is absent (Metekia, 2021: 380).

With respect to the imposition of fines, the similar nature of the Rome Statute and Criminal Code can be observed, as both, under respective Article 77 (2) (a) and Article 90 respectively, stipulate enforcement of fines, besides prison terms and dictate for compulsory payment of fine.

In any case of failure to pay imposed fines, as a last resort, the ICC and Ethiopian court employ significantly different measures. According to Article 93-96 of the Criminal Code, the court, as the endmost recourse, might either resort to compulsory labour which "shall not exceed two years" or suspend the enforcement of compulsory labour when the convict is unable to do so for a convincing good cause. When it comes to the Rome Statute, the ICC "as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less" in accordance with Rule 146 (5) of the ICC Rules of Procedure and Evidence.

await execution in prison under the same conditions as a prisoner serving rigorous imprisonment (Metekia, 2021: 391-392).

[13] Article 98 of the Criminal Code read as "Any property which the criminal has acquired, directly or indirectly, by the commission of the crime for which he was convicted shall be confiscated."

[14] Article 77 (2) (b) of the Rome Statute states, "A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties."

B. Applicable Penalties – Secondary Penalties

According to Article 121 of the Criminal Code, a principal penalty may also be accompanied by secondary penalties, which have accessory applications. Articles 121 and 122 of the Ethiopian Criminal Code provide several secondary penalties, *inter alia*, caution, reprimand, admonishment, apology, and deprivation of rights.

Though these abovenamed penalties are mainly pertinent to petty crimes and/or minor offences, surprisingly, the court, in accordance with Article 122 of the Criminal Code, might also extend its application and impose it "even for crimes punishable with rigorous imprisonment or with death, including [international] core crimes" (Metekia, 2021: 397). However, after skimming the Rome statute, we could not find any clause relating to the secondary penalties, which leads to a conclusion of the non-stipulation of the secondary penalties in the foregoing statute.

Table 1: Normative Comparison of the Criminal Code *and Rome Statute* (✓: applicable, ✕: not applicable).

Types of Penalty	Entailed Penalty	Criminal Code	Rome Statute
Primary penalties	Death	✓	✕
	Life	✓ (with parole)	✓ (with parole)
	Prison terms (in years)	✓ (25 maximum)	✓ (30 maximum)
	Confiscation and return of property	✕	✓
	Fine	✓	✓
	Last Resort of Primary Penalty (in default of fine)	Compulsory Labour	Extended prison term
Secondary penalties	Caution, reprimand, admonishment, apology, deprivation of rights *et al*	✓	✕

Source: (Metekia, 2021: 380, table modified).

III. International Criminal Cases in Ethiopia

Though Ethiopia is not a party to the Rome Statute, it is familiar in dealing with core international crimes in accordance with the Criminal Code and/or Penal Code before its domestic court of law. Such context needs to be noted in the sense that those concluded cases "were based solely on extant domestic criminal laws."[15] Moreover, even though international

[15] This is because, according to the Criminal Code, judges are not allowed to consider penalties that are not specifically prescribed by the legislator in the applicable domestic law. Accordingly, the *Dergue* trials and the *Anuak-Nuwer* trials were conducted on the basis of the Penal Code; while the Criminal Code served as the applicable laws in the *Oromo-Gumuz* trial and the CUD trials (Metekia, 2021: 378).

laws are applicable in Ethiopia, they are only viable in relation to "the substantive elements of the crime, not to the penalty," as penalties are adjudicated pursuant to the prescribed criminal legal regimes of Ethiopia (Metekia, 2021: 378-379; Haile-Mariam, 1999: 708-709).

In line with such understanding, it is important to take a look at the major international criminal trials of Ethiopia, notably, the *Dergue*[16] trials (1992–2010),[17] the *Anuak-Nuwer* trials (2004–2005),[18] the Coalition for Unity and Democracy (CUD) trials (2005–2008),[19] and the *Oromo-Gumuz* trials (2008–2010).[20]

The *Dergue* trials, known colloquially as the Red-Terror trials, are not only "the first attempt of its kind in [the] African continent" but also "ranks as one of the world's longest genocide trials,"[21] in which core international crimes, namely genocide, crimes against humanity, war crimes *et al*, were prosecuted pursuant to the penal code (Legide, 2021: 3; Tiba, 2007: 516). The *Anuak-Nuwer* case refers to the trial of "the genocidal killing of 32 South-Sudanese refugees identified as members of the *Nuwer* ethnic group by the perpetrators, security forces belonging to the *Anuak* ethnic group" (Metekia, 2019: 161). The CUD trials were the criminal case related to the opposition political group of Coalition for Unity and Democracy (CUD), in which its key members were brought before a court of law "for an attempted genocide in relation to 'post-election conflict'[22] in early 2005" (Metekia, 2019: 161). The *Oromo-Gumuz* cases are trials held to prosecute those perpetrators suspected "…for a genocide committed in the context of an inter-ethnic conflict that took place in Western Ethiopia in May 2008 between members of the *Oromo* and the *Gumuz* ethnic groups" (Negewo, 2008; Metekia, 2019: 161).

[16] *Dergue* is an Amharic language, which is a federal working language, and "literally meaning 'committee,' [which] …constituted commissioned and noncommissioned officers of the army, air force, police force [*et al* having] Colonel Mengistu Haile Mariam [as its] Chairman" (Haile-Mariam, 1999: 674; Amnesty International, 1991: 7).

[17] The *Dergue* regime, formally known as the Provisional Military Administrative Council (PMAC), ruled the country for 17 years (1974–1991) and it is said to be between 175,000 to possibly 2,000,000 people lost their lives due to various forms of violence (Haile-Mariam, 1999; Metekia, 2019: 160).

[18] The *Anuak-Nuwer* incident related to an attack perpetrated by members of the *Anuak* ethnic group against defenceless *Nuwer* refugees from South Sudan (Metekia, 2021: 141).

[19]The Coalition for Unity and Democracy (CUD) was the second largest opposition coalition during the June 2004 national election. And the trials refer to prosecutions conducted in relation to crimes committed in the context of the violence that took place in connection with federal and regional parliamentary elections held on 15 May 2005 (Lyons, 2006; Metekia, 2021: 161).

[20] The *Oromo-Gumuz* trials were conducted in relation to a conflict that took place from 16 to 31 May 2008 between members of the ethnic *Oromo* and those of the ethnic *Gumuz* in western Ethiopia, across the border shared by the Regional States of *Benishangul-Gumuz* and *Oromia* (Metekia, 2021: 141).

[21] The *Dergue* trials "has taken 12 years" (Tiba, 2007: 516).

[22] The post-election violence was triggered in early June 2005 when the CUD refused to accept the results that declared a narrow victory for the ruling party, the EPRDF, alleging electoral manipulation (Metekia, 2019: 161).

In the abovementioned trials, defendants were prosecuted with high suspicion of committing both domestic and international crimes. Hence, these defendants were prosecuted not only with "(…) a domestic crime of – murder, grave bodily injury or rape, [but also prosecuted with] (...) a core crime [of] genocide [and/] or war crimes" (Metekia, 2019: 183; Metekia, 2021: 421).

In order to prosecute those defendants, two modes of the institutional arrangement were applied: the Special Public Prosecutor's Office (SPPO) and the Ordinary Public Prosecutor Office (OPPO). Upon the fall of the *Dergue* regime in 1991, the immediate caretaker named the Transitional Government of Ethiopia, established the SPPO in 1922 upon the issuance of Proclamation Number 22/1992 (Proclamation),[23] to indict those who are responsible for grave crimes committed in the era of the *Dergue* regime (Proclamation, 1992; Legide, 2021). However, the remaining trials, i.e., the *Anuak-Nuwer* trials, the CUD trials, and the *Oromo-Gumuz* trials, were carried out under the OPPO. Aside from these, all the aforenamed trials were – not only held under ordinary criminal procedure law – but also held before the ordinary court of law, without arranging any form of special or different court.

Coming to the court's verdict, comparatively, saving the case of Rwanda as an exception, it is assumed "no other criminal trial in history has prosecuted a comparable number of defendants, as Ethiopia (…) have prosecuted 5,492 suspects for core [international] crimes" (Metekia, 2019: 162, 187).

In terms of cases, the *Dergue* trials stood in the first row, as 3,583 suspects out of 5,119 individuals were found to be guilty. In the remaining trials, while – on the one hand, a smaller number of convictions, notably 174 of 276 in the *Oromo-Gumuz* trials and 3 of 9 *Anuak-Nuwer* trials, were recorded, – on the other hand, none of 88 individuals who were on the CUD trials were convicted, as all those suspected individuals were exonerated from genocide, but prosecuted for the crime of treason (Metekia, 2019: 162). Accordingly, saving the case of CUD trials, out of the total 5,404 individuals, the respective courts rendered a guilty verdict of 3,760, which amounts to a 69.5% conviction rate (Metekia, 2019: 162). In line with these convictions, though the type of rendered verdict range varies significantly, again, those suspects which were tried under the *Dergue* case received harsher penalties.

It is very crucial to bear in mind that, though courts have rendered death penalties, none

[23] According to Article 6 of the Proclamation, the SPPO was empowered to "*conduct investigations and institute proceedings in respect of any person having committed or responsible for the commission of an offence by abusing his position in the party, the government or mass organization under the Derg[ue] regime.*"

of them has taken effect. Moreover, Ethiopian courts have neither imposed secondary penalties nor fines against offenders in those four trials.

Apart from the above, there are some criticisms attributed, if not to all, to two major trials. Accordingly, like the Nuremberg and Tokyo trials, the *Dergue* and CUD trials are highly considered to be victor's justice, due to the partisan prosecution of individuals affiliated with the *Dergue* regime and CUD party (Legide, 2021: 3-4; Metekia, 2021: 140, 149; Sellars, 2010). However, "[t]here are no similar accusations with respect to the other two trials, perhaps [not only] – because of the completely hidden nature of these trials, – [but also because the *Anuak-Nuwer*] incident represents a one-sided attack, [while the *Oromo-Gumuz* trials] (...) targeted both sides to the conflict" (Metekia, 2021: 141).

Table 2: Summary of imposed sentences for international core crimes

Trial	Sentences Imposed				
	Principal Penalties				Secondary penalty
	Death penalty	Life imprisonment	15-25 Rigorous imprisonment (in years)	Minimum sentences (in years)	
Dergue trials (1992–2010)	52 (but none of them were executed)	182	2028	2	✕
Anuak-Nuwer trials (2004–2005)	✕	✕	3	13	✕
CUD trials (2005–2008)	all were acquitted of core crime (genocide)				
Oromo-Gumuz trials (2008–2010)	7 (but none of them were executed)	95	66	5	✕

Source: (Legide, 2021: 11; Metekia, 2021: 376, table modified).

IV. Contemporary Developments in Ethiopia

Ethiopia has been going through a political transition since 2018. The four political parties,[24] which formed the Ethiopian People's Revolutionary and Democratic Front coalition (EPRDF), used to run the country's political arena on consensus. However, due to several internal and external pushing and pulling factors, the political dynamics have changed and a smooth power transition within the ruling party and the government took place (Addis Standard, 2018;

[24] The four political parties which formed EPRDF coalition are Amhara Democratic Party (ADP), Oromo Democratic Party (ODP), Southern Ethiopia People's Democratic Movement (SEPDM), and Tigray People's Liberation Front (TPLF).

Aljazeera, 2018).

Though things were going well at first, through time, however, the relationship between the Tigray People Liberation Party (TPLF),[25] and/or the State of Tigray on the one side; and the Ethiopian Prosperity Party (EPP)[26] and/or the federal government of Ethiopia (federal government) and its allies on the other side, started boiling up and getting worse (Walsh and Dahir, 2022). The political heat between the foregoing parties reached a climax, and, eventually, turned into an instant non-international armed conflict (NIAC) in November 2020 (Kebebew and Niyo, 2020).

As per the late Office of the UN High Commissioner for Human Rights (OHCHR) and Ethiopian Human Rights Commission (EHRC) joint investigation report (JI report) was recorded in the State of Tigray, Amhara and Afar (OHCHR, 2021) since the conflict, widespread serious human rights, humanitarian laws and refugee laws violations, which amounted to war crimes and crimes against humanity. However, though the federal government accepted the JI report, due to the involvement of the EHRC in the aforenamed investigation, the impartiality of the JI report was questioned and criticised from the outset (Tigray Human Rights Forum, 2021; Maru, 2021).

After a while, the African Commission on Human and Peoples' Rights (ACHPR) and, later, the UN Human Right Council (Council) decided to form a Commission of Inquiry (CI) and International Commission of Human Rights Experts on Ethiopia (ICHREE) respectively, to investigate the abovementioned international violations in Ethiopia (ACHPR, 2021; AU, 2021; UN Geneva, 2021). Though the progress of the ACHPR's CI has not been publicly communicated yet, the Council has organised its ICHREE led by the bygone prosecutor of the ICC (UN Human Rights Council, 2022). Being established for one year,[27] this commission already commenced its investigation and came up with its first report. Per this report, the warring parties are believed to have committed "extrajudicial killings, rape, sexual violence, and starvation of the civilian population as a method of warfare," thus, the ICHREE concluded the existence of "reasonable grounds to believe that amount to war crimes and crimes against humanity" (ICHREE, 2022). Moreover, the ICHREE, with its recommendation, alarmed the

[25] The TPLF is the leading party of the Tigray Regional State, which was declared a terrorist group by the Federal House of Peoples Representatives of Ethiopia when this study was conducted (Anadolu Agency, 2021).
[26] Saving the defect of TPLF, the remaining three former EPRDF coalition members and other prominent five regional states ally parties forged their signature on December 1, 2019, to form a unified one political party called EPP (Borekena, 2019).
[27] Upon ending its first-year term, the Council extended the ICHREE's term for one year, thus, mandated to continue its investigation for the following year (Endale, 2022; OHCHR, 2022).

UN Security Council urging it to "place the situation in Ethiopia on [its] agendas and take action aimed at restoring peace, stability and security in the region," giving hint on invoking chapter VII of the UN Charter. However, Ethiopia was blatantly dismayed by the action of the Council, consequently, rejected the ICHREE establishment from the get-go (Keaten, 2021). Moreover, Ethiopia vehemently expresses its regrate on the ICHREE report disqualifying the report as nothing but a politically motivated "statement issued under the guise of an investigation report" (ENA, 2022). Accordingly, Ethiopia asserts that it neither accepts the renewal of the ICHREE extension term nor endorses its first investigation report and forthcoming ones (ENA, 2022; Endale, 2022).

As a way-out solution, like Sudan,[28] some scholars insist on Ethiopia joining the Rome status (Sudan Tribune, 2021; Yilma, 2021). Moreover, there is a belief that the UN Security Council – might pressure Ethiopia to accede to the Rome Statute using different enforcement mechanisms, and/ or – direct the ICC to initiate an investigation and prosecution according to Article 12 (3) of the Rome Statute. However, the stand of the federal government against referring itself to the ICC hitherto, and the 'irreconcilable policy and political stance among the UN Security Council member states'[29] on the way to resolving the Ethiopian internal conflict quash the probability of the aforesaid scenario. Thus, those scenarios do not seem likely to happen.

In connection with the above, given the steps that has being taken by the federal government in setting up an "inter-ministerial task force (IMTF) to oversee [the] investigation [and] legal action against human rights violations in [the] conflict," it is beyond the need to mention that Ethiopia is no way going to refer its case to the ICC, instead opting to follow its late usual track and prosecute those responsible for violating international core crimes per its criminal code before its domestic courts of law (Addis Standard, 2021).

V. Conclusion

Ranking altogether, though Ethiopia is not a state party to the Rome Statute, it has criminalized genocide and war crimes among four international core crimes. Between the years 1992 – 2010, Ethiopian domestic courts of law prosecuted four major trials and rendered a guilty verdict on 3760 wrongdoers. Unlike the *Anuak-Nuwer* and *Oromo-Gumuz* trials, the *Dergue* and CUD

[28] In August 2020, the executive body of the "Sudanese cabinet …approved a draft law to join the Rome Statute," and now pending the approval of the legislative body to be fully a party to the Statute, which is not actualized yet (Sudan Tribune, 2021; Aljazeera, 2021).

[29] The diverse and uncompromising policy stance of UN Security Council members on Ethiopia (Tigray) crises can be inferred from the Security Council voting pattern and report (Security Council, 2022).

trials only prosecuted defendants belonging to one side of a conflict, thus, regarded as victor's justice.

Recently, while Ethiopia has been going through a political transition, a politically heated wrangle between the federal government and Tigray regional state has turned into NIAC since November 2020. As per the 2021 OHCHR and EHRC JI report, violent conflict amounted to war crimes and crimes against humanity. The 2022 ICHREE report also concluded the existence of reasonable grounds in affirming the violation of foregoing core international crimes. Unlike the JI report, the ICHREE came up with a recommendation stating the situation of Ethiopia should be on the UN Security Council agenda. Being suspicious about the ICHREE's motive from its inception, then provoked by its first report and aforesaid recommendation Ethiopia not only rejected this commission but also categorically shunned its report.

The above being the case, like Sudan, some scholars insist on Ethiopia acceding and/or referring its case to the Rome Statute, while others assume the UN Security Council might refer Ethiopia's case to the ICC. Despite this insistence and assumption, it is significant to underscore the unlikely nature of these scenarios. Instead, the establishment of the IMTF by the federal government greenlights the high probability of an opposite scenario; thus, without acceding to the Rome Statute, prosecuting wrongdoers in violation of international core crimes per its criminal laws before its domestic court of law is a weigh in one.

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