

**Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the situation of human rights in Eritrea; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls**

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(Please use this reference in your reply)

10 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on the situation of human rights in Eritrea; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17, 47/2, 44/5, 42/16, 41/15, 43/6, 43/8, 43/20 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received on widespread rape and other forms of gender based violence against women and girls by members of the Eritrean Defense Force in the context of the armed conflict in the Tigray region of Ethiopia since November 2020.

According to the information received:

The conflict in the above-mentioned region has been characterized by widespread incidences of gender based violence perpetrated against women and girls by, inter alia, members of the Eritrea Defence Force, also accompanied by threats and additional acts of physical and psychological torture aimed at causing lasting fear, and physical and psychological damage.

The exact prevalence of rape in these regions is hard to estimate because gender-based violence is generally under-reported due to fear and stigma. From November 2020 through June 2021, a total of 2,204 survivors reported sexual violence to health facilities across the Tigray region. One of the one-stop centres reported a total of 684 cases of gender-based violence, 92% of which reportedly involved child victims of whom (90% were girls). It is estimated that an average of 28 victims of gender-based violence visited at least one of the one-stop centres per month before the conflict; an average which reportedly quadrupled during the conflict with 15 to 20 victims of gender-based violence reportedly visiting the centre per week. These figures seem to remain an under estimation considering that the one stop centres are operating only in the provincial cities leaving a number of the population in practice cut off from accessing these centres. Notwithstanding, the

reported trends on gender-based violence is very alarming and constitute a grave situation for many women and girls.

In a number of such cases of gender-based violence, women and girls were gang raped; in other cases, they were raped in front of family members including children. Some women who were subjected to rape were pregnant; some were raped with objects, beaten, threatened with the intention of humiliating them, and denied assistance for the injuries sustained. Some were raped by multiple perpetrators over a period of time and some victims were held captive by their perpetrators in condition of sexual slavery in military camps, in houses or in open grounds in rural areas, for more than 24 hours. Some elderly women and women with disabilities were also reportedly subjected to gender-based violence.

The cases of gender-based violence reportedly took place in urban and rural areas, in a number of districts and towns, in the victims' homes or in the places where they were sheltering.

In some cases, women and girls were subjected to rape and abduction either because of their perceived or actual political opposition to the Government; as a means to pressure them to reveal the whereabouts of their male relatives or to force the latter to give themselves up as well as in revenge for belonging to the same group as persons that have reportedly committed acts of gender-based violence against their own women and girls.

In some cases, acts of extreme brutality were reportedly inflicted on women and girls subjected to rape; for example, a number of those who were raped reportedly had hot metal rods, large nails and multiple types of metal and plastic shrapnel inserted into their vaginas, causing excruciating pain and lasting and at times irreparable damage.

Women and girls, internally displaced and fleeing for their safety, were at higher risk of being subjected to sexual violence. A number of them were reportedly raped as they were trying to reach the border with Sudan to seek safety and shelter in refugee camps in eastern Sudan.

Eritrean refugee women and girls living in the Tigray region, have been particularly affected by the conflict and doubly victimized. Ethiopia is reported to be the third largest refugee hosting country in Africa. As of October 2020, Ethiopia hosted 149,000 registered Eritrean refugees, many of whom living in the northern Tigray region and housed in four camps. Between November and December 2020, some of these camps were reportedly occupied for a time by the 35<sup>th</sup> Division of the Eritrean Army and also attacked by Tigrayan militias. During this period, Eritrean forces allegedly destroyed shelters and infrastructure available in the camps, forcing refugees to move towards the border and eventually back into Eritrea. A number of Eritrean women and girls were reportedly raped by the Tigrayan militia while they were escaping from the camps in December 2020.

It is reported that besides the grave harms inflicted on women and girls by the

conflict, those women and girls who were subjected to rape have been suffering serious health problems, including bleeding, pain, incontinence, immobility and fistulas as well as mental health issues such as depression, insomnia and anxiety.

In addition to a host of grave consequences linked to rape and other forms of sexual violence, virtually all victims have also been harmed in other ways by the conflict. Some have had close relatives tortured, killed, or disappeared and many have suffered forced displacement and the resulting lack of shelter, hygiene, healthcare, safety and nutrition

Women and girls who have been subjected to gender-based violence were hardly able to obtain medical treatment and support. When women and girls could access health facilities, some were reportedly offered a pregnancy test and follow-up healthcare services, while others were reportedly not able to access safe abortion following unwanted pregnancies as a result of rape.

A number of women and girls could not seek medical support because of fear of stigma by their communities and lack of privacy.

Psycho-social support for women and girls subjected to gender-based violence has been reportedly non-existent; even in some refugee camps in Sudan, women and girl survivors have not necessarily taken up the psycho-social support offered by humanitarian organisations due to fear of stigmatization in the community.

Medical, psycho-social services for women and girls subjected to gender-based violence were already scarce in the affected areas prior to the conflict, became even harder to access as a result of the conflict. Medical facilities have reportedly been looted, damaged or destroyed, and staff have fled following the outbreak of the conflict. Already in March 2021, international organisations had assessed that a number of primary health centres in Tigray, which would normally attend to 70% of all patients, were not functioning at all, while the main hospitals were struggling to maintain essential medical services while attending to conflict related casualties. In July 2021, international organisations reported that there were only five health facilities providing mental health services in all of Tigray.

As a result, the availability of post-rape care, including emergency contraception, post exposure prophylaxis and safe abortion has reportedly drastically reduced. In July 2021, international organisations reported that only 40 rape cases had been clinically managed in Tigray within the recommended 72-hour window. Back in May 2021, these organizations had estimated that more than 110,000 women were pregnant with more than 10,000 births expected each month. According to them, over half of these (5,800 births) would likely experience complications, with potentially deadly consequences, if access to emergency obstetric care was not made available. Women have been reportedly delivering on the move, in schools or in the bush, with only assistance from other travellers or the host community.

In addition, a number of internally displaced persons have found shelter in

unfinished or damaged buildings, and most collective centres do not include separate spaces or latrines for women and men, girls and boys, thus increasing risks of gender-based violence.

This dire situation with regard to access to health care and facilities is reportedly made worse by the fact that other support mechanisms that existed prior to the conflict, including savings, food reserves and the ability to borrow, have been largely exhausted. The depletion of these coping mechanisms coupled with obstacles placed by the military and allied forces on the delivery of humanitarian assistance to the population in need added further strains on the groups most exposed to vulnerability like women and girls subjected to sexual violence.

The patterns of gender-based violence during the conflict seem to point to violence having been systematically used as part of a deliberate strategy to terrorize, degrade, and humiliate both the victims and their minority ethnic group, with the acquiescence of State actors. This observation seems to us to be confirmed by examining the official responses from the Government so far, which in our view, are far from adequate particularly given the scale and gravity of the alleged human rights violations and abuses suffered by women and girls.

Without any prejudice to the accuracy of the above-mentioned allegations, we are alarmed by the context, scale, and gravity of the gender-based violence committed against women and girls in this region, which may amount to war crimes and crimes against humanity.

We would like to express our grave concern regarding the patterns of gender-based violence against women and girls in the Tigray region, and the lack of effective measures to address it.

Gender-based violence including rape constitutes one of the most egregious human rights violations, with significant impact on victim's physical and psychological integrity, sexual autonomy, and on gender equality. Such as amount to cruel, inhumane or degrading treatment or punishment, and under certain circumstances, may amount to torture, in contravention to the absolute and non-derogable prohibition codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this regard, we would like to recall the State duty to respect, monitor and prevent violations of human rights committed, in any territory under their jurisdiction, whether by State actors or by non-State actors, in addition to the obligation to properly and impartially investigate all allegations of torture and other cruel, inhuman or degrading treatment or punishment, to prosecute and punish perpetrators, and to ensure adequate reparation and redress to victims, in full compliance international human rights law and standards, and international humanitarian law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure compliance of armed and security forces with international humanitarian law and the orders given to armed and security forces prohibiting gender based violence and any other violations of international human rights law and international humanitarian law.
3. Please provide information on the measures that authorities have taken or intend to take to investigate the allegations of gender-based violence perpetrated since the outbreak of the conflict in Tigray, effectively, independently and impartially with a view to bring the perpetrators to justice in open, accessible, fair, civilian courts in full compliance with international human rights and humanitarian law standards.
4. Please explain what measures are being put in place to implement the recommendations of the Office of the United Nations High Commissioner for Human Rights-Ethiopian Human Rights Commission Joint Investigation report with respect to gender-based violence and accountability for such violence.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Kindly be informed that we also expressed our concerns to the State of Ethiopia.

Please accept, Excellency, the assurances of our highest consideration.

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Mohamed Abdelsalam Babiker  
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Special Rapporteur on minority issues

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw Your Excellency's attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women, whether perpetrated by a State official or a private citizen, in public or private life.

Gender-based violence against women constitutes discrimination against women under article 1 of the Convention on the elimination of all forms of discrimination against women which Eritrea acceded on 5 September 1995.

General recommendation No. 35 on violence against women of the CEDAW Committee stresses that "Under the Convention and general international law, a State party is responsible for acts or omissions of its organs and agents that constitute gender-based violence against women, which include the acts or omissions of officials in its executive, legislative and judicial branches" (General Recommendation no 35, paragraph 22). The Committee adds that "States parties are responsible for preventing such acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those 6 constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities" (General Recommendation no 35, paragraph 23).

This General recommendation also recalls State obligation of due diligence under article 2 (e) of the Convention, which includes the obligation to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women and girls [General Recommendation no 35, paragraph 24(2)]. In this recommendation, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation.

The CEDAW Committee recommended in General Recommendation No. 35 that States parties develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's

organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men. In addition, it recommended States parties to adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings. Finally, it recommended States parties to ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. In its General Recommendation No. 33 (2015), the CEDAW Committee stated that States must promote women's access to justice and highlighted that accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.

In its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, the CEDAW Committee reiterated its general recommendation No. 28 “to the effect that the obligations of States parties also apply extraterritorially to persons within their effective control, even if not situated within their territory, and that States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory. (...) In conflict and post-conflict situations, States parties are bound to apply the Convention and other international human rights and humanitarian law when they exercise territorial or extraterritorial jurisdiction (...) The Convention applies to a wide range of situations, including (...) to persons detained by agents of a State, such as the military or mercenaries, outside its territory; to lawful or unlawful military actions in another State” (CEDAW/C/GC/30, paras. 8 and 9).

Gender-based violence against women may also amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape. In this respect, we would like to recall the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment and punishment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Eritrea acceded on 25 September 2014, and in article 4(2) read in conjunction with article 7 of the International Covenant on civil and political rights (ICCPR), which was acceded by Eritrea on 22 January 2002. We highlight that article 2 of the CAT specifically provides for the obligation of States parties to prevent acts of torture.

In her report on the criminalisation and prosecution of rape (A/HRC/47/26), the Special Rapporteur on violence against women noted that under international humanitarian law and international criminal law, rape can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide when the other elements of the crimes are present. She stressed that rape is a violation of a range of human rights, including the right to bodily integrity, the rights to autonomy and to sexual autonomy, the right to privacy, the right to the highest attainable standard of physical and mental health, women's right to equality before the law and the rights to be free from violence, discrimination, torture and other cruel or inhuman treatment. She

recommended that there should be no statute of limitation for initiating legal proceedings on rape, whether committed during conflict or in peacetime. Finally, she recommended that States review their legislation on the criminalisation and prosecution of rape in order to allow for accountability of the perpetrators, in line with international human rights standards.

In its recent report on women's and girl's sexual and reproductive health rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girls expressed its deep concerns about the widespread impunity for violations of the sexual and reproductive health rights of women and girls. While some progress has made in investigating and prosecuting crimes of sexual violence in situations of conflict, many violations of sexual and reproductive health continue to be either neglected or tolerated and occur with impunity. The Working Group stressed that women and girls are entitled to receive adequate reparations, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, for violations of their sexual and reproductive health rights, and States have a core obligation to ensure access to effective and transparent reparations. However, women and girls continue to face a variety of barriers to access to justice in situations of crisis, from the lack of recognition of the harm caused to them as being a violation of human rights to the absence of procedures and formal mechanisms.

We would like to recall that article 12.1 of the International Covenant on economic, Social and Cultural Rights ratified by Eritrea in 2001, recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, we would like to refer your Excellency's Government to General Comment 14 and 22 of the Committee on Economic, Social and Cultural Rights. As clarified by the Committee, the right to health includes the right to sexual and reproductive health and extends to the underlying determinants of health, as well as to effective protection from all forms of violence. Furthermore, under the right to health States are obliged to take measures to protect all vulnerable or marginalized groups of society, in particular women, in the light of gender-based expressions of violence. Violations to the right to health follow from the failure of a State to protect women against violence and States must guarantee physical and mental health care for survivors of sexual and domestic violence in all situations, including access to post-exposure prevention, emergency contraception and safe abortion services.

As noted by the Special Rapporteur on the right to health on her 2021 report to the General Assembly (A/76/172) "Access to comprehensive physical and mental care for survivors of sexual and domestic violence of all genders is part of the full range of quality sexual and reproductive health care that States have the obligation to provide, including access to post-exposure prevention, emergency contraception and safe abortion services". In her previous report to the Human Rights Council, (A/HRC/47/298), the Special Rapporteur noted that "Violence against women touches the lives and livelihoods of women everywhere. It negatively affects women's health, impedes their ability to participate fully in society, affects their enjoyment of sexual and reproductive health rights and, in many cases, denies them these rights, resulting in severe physical and mental effects that have an impact on both women and their families."

We would like to also recall that article 3(4) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) signed by Eritrea on 25 April 2012, requires States Parties to “adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence...” The Maputo Protocol also requires States Parties to, inter alia, “enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public” [article 4(2) (a)]; “punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims” [article 4(2)(e)] and “establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women” [article 4(2)(f)]. With respect to reports indicating that a number of the women raped became pregnant as a result of the acts of gender-based violence described in the paragraph above, we would like to recall that article 14 (2) (c) of Maputo Protocol requires States Parties to “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus”.

We further recall the African Union Guidelines on Combating Sexual Violence and its Consequences in Africa adopted by the African Commission on Human and Peoples’ Rights during its 60th Ordinary Session held in Niamey, Niger from 8 to 22 May 2017 that calls for investigation into and, prosecution of alleged perpetrators of sexual and gender-based violence as well as, access to justice, and psycho-social and medical assistance to the victims of sexual and gender-based violence. In the context of these Guidelines that calls for the reparations of sexual and gender-based violence in form of compensation, rehabilitation, satisfaction and guarantee of non-repetition of sexual violence, we call on Your Excellency’s Government to provide reparations for victims of sexual and gender-based violence during the electioneering period of 2017.

The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, noted that violence against women is one of the major forms of persecution experienced by women in the context of refugee status and asylum. Such forms are recognized as legitimate grounds for international protection in law and in practice. They may include the threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called “honour crimes”, trafficking in women, acid attacks, rape and other forms of sexual assault, serious forms of domestic violence, among others. The Committee recommended that States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality; fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender, as well as the reason of being lesbian, bisexual or transgender, and other status to the list of grounds for refugee status in their national asylum legislation.

The Committee further considered that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity

with that obligation. That duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of discrimination against women, including gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party. The Committee noted that harm perpetrated against women and girls is often at the hands of non-State actors, including family members, neighbours or society more generally. In such cases, the Convention requires that States parties assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors.

Moreover, we would like to bring to Your Excellency's attention article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

We would also like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

Finally, we wish to draw your attention also to the applicable treaty and customary norms of international humanitarian law. Common article 3 to the Four Geneva Conventions of 1948, which Eritrea ratified on 14 August 2000, prohibits outrages on personal dignity, in particular humiliating and degrading treatment. In addition, rape and other forms of sexual violence are prohibited by norms of customary international humanitarian law (see ICRC Study on Customary International Humanitarian Law Rule 93). Arbitrary displacement is prohibited and the parties to a conflict have the duty to prevent displacement caused by their own acts, such as terrorizing the civilian population or carrying out indiscriminate attacks (Rule 129). Women and children are entitled to special protection (Rules 134 and 135). Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces (Rule 139), and States must investigate war crimes allegedly committed by their nationals or armed forces and prosecute the suspects (Rule 158).

Furthermore, we would also like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, which reflect international human rights law and international humanitarian law and set out the prohibition of arbitrarily displacement, including in situations of armed conflict (Principle 6). The Guiding Principles also set out that internally displaced persons shall be protected, including from rape and other human rights violations (Principles 10 to 13).