

Assessing the Peace Accord for Tigray

By Concerned Pan-African Scholars

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Overview

1. This memorandum outlines the background, process and outcomes of the negotiations between the delegations of the Federal Government of Ethiopia (FGE) and the leadership of Tigray region (representatives of the Tigray People's Liberation Front, TPLF, and the people of Tigray), under the auspices of the African Union High-Level Panel, between 24 October and 12 November 2022. Defying pessimistic expectations, the parties reached an agreement in Pretoria, augmented in Nairobi. They have succeeded in ending active hostilities between the two. If the agreements hold, this can relieve the humanitarian catastrophe and begin political dialogue.

2. The core deal made is that humanitarian aid will flow in exchange for Tigray accepting a subordinate political status with respect to the FGE including the dismantling of the TPLF-run Government of Tigray, to be replaced with an as-yet unspecified formula for an interim administration. Eritrea and Amhara region special forces, although unnamed in the document, will withdraw and Tigray will disarm. The rest is detail. The security arrangements provisions are entirely impractical and the actual security arrangements depend upon the cooperation between the commanders of the Ethiopian National Defence Force (ENDF) and the Tigray Defence Force (TDF) and the withdrawal of the Eritrean Defence Force (EDF), willingly or otherwise.

3. The rationale for reaching agreement was that the war in Ethiopia was leading to the destruction of the people of Tigray and the state of Ethiopia. More than 1 million people had perished including 10 percent of the pre-war population of Tigray. The Tigrayan leadership blinked first and took a decisive initiative to make peace, accepting that this would entail major concessions and climbdowns. The FGE faced bankruptcy and the evisceration of its national army. The national crisis also pressed the FGE to make peace, long after it should have done so in the national interest, and still with less urgency than the Tigrayans. The survival of the Ethiopian state is more likely after the deal than beforehand.

4. The Tigrayan delegation took the initiative to make peace. This put it in a weak

negotiating position vis-à-vis the FGE. The FGE and the Chair of the Panel exploited that weakness to push for maximum concessions. This included using brinkmanship to ensure that in Pretoria the main text (favourable to the FGE) was signed and the implementation matrix (favourable to Tigray) was not. Some of these shortcomings were remedied in Nairobi. More detailed negotiation is still needed to forge a workable agreement.

5. The Pretoria Agreement, even supplemented by the Nairobi Declaration, is unworkable on paper. It is rushed. It shows no evidence of a shared understanding of the Ethiopian predicament. It contains ambiguities, especially as regards security. This undermines the credibility of the agreement as it will not be implemented as contained in the text. Normally, a written peace agreement is built upon a foundational political pact between the parties. In this case, the political foundation must be constructed after the façade has been shown to the world. The political work of peace is beginning now.

6. One core political question is whether the Pretoria Agreement nullifies the 2018 Asmara pact between Pres. Isaias Afewerki and PM Abiy Ahmed, or whether that secret security deal remains in force. This is unresolved. Even if the EDF were to withdraw from Tigray, Asmara and Addis Ababa could keep that security pact in force, continuing to threaten Tigray,

7. The immediate deliverable from the agreement must be humanitarian aid and the return of people displaced in the recent fighting along with protection of civilians. At the time of writing, the delivery of such aid has been small and slow.

8. Notable weaknesses in the agreement include the provisions for protection of civilians, monitoring and verification, and accountability for gross violations. There is complete silence on security guarantees on each of the security measures that each of the parties are required to undertake.

9. The agreement risks failure for many reasons, which may include inter alia: Eritrean spoiling (including using proxies); conflict with Amhara over Western Tigray; the multiple political pressures on PM Abiy which may result in prevarication and tactical shifting; Tigrayan discontent (especially if aid is not forthcoming and civilians are not protected); and the ongoing escalation of the war in Oromia

and accelerated state failure. A weak AU oversight mechanism and international inattention make such failings more likely.

10. The agreement is a notable regression from the norms, principles and institutions of the African Union peace and security architecture from the Constitutive Act of 2000 to the 'silencing the guns' initiative, turning the clock back to the barebones model of peace accords characteristic of the OAU era. Regional leaders, led by Kenya, have a responsibility to revive those norms, principles and institutions, including multilateral partnerships, to make the agreement work. A long and painstaking process of political accompaniment will be needed.

11. The international community has been less than energetic in responding to the political and humanitarian crises in Tigray. The Pretoria Agreement provides little formal role for the UN and other international partners, although they will be asked to foot a bill which will be upwards of US\$20 billion. No international actor should labour under the illusion that the Pretoria Agreement is in itself a roadmap towards political normalization and the return of Ethiopia to its former status as the anchor state for peace and security in the Horn of Africa.

12. Despite these shortcomings, the rationale for making the peace work is strong. Both Tigray and the FGE are weak and cannot sustain a return to war. Both may collapse if the Pretoria Agreement is not built upon to ensure the breaking of the 2018 Asmara Pact, workable security arrangements, and political dialogue.

Background and Calculus

13. The war in Tigray, Ethiopia, erupted in November 2020. It is both a political dispute between the Federal Government of Ethiopia (headed by PM Abiy Ahmed) and the Regional Government of Tigray (headed by the TPLF), and also a war between Tigray and the State of Eritrea (headed by President Isaias Afewerki). Pres. Isaias has long been determined to destroy the TPLF, crush the Tigrayan people and establish his dominance over Ethiopia as a whole.

14. Over two years the war has destroyed the economy of Tigray and reduced the people to starvation. From a pre-war population of approximately 6 million, between 385,000 and 600,000 Tigrayan civilians are estimated to have perished from hunger,

preventable disease, and atrocities directed against civilians.¹ An unknown number of women and girls have been raped. Scores of thousands have been killed in battle. Tigray will have a missing generation. There were two rounds of mass displacement, first during the early months of the war, especially from Western Tigray, and second, during recent fighting.

15. Ethiopia has been plunged into massive economic and social crisis. Tens of thousands may have died in neighbouring Amhara and Afar regions. Millions are displaced. Fatalities in combat are estimated at over 300,000 for the period August-November 2022 alone on all sides, and at least that same number for the previous 21 months. These fatalities are disproportionately among the ENDF and Amhara militia. These figures give an overall death toll of more than one million for the two years of war, excluding additional fatalities from the wars in Oromiya and elsewhere in Ethiopia. National development has been set back many decades.

16. Demographic and food security arithmetic were not in favour of Tigray's resistance. With a population only 5-6 percent of Ethiopia's, Tigray could not withstand demographic losses on the scale inflicted. Its population was also directly exposed to hunger and disease and, insofar as the TDF could no longer protect population centres, to forced displacement and widespread and systematic human rights violations perpetrated by occupying armies. The weapon of hunger worked its inexorable effect on the people of Tigray.

17. The FGE faces bankruptcy and the collapse of its institutions, including its national army. Because of its size, Ethiopia is more resilient than Tigray. It has greater reserves of human resources to conscript into its army and much deeper financial pockets. It also has a leadership that appears to discount human suffering and to show little awareness of, or concern for, the fragility of the state. The FGE's most vulnerable point was its army. In 2020-21 the ENDF was massively reduced in capacity four times: first, with the exclusion of Tigrayan soldiers and officers; second, with the losses in Tigray in the war during May-June 2021; third, with losses in the TDF's offensive into Amhara and Afar in October-December 2021; and fourth during the fighting from August-November 2022. Each time the command structure and effectiveness of the army was dismantled, but it was able to compensate through a combination of sheer

¹ Jan Nyssen, 'New estimate of the Tigray death toll,' 19 October 2022.

numbers (including both new ENDF recruits and militia) and drones. Nonetheless, the officer corps has been depleted and the rank-and-file reduced to a poorly trained rabble in uniform. For the overall commanders, casualty levels became immaterial. In fact, the federal war strategy required high sacrifices as a means of depleting the resources of its enemy.

18. The State of Eritrea is an enigma. The downfall of Pres. Isaias has been repeatedly predicted but never materialized. Internal opposition is unknown. The impact of battlefield fatalities that probably exceed 100,000 since the start of the war is unknown. It appears that Isaias tried to conserve EDF troops as much as possible, putting ENDF and Amhara militia forces in the front line for as long as possible, but was also prepared to sacrifice large numbers of Eritrean conscripts and officers in pursuit of his war aims.

19. The logic of the war boiled down to the question, who will die first. The answer was that the joint EDF-ENDF-Amhara forces could absorb astronomical battlefield losses while their political leaders' readiness to accept these losses remained undimmed. The Tigrayan leadership calculated that the Tigrayan population could not survive much longer. The Tigrayan leadership blinked first.

20. The AU cooperated with the FGE strategy of insisting that the conflict was solely an internal affair of Ethiopia (a 'law enforcement operation') and not a matter for the AU Peace and Security Council (PSC) let alone the UN Security Council. The AU broke with its practice of invoking international law and its own mandated obligations. This close alignment between the FGE and AU was evident from the earliest days of the war when the AU Commission blocked IGAD from taking any action. In his opening remarks at the IGAD Extraordinary Summit on 20 December 2020, AU Commission Chairperson Moussa Faki said, 'In Ethiopia, the federal government took bold steps to preserve the unity, stability and respect for the constitutional order of the country; which is legitimate for all states.'² Chairperson Faki limited IGAD's role to addressing humanitarian issues such as refugees. The AU Commission did not actively promote the work of the three high-level envoys appointed by then-AU chair, Pres. Cyril Ramaphosa.

² IGAD, 'Opening Remarks of the Chairperson of the African Union Commission, H.E. Moussa Faki Mahamat, at 38th Extraordinary Summit,' 20 December 2020.

21. In August 2021, Chairperson Faki appointed former President Olusegun Obasanjo as his High Representative, over the objections of the Tigrayans who saw him as biased in favour of the FGE. The short article published by Obasanjo on 19 November validates the Tigrayan suspicion.³ In a departure from best practice at the AU, High Representative Obasanjo reports to the AU Commissioner and not to the AU PSC, though he occasionally briefs the latter. In October 2022, AU Commission made a lastminute concession to the Tigrayan position, which was to expand the mediation to a Panel of three, including former Kenyan president Uhuru Kenyatta and former South African deputy president Dr. Phumzile Mlambo-Ngcuka.

22. The AU's exclusionary approach meant that U.S. initiatives to achieve a humanitarian truce and dialogue had to be held in secret, so as to avoid public antagonism between the U.S. and AU. In turn, this meant that the proceedings were deniable. American efforts began when its Special Envoy engaged in shuttle diplomacy and continued with U.S. facilitated face-to-face talks in the Seychelles and in Djibouti. The pattern of behaviour of the key actors during these negotiations gave solace to the FGE. This pattern consisted of the Tigrayans offering a concession, the FGE accepting it, Eritrea remaining silent but seeking to sabotage it, the FGE reneging on the deal, and the facilitators (the U.S.) failing to impose any penalties on the FGE, or even to publicize that negotiations had taken place and an understanding had been reached. Additionally, when High Representative Obasanjo negotiated a prisoner exchange, the Tigrayans released 4,500 prisoners of war, but the FGE did not reciprocate. This, the only agreement facilitated by Pres. Obasanjo prior to the Pretoria talks, also passed without any criticism of the one-sided implementation.

23. This pattern recurred in U.S.-convened talks in Djibouti on 8-9 September. The Tigrayan delegation (headed by Getachew Reda and Tsadkan Gebretensae) had full authority to agree a ceasefire, the FGE delegation (headed by Redwan Hussein and Gedion Timotheos) did not, and could only report back to Deputy PM Demeke Mekonnen and through him to PM Abiy, who would decide. The Tigrayans made a call for a ceasefire on 11 September⁴, which received international statements of support (Including, for the first time, from the AU Commission Chairperson). The FGE did not

³ 'Olusegun Obasanjo: How Ethiopia's peace plan will work,' Semafor, 19 November 2022.

⁴ AU Commission Chairperson welcomes the Call by the Government of Tigray for peaceful resolution of the Ethiopian conflict,' 11 September 2022.

reciprocate. Instead, PM Abiy declared that he would 'go anywhere and do anything' for peace, which were empty words. The fighting continued. PM Abiy faced no consequences for his decision. On the grounds that the AU had not been invited to Djibouti, the AU Commission was reluctant to invite the U.S. to Pretoria. The U.S. lobbied vigorously to be present and the AU Commission acceded when it became clear that only the U.S. could provide the aircraft to fly the Tigrayan delegation from Mekelle. The Tigrayans would not have entrusted their security to the AU.

24. The AU Commission also spurned its long-standing partners, the UN and the European Union, treating them as rivals or even adversaries rather than as joint architects of the norms, principles, and institutions of multilateralism in the Horn of Africa and the Red Sea Arena, the AUC appeared to redefine an 'African solution' as one that excluded non-Africans. The EU Parliament's statements on the conflict include more consistent statements of the multilateral norms to which the AU ostensibly aspires, than any recent AUC statements. Ironically, the AU enlisted the support of non-African members of the UNSC, notably China and Russia, to protect its stand.

25. The overall approach to negotiation by the FGE and AU Commission consisted of procrastinating until the joint FGE-Eritrean forces achieved a military *fait accompli*. This strategy required that the process be opaque and sealed off from international engagement, and especially from any formal reporting process, including to the AU PSC or UNSC. This approach was sustained until October, when the AUC Chairperson issued an invitation to the Tigrayan leadership to attend talks in South Africa. This timing was under international pressure but no preparation had been made for substantive talks. The agenda was vague (see Annex A). No counterpart letter to the FGE was made public. There had been no prior consultation with the two newly-nominated Panel members nor the South African government.

26. The weaponization of hunger favoured the FGE's war strategy. The principle of unfettered humanitarian access was never accepted beyond rhetoric. The prohibition on the war crime of starvation (defined as destroying, removing or rendering useless objects indispensable for the survival of the civilian population, and impeding humanitarian aid)⁵ was never accepted, even rhetorically, at the highest levels. The FGE

⁵ European Parliament, Joint Motion for a Resolution on the recent humanitarian and human rights situation in Tigray, Ethiopia, notably that of children, 5 October 2022, RC-B9-0429/2022.

used pretexts of logistical problems or negotiation hiccups for its unlawful siege and it was not called out by foreign governments or the UN. The UN was not permitted to collect the data that would have been able to demonstrate that famine conditions existed. The UN World Food Programme was quick to condemn Tigray for violations (including unsubstantiated ones) and slow to condemn the FGE or Eritrea (on many occasions failing entirely to do so). Both sides factored the behaviour of the international humanitarian community into their calculations. The FGE anticipated that it could sign a new agreement promising unfettered humanitarian access and then put political conditions on that access, without facing more than mild rebuke. The Tigrayans expected that any appeals to humanitarian principle would have no effect beyond ineffective rhetoric.

27. The military-political decision point was reached in September or October, when it became clear that the joint forces (ENDF, EDF and Amhara) were prepared to sustain extraordinarily high human losses in order to press home their material advantage, and the international community would do nothing to stop this or to provide humanitarian assistance to the victims.

The Process in Pretoria

28. Expectations for the Pretoria meeting were extremely low. The official invitation gave no sign that the mediation was serious (Annex A.) The indication was that the AUC did not expect serious talks to take place at all, because they had been assured by the FGE that a military solution would have been accomplished by that point.

29. The AU Commission kept tight control over the process. The European Union was not invited as a partner. The UN was invited but its team of experts from the Mediation Support Unit were excluded entirely. IGAD was permitted to play a role through its Special Envoy. The U.S. was present, but its engagement was restricted. One regrettable outcome of this is that the technical quality of the documents produced are substandard. Another is that international support to the implementation of the agreement is neither integrated into the text nor contained in any supplementary declaration. The most immediate issue is humanitarian aid. Insofar as the Tigrayans' most urgent motive was to obtain aid, one would have expected them to insist on, at minimum, parallel engagement with aid donors. International monitoring is another

neglected issue. In the longer term, international donors' funds will be needed for the reconstruction efforts that the parties will be requesting.

30. After a delay, the talks convened in Pretoria on 24 October. As the negotiating teams, mediators, and observers assembled in Pretoria, all but the Tigrayans were convinced that the joint forces of ENDF and EDF would capture Mekelle within days. The AU Panel changed and focused the agenda, so that it essentially had one agenda item only, cessation of hostilities and humanitarian access.

31. The delegation of the FGE, led by National Security Advisor Redwan Hussein, did not have the authority to negotiate on major substantive issues or to agree a final text. That authority rested with Deputy PM Demeke, who remained in Addis Ababa, and ultimately with PM Abiy. The delegation adapted its proposal—a demand for unconditional surrender—by renaming it 'Permanent Cessation of Hostilities.' (Annex B.) Note that in standard technical parlance, a cessation of hostilities is a limited and temporary disengagement that simply stops active combat, followed by a ceasefire phase, which involves redeployment, a full list of prohibited and permitted actions, and a monitoring and verification mechanism. 'Permanent cessation of hostilities' is an ad hoc invention.

32. At various times the Panel needed to call PM Abiy to obtain his decision on key provisions. There was little direct communication between the Abiy and the Tigrayan leadership, and no evidence of an underlying political pact between the two sides. The gap between PM Abiy and the negotiations may also allow the PM to distance himself from the details, disavow commitments, and casually justify non-compliance on the excuse that peace agreements are rarely implemented in full.

33. The Tigrayan delegation, led by Government of Tigray spokesperson and TPLF central committee member Getachew Reda, and military advisor and central command member Lt. Gen. Tsadkan Gebretensae, were fully empowered to negotiate and sign. They had prepared a proposal for a three-stage agreement, including a 90-day cessation of hostilities, a permanent comprehensive ceasefire, and political negotiations. This concept would later be transferred to a proposed implementation matrix (Annex D).

34. The Tigrayan delegation, however, had made the strategic decision to seek peace. They did not want to leave South Africa without a signed agreement and face a

repeat of what had occurred in previous negotiations. This decision was evident in their personal interactions with the FGE delegates. From the outset they were personally open and accommodating, rather than acrimonious, point-scoring or haggling over details. The same was the case in their interaction with the Panel. However, this put them in a disadvantageous negotiating position because it was evident that they would not leave Pretoria without an agreement, and the FGE and the Panel Chair could press them for concessions.

35. When it became evident to the FGE delegation that their military objective (the capture of Mekelle) would not be achieved quickly, they stalled. Faced with the prospect of being called out for obstructing the process, they responded to the Panel's request to expand their document and negotiate. Meanwhile, the Panel made it clear to the Tigrayan delegation that their military record was a liability as well as an asset—they had gained a reputation for military adventurism and the TDF advance towards Addis Ababa last year had struck fear into many. Only a clear commitment to disarm could lay these fears to rest. The FGE was determined to score a high-profile win on disarmament, especially of heavy weapons. The Tigrayans conceded this, anticipating that negotiating the details of on-the-ground realities of providing security would change the equation in their favour.

36. Thereafter, the negotiations focused on two documents, the Agreement for a Lasting Peace through a Permanent Cessation of Hostilities ('main text') and an implementation matrix. The main text was drawn from the FGE's document and the implementation matrix from the Tigrayan document.

37. The main text went through three major forms. Initially, the FGE delegation presented its three-page surrender document (Annex B). Under pressure from the Panel, and with Panel inputs (e.g., an insistence on a provision for accountability) this was revised to a nine-page document (Annex C). The Panel proposed, and the Tigrayans accepted, that this document forms the working text for the main text. The final agreement (Annex E) is clearly similar in structure and main points. A comparison of the two drafts and the final agreement (Annex F) shows how the text changed.

38. The principal changes are the additions of articles on protection of civilians and accountability (both of these at the initiative and insistence of Dr. Phumzile) and a strengthening of the monitoring, verification and compliance mechanism (principally

championed by Pres. Kenyatta). Other important changes include:

- a. Article 3 (cessation of hostilities) adds a prohibition on 'collusion with any external force hostile to either party.'
- b. Article 6 (disarmament, demobilization and reintegration, DDR) Eliminates the 24-hour and 72-hour timeline for Tigrayan disarmament of heavy and light weapons, replacing them with a 30-day deadline, and (crucially) adds that the DDR plan 'will consider Tigray region's law and order needs.' Sub article (d) which specifies the follow-up meeting between the senior commanders was inserted at the insistence of the Tigrayans.
- c. The joint committee for monitoring is to be constituted by the AU Panel and IGAD rather than solely the AU High Representative.
- d. The agreed 14-day timeline for the restoration of services (Article 7(2)(b)) was edited out by the AU Commission penholder without consultation, and replaced with 'agreed timelines'.
- e. The following provision is removed as a TPLF obligation: 'Issue a public statement apologizing and taking responsibility for the attack against the northern command and for the pain and suffering entailed by the conflict it has triggered.'

39. In parallel, an implementation matrix was developed. The major work on this took place in the middle part of the negotiations when Pres. Kenyatta took the chair during Pres. Obasanjo's absence on a business trip to D.R. Congo. The most substantive negotiations took place during these days. The implementation matrix drew on Tigrayan expertise in this field and as such was in technical terms a higher quality document. It had a three-phase approach:

- (1) short term cessation of hostilities including humanitarian access and restoration of essential services;
- (2) permanent and comprehensive ceasefire; and
- (3) political negotiations. Early versions of this can be seen in Tigrayan proposals developed as early as October 2021 and in statements made by Gen. Tsadkan prior to the talks.

40. In open session, Pres. Kenyatta urged each party to draw upon external (U.S.) assistance in finalizing their documents. The U.S. Special Envoy double-checked with the FGE and was assured by Redwan that if the Tigrayans accepted the offer it would not be a problem. The Tigrayans accepted. Their delegation received modest assistance by a technical expert from the U.S. State Department's Negotiations Support Unit. The

FGE declined to take up this offer. This was a rare occasion in which the U.S. team had a direct involvement; in all other respects it was deferential to the AU mediation and kept its distance. The FGE has repeatedly alleged, incorrectly, that the U.S. is favourable towards the TPLF, and uses this as a ploy to play the 'African solutions' card and keep the U.S. at bay. The Tigrayans made a tactical error in accepting even this minor U.S. technical assistance as this opened the door for the FGE to make a spurious objection, that the outcome was not an authentic Tigrayan document and was instead an 'American document' which could not be admitted. Both Pres. Kenyatta and S.E. Hammer clarified to the FGE delegation that the offer had originated with the Panel, had been approved by Redwan and was in any case marginal. On his return from his trip to DRC, Pres. Obasanjo overruled Pres. Kenyatta and eliminated this document. He reportedly said that this was to pre-empt the FGE objections which would have extended the process, but de facto it cancelled Tigrayan negotiating strategy. It is unclear whether this was a trap deliberately set for the Tigrayan delegation or an unfortunate series of events.

41. Pres. Obasanjo's ruling left the Pretoria Agreement consisting solely of the main text, which leaned heavily towards the FGE position, excluding those elements that balanced it, with only the amendments to Article 6 as a mechanism for rebalancing the security provisions. Pres. Obasanjo imposed this decision as the talks approached their deadline. The Tigrayan delegation had the option of accepting the unbalanced main text or walking away without an agreement. They chose to agree. The FGE delegation then tried to press home its advantage, demanding that the senior commanders' meeting (Paragraph 6(d)) be deleted, and also that Tigray cede authority over the contested areas of Western Tigray and Raya. The Tigrayan delegation drew the line at these demands, and the FGE conceded them.

42. In his speech at the signing ceremony on 2 November, Pres. Obasanjo's words reflected the FGE's longstanding position that its military operation was intended to impose constitutional order and the rule of law on Tigray, and that peace would be achieved through silencing the guns and disarming the Tigrayans. He said:
The two parties in the Ethiopian conflict have formally agreed to the cessation of hostilities as well as to systematic, orderly, smooth and coordinated

disarmament, restoration of law and order, restoration of services, unhindered access to humanitarian supplies, protection of civilians especially women and children and other vulnerable groups among other areas of agreement.⁶

Anyone listening to that speech, without knowing the deep background, would conclude either that the FGE had achieved all its war aims, or that the AU High Representative was fulfilling a promise made to PM Abiy to present such an outcome to the world. For Nigerians of an older generation, the substance might remind them of the four substantive sentences of the Biafra surrender declaration, witnessed by Col. Obasanjo in January 1970.⁷

The Process in Nairobi

43. The outcome of the Pretoria negotiations was a public relations triumph for PM Abiy and the FGE and a disaster for the Tigrayans. The dynamics between the negotiators and the Panel and international observers were, however, somewhat different. The three Panel members and the observers had been impressed by the determination of the Tigrayan delegation to make peace, their motivation for doing so, and their readiness to make compromises and take the backlash from their constituencies at home and in the diaspora. The Panel and internationals were less impressed with the FGE delegates who had been less prepared and less professional, and who had deviated from the spirit of the agreement within days of its signature.

44. In particular, the FGE did not honour its commitment to immediate, unfettered humanitarian access and instead permitted aid to flow only to the areas under its control, interpreting the agreement to imply that humanitarian supply was contingent on the FGE resuming its position of authority in Tigray. The FGE delegates had put the sovereign entitlement of a state to feed its citizens above the humanitarian realities and international obligations, which did not go down well with Pres. Kenyatta and Dr. Phumzile.

45. The general public interpretation of Tigrayan concessions in Pretoria was that the TPLF had submitted because it was about to lose the war. The Tigrayan delegation

⁶ Pres. Olusegun Obasanjo speech at the signing ceremony for the Pretoria Agreement, 2 November.

⁷ Biafra surrender declaration, 14 January 1970.

insisted that this was not the case, presenting the facts on the ground. The TDF had yielded ground but had not been defeated. The concessions had been made because the TDF could no longer protect large civilian populations and the humanitarian crisis, exacerbated by mass displacement over the previous weeks, was literally unbearable. The Panel and the observers understood this.

46. The Nairobi meeting opened with a fraught atmosphere. Rather than mutual congratulations on the achievement of a peace deal, there was suspicion. The FGE arrived in a triumphal mood, wanting to press home what it saw as its political advantage, while the Tigrayans were determined to consolidate the promises of remedying the shortcomings on the security provisions of the Pretoria deal and secure humanitarian assistance. The Tigrayan calculation had been that, what it had conceded in the political headlines, it could claw back when the senior commanders met to review the situation on the ground.

47. The FGE/ENDF delegation was led by Field Marshall Berhanu Jula, ENDF chief of staff, and the TDF delegation by Lt. Gen Tadesse Werede, overall commander of the TDF. Both are professional commanders who speak in a calm and factual manner and both expect an agreement to be clear and precise. Ambiguity can be fatal in a ceasefire agreement. Among other things, Gen. Tadesse was the first force commander for the UN Interim Security Force in Abyei, Sudan (UNISFA) and is therefore familiar with such agreements and standard UN operating procedures. He expressed his surprise at the impracticality of the Pretoria Agreement's security provisions. He insisted that any disarmament of heavy weapons could only be linked to Eritrean withdrawal and said that disarmament of light weapons would be practicable only if there were to be general disarmament across neighbouring regions as well, and in any case would take years. (Along with other TDF commanders he had been involved in the design and implementation of the post-1991 disarmament programme, which had not in fact collected many light weapons, but had focused on regulating and controlling them.)

Gen. Jula had also served as force commander for UNISFA and was familiar with these issues. Jula's body language was of a man who has got out of jail free: he knew the ENDF's precarious state, and openly admitted to the extraordinarily high level of casualties suffered, and who considered the Pretoria Agreement as akin to the military

victory he had not (or not yet) obtained on the battlefield.

48. The two commanders held bilateral talks for two days before returning to the plenary. It is not clear whether those talks resulted in a clear understanding between the soldiers about how to turn the signed agreement into something that could actually be implemented in a manner that was both practical and acceptable to both. Subsequent events suggest that the military-to-military talks evolved to meet at least some of the Tigrayan expectations.

49. In the plenary, Pres. Obasanjo took the chair, on the grounds of seniority and his military rank, despite the fact that in Pretoria, Pres. Kenyatta had run the security talks in Pretoria in a business-like manner. Redwan was a member of the FGE delegation and his disregard for both military practicality and humanitarian necessity, in favour of winning political points, did not go down well with the Panel.

50. The Nairobi Declaration overcomes some of the shortcomings of the Pretoria Agreement. It does not go as far as the draft implementation matrix in terms of detail and sequencing. However, by placing the process in the hands of a joint committee, and linking the steps to the withdrawal of foreign forces and non-ENDF forces, along with 'taking into account the security situation on the ground' (Pretoria, Article 6(d)), it provides for a flexible implementation plan. All depends, of course, on the relations between the ENDF and TDF commanders.

Analysing the Documents

51. The preamble to the Pretoria Agreement does not resemble the standard set of sentiments, hopes and concerns normally written on the opening page of a peace agreement. It resembles far more the text of a communiqué of the African Union. This gives a clue as to the authorship of the document.

52. Identifying the parties. Prior to the talks, the Tigrayan authorities had insisted that they be identified as the 'Government of Tigray'. Following the position of the FGE, the AUC and AU High Representative referred to them as TPLF,⁸

⁸ African Union, 'AU launches peace talks to end the conflict in the Tigray Region of Ethiopia,' 25 October 2022, (The sole exception was on 11 September when Chairperson Faki used the terminology 'Government of Tigray.' After this, the FGE severely criticized Faki and he did not repeat this language.)

and during the talks, the AUC insisted that this was non-negotiable. The main text identifies the Tigrayan delegation as TPLF and the TDF as 'Tigrayan combatants'. The seven-man Tigrayan delegation⁹, included four non-TPLF members including Gen. Tsadkan. Their presence was referred to by Pres. Obasanjo in his opening speech at the signing ceremony when he referred to 'representatives of the Tigrayan people' as well as TPLF. The Tigrayans agreed to this change in nomenclature.

53. The designation is more than semantics. The FGE intent was to deny recognition to the Government of Tigray. That government was formed after the September 2020 election, won handsomely by the TPLF. The FGE denied the legitimacy of the election and cited it as a *casus belli*. The designation thereby endorses the FGE narrative about the origins of its 'law enforcement operation.' It opens the door to the FGE demand for an interim governing arrangement and new elections under the auspices of the National Election Board of Ethiopia (NEBE), which issued a controversial ruling in June 2020 denying the Tigrayan authorities' right to hold the September 2020 election. (Under Article 102(1) of the FDRE constitution and Article 7(1) of the NEBE establishment proclamation, NEBE has the power to 'execute' elections. The interpretation of this term was the bone of contention in 2020.)

54. The FGE is identified as such, but the obligations on it are specified as though it did not have full power. For example, in Article 7(2)(c), the FGE is required only to 'facilitate' the lifting of the TPLF's terrorist designation by parliament, as though it were a legislative rather than an executive decision, and it is required only to 'expedite and coordinate' restoring essential services, rather than simply restore them.

55. One national army. The Pretoria Agreement and the Nairobi Declaration emphasize that there is one national army. This raises three questions. First, will Tigrayan officers and rank-and-file be part of that national army? There are many who were dismissed, and who are in detention, or are refugees or asylum seekers, or members of the TDF. It is not clear whether they will be reintegrated and if so, on what terms. Second, there is the option of Tigray special forces. Other regions possess these, and many TDF members could be rehatted in this way. Speaking to the diplomatic

⁹ Both delegations were 100 percent male

community, Redwan alluded to the possibility that Tigrayan combatants could be integrated into a regional special force. He said:

You cannot be armed while you're a political party. So that's why some friends can be confused when we say disarmament of TPLF, we are not denying the right of the region of Tigray to have arms. Regions have arms that are standardized, federal government can have arms which is stipulated in laws, Tigray region can also have those arms, adequate police force, adequate special force, adequate militia that is pertinent to the land area of Tigray to control and the population to police....¹⁰ No other regional special forces possess tanks or heavy artillery, which served as an argument for the FGE to prioritize this element of disarmament.

Third, the ENDF is itself in dire need of rehabilitation and reform. It is a national army in name. In practice it is a bloated assemblage of conscripts and officers, mostly poorly trained. It has excluded Tigrayans. All these issues are for discussion in another round of negotiations, which may take the form of 'Nairobi II'.

56. Restoring Federal Authority in Tigray. The core of the agreement is placing Tigray under Federal authority and repudiating any legitimacy for the 2020 election that brought the TPLF to power in Tigray. As the TPLF had insisted that its legitimacy stemmed from those elections, and on these grounds refused to share power with other Tigrayan parties after the June 2021 reoccupation of Mekele, this is not only a major concession to the FGE but also dismantles the TPLF's standing vis-à-vis the many Tigrayans who were unhappy with its performance. The existing government is to be dissolved and an interim government established until elections can be held under the auspices of the NEBE.

57. The agreement is short on detail about the interim administration. It does not indicate which parties should be included, only specifying that the TPLF will no longer be designated a terrorist organization, implying that it may be permitted to contest for office. It does not indicate whether the interim administration will be staffed by Tigrayans, whether Tigrayan political parties that have competed with the TPLF will be included, or whether it will be shared by individuals appointed by the FGE, whether Tigrayan or non-Tigrayan. The option of a power-sharing arrangement between the

¹⁰ 10 Briefing to the Diplomatic corps in Addis Ababa by Redwan Hussain, national security advisor to the Prime

TPLF and the Prosperity Party is not raised. Nor does the agreement specify how long the interim administration should be in office before transitioning to a permanent one.

58. Respecting the Constitutional Order. The restoration of Federal authority is a win for the FGE while upholding the Federal Constitution as the basis for resolving political differences is a win for Tigray.

59. Among the successes of the FGE's public diplomacy over the last two years has been to portray the Tigrayans as the party seeking to overthrow the constitutional minister on the signing of the Cessation of Hostilities Agreement, 6 November. order, rather than uphold it—all the while blaming the TPLF for the alleged shortcomings of that constitution. The Pretoria Agreement's Article 7(1)(e) and (f) require the TPLF to respect the sovereignty and territorial integrity of Ethiopia, cease unconstitutional correspondence and relations with foreign powers,¹¹ and cease all attempts to bring about an unconstitutional change in government. However, note that the Constitution of the Federal Democratic Republic of Ethiopia vests sovereignty in the nations, nationalities and peoples of Ethiopia (Article 8), and establishes the territory of Ethiopia as the aggregate of the territories of member of the federation (Article 2). Had the Tigrayan delegation been recognized as the Government of Tigray rather than TPLF, the FGE would have conceded important limits to its own sovereign legitimacy.

60. The question of Tigray's boundaries, especially the status of Western Tigray and Raya which are claimed by Amhara region, is to be determined by constitutional procedures (Pretoria, Article 10(4)). This appears to restore the status quo ante prior to the unconstitutional annexation of territory in November 2020. However, there have been hints that the FGE would seek alternative paths such as making Western Tigray a federal territory or specifying its people as a distinct nationality. This issue is already stoking the ire of Amhara political leaders.

61. Security Arrangements including DDR. The process for securing Tigray is woefully under-specified. The DDR process is entirely one-sided and makes no reference to national security sector reform or nationwide DDR. It has no security guarantees for the disarmed and demobilized forces. The commitments to DDR and its timetable in the Pretoria Agreement are extraordinarily unrealistic. (By way of

¹¹ This is a reference to the 7 September 2022 letter from Debretsion Gebremichael to the President of the UN

comparison, the DDR process in the 1990s, which had a comparable scale, took seven years, and there is no recent peace agreement in which DDR is put among the first steps to be implemented.) The FGE delegation will have known that these provisions were impossible to implement. Instead, they are a political statement intended to humiliate the Tigrayans. This appears to have been a priority for not only for the FGE but also, for Pres. Obasanjo, whose speech at the signing ceremony elevated the 'Systematic, coordinated, orderly and smooth disarmament' of TPLF combatants to the second point, after a cessation of hostilities.

62. The Nairobi Declaration does not detail how the process would work, other than specifying that there would be four 'disengagement zones' for Tigrayan and ENDF combatants, and the two parties would form a joint committee to draw up and implement plans. The four zones correspond to the four fronts of recent active combat. Security Council, in which he laid out the Tigrayan peace terms. The FGE responded furiously. For each one, the commanders will identify three locations for Tigrayans and three for ENDF forces.

63. The Nairobi Declaration states that the disarmament of Tigrayan heavy weapons will be done 'concurrently' with the withdrawal of foreign and non-ENDF armed elements from Tigray. Several questions, including the following, are to be resolved in the military-to-military talks. (1) When does this process begin and end? (2) What is the sequencing involved in 'concurrent' actions? (3) What are the security guarantees for Tigrayan combatants? (4) Does the disarmament of heavy weapons mean that they are handed to the ENDF? Or that they are decommissioned in the presence of third party monitors? Or that they are securely stored, with joint control over the future release?

64. **Foreign Forces.** The texts make no mention of Eritrea. The negotiating tactic used by the FGE was to insist that if Eritrea were to be mentioned, Sudan and Egypt would also be mentioned. Material support from Sudan and Egypt to the Tigrayans has been extremely small and in no way comparable to the strategic alliance between the FGE and Eritrea. Mention of Sudan and Egypt would have complicated the task of the Panel, which ruled that they would reduce the wording to 'foreign forces.' (It should be noted that in his 19 November article, Pres. Obasanjo wrote 'Some of the neighbours of Ethiopia such as Eritrea and Sudan had their part in the war directly and indirectly.'¹²

¹² Olusegun Obasanjo: How Ethiopia's peace plan will work,' Semafor, 19 November 2022.

This phrasing equalizes the direct and leading role played by Eritrea in combat and war crimes, with the marginal role of Sudan in support of the Tigrayans.)

65. They key provisions are:

- a. Pretoria, Article 3(2) prohibits 'collusion with any external force hostile to either party.'
- b. Pretoria, Article 8(2) obliges the ENDF to safeguard Tigray from foreign incursion.
- c. Nairobi, Article 2.1(d) specifies that disarmament of Tigrayan heavy weapons will be concurrent with the withdrawal of foreign and non-ENDF forces from the region.

(Additional observations are included in the section on Eritrea, below.)

66. **Protection of Civilians**¹³. Pretoria, Article 4 was inserted at the insistence of Dr. Phumzile. The provisions are strong but generic. Nairobi, Article 3 provides more details and places responsibility on federal and regional security organs. There is no mechanism for monitoring, verification and enforcement. All sides have perpetrated abuses and the UN Committee of Human Rights Experts has concluded that the ENDF has committed widespread and systematic abuses. Substantial human rights monitoring presence will be essential if this provision is to be meaningful.

67. There is no mention in the agreement of the rights and welfare of disabled war veterans, the release of prisoners of war and political detainees, and the reinstatement of Tigrayans purged from federal institutions. These are oversights which will need to be remedied in a future negotiation.

68. **Humanitarian Assistance.** The understanding of the Panel and the international community was that humanitarian aid would flow immediately after the Pretoria Agreement was signed. The FGE did not comply and instead continued to sequence humanitarian aid with the return of Federal authority. At the press conference announcing the Nairobi Declaration, Pres. Obasanjo was asked by a journalist when aid would flow, and said, 'In fact it should have been going yesterday... There will be, with immediate effect, unhindered humanitarian access.'¹⁴

¹³ See video of the signing of the agreement

¹⁴ U.S. Department of State, Briefing with Senior State Department Official on the Situation in Ethiopia, 15, November 2022.

However, the wording of the Nairobi Declaration obliges the parties to ‘facilitate’ unhindered access, which does not explicitly contradict Redwan’s position that Federal authorities need to be in place to do that facilitation. Nothing has happened in the subsequent two weeks that indicates that the FGE has changed its position, and humanitarian agencies report continuing difficulties in obtaining authorization to operate. The UN and major humanitarian donors, having been excluded from both sets of negotiations, were not able to explain their challenges nor guarantee that they could fulfil their part of the deal.

69. **Media and Communications.** Pretoria, Article 13 commits the two parties only to making joint statements and Article 3(3) commits them to ending hostile propaganda. This is repeated in Nairobi, Article 6, on responsible use of the media. This might be interpreted to authorize government control over all media. There is no provision for international media access to Tigray.

70. **Accountability.** Reference to this was inserted at the insistence of the Panel in Pretoria, Article 10(3). The accountability mechanism falls under the FGE in line with

13 See the video of this segment of the press briefing. 14

African Union Transitional Justice Framework. This cannot halt international processes but it is likely to serve as the basis for a consensus to minimize further investigations. There is no mention of providing access for international human rights investigators or any other mechanism for investigating atrocities.

71. Articles 269-283 of the Ethiopian Criminal Code of 2004, ‘crimes in violation of international law’, are relevant here. These Articles cover both ‘fundamental crimes’ and ‘crimes against humanitarian organizations.’ Article 270, ‘war crimes against the civilian population’ includes sub-articles (b), (i) and (k) which specifically prohibit starvation crimes. A ‘law enforcement’ operation should enforce these articles, but it seems unlikely that the FGE will do so in a consistent, rigorous and fair manner.

72. **Monitoring, Verification and Compliance Mechanism.** This mechanism is weak. It does not provide for transparent reporting. The Panel itself is responsible for establishing a monitoring and verification team and overseeing it. The Panel reports to the AU Commission Chairperson and not to the AU Peace and Security Council, let alone the UN Security Council. The mention of satellite monitoring opens the door to a role for those countries that possess the satellite capacity, i.e. the U.S.

73. Formally, the Pretoria Agreement is the peace agreement while the Nairobi Declaration is solely concerned with implementation modalities. In reality, the Nairobi

document, while it contains implementation modalities, is correctly seen as an improvement of the Pretoria Agreement. This sets a precedent for further improving the agreement so that the contradictions are removed, the ambiguities cleared, and gaps filled. It is for this reason that the mediators and the parties should plan on a 'Nairobi II' meeting in order to flesh out key security and political details. In such a scenario, Nairobi II would need to include the support of technical expertise drawing from the UN Mediation Support Unit and other international partners. A priority agenda for Nairobi II would be the working on the whole set of security guarantees both under each set of activity and as a complete set of measures for such an assurance.

The Primacy of Politics?

74. Africa's agenda of 'silencing the guns' was initiated with the 50th Anniversary Solemn Declaration of the African Union (2013)¹⁵. In section E, the AU and its Member States undertook to 'make peace a reality for all our people and to rid the continent of wars, civil conflicts, human rights violations, humanitarian disasters and violent conflicts, and to prevent genocide.' The declaration continued, committing the continent to: Address the root causes of conflicts including economic and social disparities; put an end to impunity by strengthening national and continental judicial institutions, and ensure accountability in line with our collective responsibility to the principle of non-indifference.

The commitments on peace and security were embedded within commitments on African identity and the African Renaissance, democratic governance, and others. Most importantly, the commitment to 'silencing the guns' was intended to allow for civil voices to speak, in pursuit of political solutions consistent with inclusion, democracy and human rights. The imperative of foregrounding this kind of political solution to violent conflicts was emphasized in the report of the UN's Independent High-level Panel on Peace Operations (HIPPO, 2015)¹⁶ and the 'African Politics, African Peace' report to the AU Commission (2016)¹⁷, both of which emphasized the 'primacy of the political'.

75. The Pretoria and Nairobi talks did not respect this principle, save in the backhanded manner that they recognized the power of coercion and secret pacts in

¹⁵ 15 African Union, 50th Anniversary Solemn Declaration, 2013.

¹⁶ the report of the UN's Independent High-level Panel on Peace Operations (HIPPO, 2015)

¹⁷ World Peace Foundation, 'African Politics, African Peace: Report Submitted to the African Union,' 2016.

achieving political outcomes. The Tigrayans sacrificed politics for humanitarian need. The FGE achieved key political goals, including the adoption of its preferred narrative about the war and an interpretation of its role as the upholder of the constitution.

76. There were no substantive political negotiations in Pretoria or Nairobi, instead there was bargaining over how the most contentious issues in dispute would be contained in a text, without the differences having been fully debated, let alone resolved. In other peace processes, there is a political pact between the principals, or between them and a third-party hegemon or guarantor, upon which a text is built. In this case, the agreement arose from different needs of the two parties, without a foundational political pact or even a shared understanding of their predicament.

77. Hence the Pretoria Agreement is an edifice that still needs a political foundation. One implication of this is that until there is a direct pact between PM Abiy and the Tigrayan leadership, existing pacts remain in force. In particular, this means the 2018 pact between Abiy and Isaias may still be in force.

16 United Nations, 'Uniting our Strengths for Peace: Politics, Partnerships and People,' Report of the

Independent High-Level Panel on Peace Operations, June 2015.

78. The Pretoria Agreement was possible because the Tigrayans had a reading of the situation on the ground that demanded that they concede major political demands. The FGE accepted this and took advantage of it. However, the two sides do not appear to share their assessment of what these material facts were. The Tigrayans attribute their decision to the humanitarian crisis. The FGE attributes it to the battlefield. If the two cannot arrive at a shared understanding, it bodes ill for the sustainability of the agreement.

79. For PM Abiy, the agreement is an important part of his political calculus but not the only one. There are many other vocal and active political forces in Ethiopia making claims on him. PM Abiy will be relieved that he does not need to contend with the challenge from Tigray, for now. However, given his transactional political style, the working assumption must be that his commitment to the Pretoria Agreement is tactical and subject to revision.

80. The FGE is facing a financial crunch and will be seeking to leverage the agreement to unlock IMF and other multilateral funds and to return to the AGOA fold.

The FGE will be seeking major funds for the reconstruction of Tigray and adjoining war affected areas. An overall estimate of US\$20 billion has been mentioned. Donors and IFIs will face various dilemmas as they consider releasing funds. First, there are the usual concerns over whether funds are going to be spent as promised or whether they will be fungible and end up subsidizing a bloated military budget. Second, they will be seeking assurances that the war is truly over, and that the FGE is not merely seeking a breathing space for a new war in Oromia. Third is the question of whether donors will be ready to rebuild infrastructure that was deliberately destroyed or looted by the FGE or Eritrea. They may legitimately ask whether they should rebuild a hospital or water system when equipment that they purchased a few years ago has been vandalized by government forces or is now in Eritrea as part of that country's spoils of war. On the other hand, donors are desperate to avert the escalation of the national crisis, and the IMF and World Bank are under institutional pressure to allocate and spend funds, so it is likely that they will release money first and ask questions later.

81. In Pretoria, the FGE proposed that the Tigrayans join the established National Dialogue. They refused, saying that they had not been part of its inception. The fate of the National Dialogue and political dialogue between the FGE (Prosperity Party) and Tigray (TPLF) are now to be determined. Discussions in Pretoria and Nairobi focused on a two-stage process, first between the FGE/PP and Tigray/TPLF, and then bringing Tigray into a national process. These matters need to be decided in another round of dialogue (perhaps, Nairobi II). Should these discussions fail, it leaves Tigray vulnerable to decisions made without Tigrayan participation, while depriving other Ethiopians of Tigrayan inputs. The marginalization of Tigray may consign accountability for human rights violations to a footnote. However, the agreement does not limit Tigrayans' political engagement to dealing exclusively with the FGE/PP. Both the Tigrayans and diverse Ethiopian constituencies have an opportunity to rebuild relationships with one another, which they should not neglect.

82. The Amhara constituencies are restive, worried that they have been sold out by territorial and constitutional concessions. Amhara civilians and combatants also suffered grievously in the war. Some Amhara leaders within the Prosperity Party are unhappy that they were not directly represented in the talks, and their interests were not taken into account. The provision for the removal of 'non-ENDF' forces from Tigray clearly refers to Amhara special forces and militia. Those forces may be worried that their links

with Eritrea will be severed. Amhara groups are also engaged in other conflicts, including making territorial claims on Oromo and Beni Shangul, while Amhara communities outside Amhara region are facing discrimination and violence. PM Abiy will need to insist that these disputes are settled solely by constitutional and non-violent means. Amhara region is also imbricated in Ethiopia's border dispute with Sudan over the al-Fashaga area. These will be tests for the Prime Minister's leadership.

83. The war has highlighted divisions among the Oromo political elite, and the peace agreement may further deepen those divides. Perhaps the most urgent worry is that ENDF forces no longer required for operations in Tigray will be relocated to mount military operations against the Oromo Liberation Army. There are already signs that ENDF divisions and drones are intensifying their counterinsurgency in Oromia. The idea that PM Abiy made peace in Tigray to go to war in Oromia would not be well received. On the other hand, the evident tension between PM Abiy and Amhara leaders, along with the Pretoria Agreement's commitment to respecting the Federal Constitution, provides an opening for a new political alignment favourable to peace.

84. For the Tigrayans, the agreement is at once existential and deeply divisive. The TPLF failed to do the kind of political work necessary to establish a consensus for their decision. This is rooted in their refusal to open up political space in Tigray after reoccupying Mekelle in June 2021. The TPLF will probably suffer irreversible political damage. The military leadership in Tigray will likely hold together but remain deeply sceptical about the prospects for peace. For the general public, the litmus test is humanitarian relief, protection against human rights abuses, and return to their homes. If this peace agreement were to collapse, it is very likely that the current Tigrayan leadership—which has shown itself prepared to make strategic compromises for peace—will be replaced by a more radical leadership less prepared to make political concessions of this nature.

The Eritrea Issue

85. Eritrea is not mentioned by name in either document and Eritrea's goals and interests are not addressed. The AU has been a full partner in an astonishing conspiracy of silence to deny Eritrea's role in planning and instigating the war in 2020, dispatching its forces into Tigray, perpetrating widespread and systematic crimes against the civilian population, embedding itself in the Ethiopian national security, political and economic

structure at many levels, and acting as a persistent spoiler in efforts to achieve peace and humanitarian access. Tigrayans in particular and Ethiopians in general, are owed explanation for this deafening silence.

86. Many observers and diplomats believe that the root cause of the war is the 2018 Asmara Pact between Pres. Isaias and PM Abiy (the contents of which have never been made public). Even were this not to be the case (as contended by PM Abiy, Chairperson Faki and Pres. Obasanjo, who blame the TPLF for the war), this pact lies at the heart of the subsequent conduct of the war by the joint forces of EDF, ENDF and Amhara forces. The immediate issue is the withdrawal of EDF troops from Tigray. The fundamental issue is whether the Pretoria Agreement overrides or nullifies the 2018 Asmara Pact, or whether it is a product of that pact. While the Asmara Pact remains in force, Ethiopia will never be at peace.

87. Eritrea has remained silent. However, a tweet by Eritrea's Minister of Information, Yemane Gebremeskel on 7 November indicates that the Asmara Pact is still in force:

[The unit of scraps/garbage]¹⁸ is in total disarray [sic]. Time to close shop! Its most rabid elements are venting their frustration on Eritrea. HoA [Horn of Africa] cherishes permanent/ irreversible peace; & that is on the horizon. This is also embedded in historic 2018 Eritrea-Ethiopia Peace Agreement.¹⁹

On the other hand, there are clear signs of Eritrean discontent with the Pretoria-Nairobi Agreement, and efforts to undermine it.

88. The FGE delegation was at pains to keep Eritrea unmentioned. The AUC and Pres. Obasanjo have complied with the FGE in this regard, to the extent of publicly equalizing the role of Eritrea with that of Sudan and entirely overlooking Eritrea's role in starting the war. Nonetheless, the Panel's understanding is that Eritrea must withdraw. It is not clear whether this means withdraw from Tigray alone, or from other regions too, and whether intelligence officers and military advisors will also withdraw. It does not specify whether there will be an end to security cooperation between Ethiopia and Eritrea, only that there can be no collusion with a force hostile to the other party. The

¹⁸ Translation from Tigrinya: አሃዳ. “እፍሊ ሓነጨ ምንጭ”

¹⁹ Yemane Gebremeskel tweet, 7 November

FGE might well argue that EDF withdrawal from Tigrayan territory is sufficient to comply with the agreement and signify an end to Eritrea's status as a hostile party. On past record, the AUC and High Representative may accept such assurances at face value, and PM Abiy continues to insist that he deal with Pres. Isaias personally. The PSC Communiqué of 9 November 'Strongly urges all external actors to fully respect the sovereignty, political independence, national unity and territorial integrity' of Ethiopia.²⁰ Insofar as Eritrean forces are in Ethiopia at the invitation of the FGE, they are not in violation of this provision.

89. In the meantime, insofar as the ENDF is still permitting the logistics of the EDF inside Tigray, while the EDF continues to commit abuses against the civilian population, it is colluding with a hostile force and is in violation of the agreement. The coming few weeks will determine whether the ENDF is fulfilling its promise to ensure the withdrawal of the EDF.

90. Isaias has several options and will make his choice without any publicity in accordance with his assessment of his interests. He will be considering putting EDF troops in ENDF, Afar or Amhara uniforms, continuing or even expanding his ties to Amhara and Afar militia, and using his leverage through his officers' presence in Addis Ababa. He has Tigrayan dissidents whom he will likely arm and position in Tigray. There are ENDF troops and equipment in Eritrea that he can use as leverage. It is unlikely that he will let ENDF divisions depart without exacting a price. He has kept Somali National Army forces in Eritrea against the wishes of the Somali president.

91. The Pretoria Agreement states that the ENDF will be responsible for border monitoring. The Tigrayans will be justifiably concerned that after their disarmament, the EDF will remain intact and stationed on the border.

92. Up to now, PM Abiy has maintained his relationship with Pres. Isaias despite international efforts to wean him away. The tools have been quiet diplomacy and encouragement. The Panel is not in a position to offer anything else. Others with direct leverage will need to act if the Pretoria Agreement is definitively to supersede the 2018 Asmara Pact. The Tigrayan military may be one such source of leverage. The U.S. may

²⁰ African Union Peace and Security Community, Communiqué, 1120th meeting, 9 November 2022, PSC/PR/COMM.1120.2 (2022).

calculate that what is required is to make it more painful for PM Abiy to remain in that alliance, than to break it. The U.S. has numerous tools including sanctions to put that pressure on Abiy.

93. The OAU was the mediator of the 2000 Algiers Agreement that brought the 1998-2000 war to an end, and the AU remains the custodian of that agreement. Among other things, this agreement covers the delineation and demarcation of the boundary and the rationale for a buffer zone along the border to protect each side. The AU is obliged to explain the fate of the Algiers Agreement and to examine appropriate measures, deriving from that agreement, to protect the border.

94. In recent months, ENDF military commanders have followed orders to cooperate with Eritrea and place themselves under Eritrean command. Many will have had misgivings about this. Their calculations may shift as the joint committee begins to operate and they are required to cooperate with TDF commanders who, despite their subordinate position under the agreement, possess the forces and the local intelligence to determine the outcome of security cooperation.

An 'African Solution'?

95. In all aspects, the Pretoria Agreement conforms neither with international standards nor with the norms, principles and institutions of the AU, as established during its first decade (see above). The slogan of 'silencing the guns' has been taken to include silencing democratic politics and human rights as well. Multilateral cooperation has been obscured by invocation of the slogan 'African solutions to African problems.'²¹ These are deliberate actions of the AU Commission which will have far-reaching consequences for peace and security throughout the continent. Key African norms and practices, such as non-indifference to grave circumstances and the duty of a conflict affected state to speedily accept good-faith mediation efforts, have been set aside in favour of a return to an invocation of the sovereign privileges of states that would be familiar to belligerents in the 1970s. Institutions such as the PSC have been side-lined in favour of an individual appointment of a 'High Representative' by the AU Commission Chairperson, who has not been obliged to report to the PSC in a regular, comprehensive or transparent manner. One of only two concessions to shift from a personalized approach to a more institutionalized one was the last-minute nomination of two

²¹ See George Ayittey, 'African Solutions for African Problems: The real meaning,' Pan African Visions, 2014

additional mediators to 'support' the High Representative, forming a Panel. The second was the PSC communiqué of 9 November—the first PSC communiqué since the war began—which requested the AUC to 'provide regular briefings on the status of the implementation of the agreement.'²² Note that a 'briefing' is merely an update while a 'report' would be a mandated obligation.

96. The agreement is technically sub-standard. The UN and U.S. experts who were present in Pretoria but who were either totally excluded from the process, or who had very minor input that was then ruled out of order, will not be impressed. The AU's own security experts may be embarrassed. Diplomats and military experts assigned to the file will have difficulty in persuading their governments to take the agreement seriously,

97. For the AU, describing this as an 'African solution' is a gamble. The AU has twenty years of experience of leading conflict resolution initiatives, always in partnership with the UN and international actors, and sharing both the credit for successes and the blame for shortcomings. This process has fallen short of their standards and practices. Should it fail, they alone will be held responsible.

98. The governments of the region have cause for concern. In the early days of the conflict, the Sudanese Prime Minister Abdalla Hamdok tried to raise the conflict at an IGAD Summit. His efforts were blocked by the AU Commission Chairperson who took the irregular step of taking the floor to define the conflict as a legitimate law enforcement operation.

99. The Pretoria process was salvaged by the initiative of Pres. Kenyatta, who thereby assumed the mantle of being the focal point for regional peace and security in the IGAD region, and the responsible actor in terms of ensuring the best-possible implementation of the agreement. Kenyan leadership will be essential to the tasks of advising the further elaboration of the security elements of the deal (including convening a 'Nairobi II' negotiation), monitoring and verifying the staged implementation of the steps agreed, reporting to the AU PSC and (if possible) the UN Security Council and enlisting technical and political support for the implementation.

100. The neighbouring states will also be concerned at the unfinished conflict

²² African Union Peace and Security Community, Communiqué, 1120th meeting, 9 November 2022, PSC/PR/COMM.1120.2 (2022), para. 12.

resolution agenda elsewhere in Ethiopia. The most urgent conflict demanding peacemakers' attention is the escalating conflict between the FGE and the Oromo Liberation Army and the associated inter-communal conflict between Amhara and Oromo. There are numerous other conflicts in Ethiopia that demand attention. It would be preferable for these to be addressed in a single national process rather than on a one-by-one basis. This is a huge challenge that cannot be postponed.

Not a Multilateral Agreement

101. The AU is a multilateral organization but the process it sponsored is anything but multilateral. The African peace and security architecture is a product of a complex, multi-layered multilateralism constructed through decades of collaborative work. The AU's programme of 'silencing the guns' involved multiple African stakeholders²³ in partnership with the United Nations²⁴ and other multilateral institutions, notably the European Union.

102. All the investment in these multilateral partnerships appeared to count for nothing in Pretoria. The AU's partners were treated as irritants and rivals rather than principled and strategic partners. The U.S. and EU were in a weak position to push back. Having established strategic partnership with both the AU and Ethiopia over the decades, Washington DC and European capitals had themselves succumbed to lazy thinking about the Horn of Africa, taking the hard-won achievements of regional peace and security for granted.²⁵

103. As a result of their marginalization, the international partners, whose political and financial support will be essential to the success of the agreement, may be less swift and enthusiastic in assisting with implementation and will be able to distance themselves if things do not go well. Senior FGE officials and Pres. Obasanjo have indicated that the bill for reconstruction, including repairing the damage done by deliberate looting and destruction of infrastructure, will be upwards of US\$20 billion. We may safely assume that the FGE will be asking western donors to foot this bill. It is

²³ African Union Master Roadmap of Practical Steps to Silence the Guns in Africa by Year 2020 (Lusaka Master Roadmap 2016), AU Assembly/AU/6/(XXVIII), Annex.

²⁴ United Nations Security Council Resolution 2457 (2019)

²⁵ Harry Verhoeven & Michael Woldemariam, 'Who lost Ethiopia? The unmaking of an African anchor state and U.S. foreign policy, Contemporary Security Policy, June 2022.

unlikely that PM Abiy's favourite private and Gulf State patrons will contribute to the reconstruction budgets of the Tigray government or even the FGE.

104. The Pretoria process and agreement sends a clear message to other belligerents around the world, namely that starvation is a weapon of war that can be used with impunity. For this crime to succeed, it needs patience, resolve and control over the media, communications and humanitarian information systems. International humanitarian agencies have, for the most part, shown themselves willing to remain in collusive silence while starvation is perpetrated in a widespread, systematic and sustained manner. Regrettably, the case of Tigray shows that political and institutional expediency at the UN and by the major international donors will overrule humanitarian principle.

105. The Tigray conflict has highlighted the role of middle powers from adjacent regions, namely the Gulf States and Turkey. Their political, financial and military support shaped the war, dragging the Horn of Africa into the security perimeter of the Middle East. The politics of the Red Sea Arena will continue to shape outcomes in the Horn of Africa. An international mechanism for addressing the interests and practices of these non-African powers, while reviving the norms, principles and institutions of the AU's peace and security architecture, remains a priority.

Prospects for Peace

106. Despite all the shortcomings and missed opportunities, the Pretoria-Nairobi process marks an opening for peace. The Agreement represents a shift away from the principled and multi-layered multilateralism embodied in the formative years of the African renaissance, back to transactional politicking. The Tigrayans fought the war in the hope that African and international norms and institutions would prevail; they signed a peace that accepts that they must play politics like any others. The question facing Tigrayans, Ethiopians and Africans, is how this peace can be made to work.

107. The Tigrayan people have suffered widespread and systematic violations of fundamental rights. Those responsible for perpetrating the crimes are still in a position to threaten them. The process of military disengagement followed by disarmament is highly sensitive. There is a real danger that this agreement could be no more than a temporary truce, as was the case with the March humanitarian ceasefire. Further negotiations are needed focused on security guarantees. Such a 'Nairobi II' negotiation

would require a detailed specification of the steps to be taken by each party and the international guarantees to ensure that these actions are undertaken correctly. The AU can only undertake this with the technical and political engagement of international partners, especially the UN.

108. The Pretoria Agreement and Nairobi Declaration rest on a political gamble by the Tigrayan leadership, the wisdom and restraint of PM Abiy and other senior FGE figures, and their collective readiness and capacity to end the 2018 pact between Asmara and Addis Ababa. It also depends on the alacrity with which international donors provide essential humanitarian aid. There are many ways in which the agreement could fail. But it is likely that if it were to fail, the path back to peace would be extremely long and hard, in part because the Tigrayan leadership prepared to make compromises for peace would be removed, or no longer able to make such concessions.

109. This Agreement downgrades accountability for international crimes. Under the principled approach to peace-making, the transitional justice toolkit is central. Any attempt to diminish accountability is a recipe for festering grievances and entrenching a culture of impunity, not only in Ethiopia and throughout the continent. The total impunity extended to Eritrea is particularly concerning. In the absence of a credible exercise in transitional justice, Tigrayans will need to swallow the humiliation of seeing their story of suffering and resistance told by others, who are already writing the narrative.

110. The Agreement could fail because the credibility and commitment of the Tigrayan leadership collapses because the promise of protection of civilians and humanitarian aid is not fulfilled, or because the non-Tigrayan forces occupying parts of Tigray enjoy a sense of impunity and violate the spirit or letter of the deal. It could fail because the FGE is divided or tactical in its approach, seeking to win every small advantage, at the expense of the bigger picture. It could fail because the FGE commits itself to an intensified war in Oromia. It will certainly fail if the 2018 Asmara Pact between Pres. Isaias and PM Abiy remains in force. No-one should have any illusion about Pres. Isaias, who is solely interested in power. If the FGE backtracks slightly and there is no decisive end to Eritrean influence, Eritrea has many tools with which it could sabotage the prospects for peace.

111. If any or all of these scenarios were to unfold, even in part, it would also be

because the international community failed to invest sufficient energy, analysis and political commitment to making the peace agreement work. When peace agreements are signed, there is a common tendency for international partners to breathe a sigh of relief and turn their attention elsewhere. This is especially the case when the conflict has been an unwelcome distraction, has not generated media coverage or public outrage, and when the international community has not been vested in finding a solution as a full partner. To regard the Pretoria Agreement and the Nairobi Declaration as a problem solved, rather than a step towards resolving the problem, would be a mistake.

112. The people of Tigray have withstood the assault of two massive national armies, both of them armed with the most sophisticated modern armaments, both of them with the war aim of inflicting irreparable harm on the civilian population, using among hunger among other weapons. The Tigrayans resisted these overwhelming odds almost entirely alone. After two years, without an end in sight, and without tangible humanitarian assistance to save the lives of civilians, their leaders sued for peace. Now the people of Tigray face an uncertain future alongside those who have targeted them, with only the weakest guarantees of protection or accountability. If long-standing global commitments to peace and human rights are to be meaningful, having been let down during their hour of deepest need, Tigrayans are entitled to international support in their efforts to secure peace.

113. Ethiopians from all corners of the country have suffered grievously in this war and because of the failure to manage the challenges of governing diversity. Peace in Ethiopia is indivisible. If the Pretoria Agreement is to be meaningful, it must be followed by peace in Oromia and everywhere else in Ethiopia, including but not limited to Amhara, Afar, and Beni Shangul.

114. On the face of it, the Pretoria Agreement is a triumph for the transactional politics of brute force and money over the progressive political tradition in Ethiopia and across Africa. But an end to war and famine along with a reshuffle of the political deck should be an opening for civic politics. Having looked into the abyss of collective catastrophe and decided to pull back, Tigrayan leaders and their counterparts in the FGE have an opportunity to create the conditions in which all Ethiopians can come together to create a new peaceful political order.

115. Bringing this war to an end is also an opening for the peoples of the Horn of Africa, and Africa more widely, to examine their continental institution and to rejuvenate the hard-won norms, principles and institutions of Africa's architecture for peace, security, democracy and justice. The AU, IGAD and UN need to reflect candidly on how this war has damaged them and hold themselves accountable.

Annexes

- A. African Union Commission, invitation to the peace talks, 1 October.
- B. Federal Government of Ethiopia, initial proposal for Cessation of Hostilities, 25 October.
- C. Federal Government of Ethiopia, revised proposal for Cessation of Hostilities, 29 October.
- D. Tigray delegation, draft Implementation Matrix, 29 October.
- E. Pretoria Agreement, 2 November.
- F. Comparison of Cessation of Hostilities documents.
- G. Nairobi Dec