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THE MATERIAL SCOPE OF EMERGENCY MEASURES IN RESPONSE TO COVID-19: THE CASE OF ETHIOPIA

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Abstract

Many states have introduced emergency measures in the wake of the coronavirus pandemic. Countries such as Ethiopia have gone to the extent of declaring a state of emergency through legislation. It is evident that a state is in a position to declare a state of emergency in situations where the life of the nation is in jeopardy. Before all things, this triggers the question whether or not the declaration of state of emergency in response to COVID-19 is indeed necessary. If the answer to this question is in the affirmative, it begs another question whether emergency measures adopted in the wake of the pandemic are proportional in terms of their geographical, temporal and material scope. Conversely, retraction of rights and freedoms must be strictly required by the crisis. Emergency measures would be disproportionate if they are taken to destroy rights altogether or they impose limitations more excessive than warranted. It is also evident that the mere declaration of state of emergency does not confer blanket approval of all the emergency measures which are adopted in the wake of the pandemic. Therefore, the material scope of the proportionality of emergency measures introduced remains to be a cogent matter of inquiry. The inquiry into the material scope of emergency powers is all the more important since such measures are likely to jeopardise the exercise of civil liberties. With these objectives in view, the book chapter investigates the emergency measures taken by the Ethiopian government ostensibly in response to COVID-19 to identify lessons that can be learnt from this case study.

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1 Introduction

This article assesses the constitutionality of the Ethiopian federal government's emergency powers following the COVID-19 pandemic's onset. The article focuses on the major legislative and regulatory measures taken in response to the COVID-19 pandemic. It tests the measures taken against the backdrop of international and constitutional standards and assesses whether those measures comply with human rights and fundamental freedoms. So far, in Ethiopia the key pieces of legislation enacted in response to the pandemic include the state of emergency proclamation (Proclamation 3 of 2020), its implementing regulation (Council of Ministers Regulation 466 of 2020), and the Public Health Proclamation (Proclamation 200 of 2000). Moreover, the implementing regulation mandates the Ministerial Committee, the body established by the Council of Ministers to oversee efforts to control the spread of COVID-19, to issue directives for implementing the regulation and the state of emergency proclamation. Accordingly, the Ministerial Committee adopted a raft of Directives to control the spread of COVID-19. These include the directive relating to the restrictions on the transport sector (Directive 1), directive for the implementation of the implementing regulation (Directive 2), directive relating to restrictions on commercial and economic activities (Directive 3), directive for the amendment of directives one and two (Directive 4), directive relating to restrictions in the construction sector (Directive 5) and directive relating to restrictions on the transport of remains of those suspected of dying due to COVID-19 and restrictions on funeral and mourning rituals (Directive 6).

This contribution takes stock of the human rights issues that arise from the Ethiopian government's response to COVID-19 and the extent to which the government respected its human rights obligations while implementing its response to the pandemic.

2 Constitutional framework

On 21 August 1995, Ethiopia adopted the federal system when the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) came into force. The country adopted the federal system with the intention to accommodate the country's vast ethnic and religious diversity that boasts more than 80 languages and 200 dialects.¹ The Constitution of the Federal Democratic Republic of Ethiopia declares that the federation is

1 RL Watts *Comparing federal systems* 3 ed (2008) 48.

comprised of the Federal Government and the State Members.² Moreover, the Constitution states that the Federal Government and the States shall have legislative, executive, and judicial powers.³

The Federal Democratic Republic is made up of 11 regional states at the time of writing. These units include the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia, the State of Somalia, the State of Benishangul/Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of the Gambela Peoples, the State of Sidama, the State of Harari People and the State of South West.⁴ There are various ethnic, linguistic and religious majorities in the 11 states.⁵ This delimitation is based upon the settlement patterns, language, identity, and consent of the people concerned.⁶ Addis Ababa and Dire Dawa, the two charter cities, form part of the Federation and are accountable to the federal government.⁷ The Constitution recognises the right of Nations, Nationalities, and Peoples within the aforementioned States to establish their own states.⁸

There are tremendous variations within the Ethiopian Federation. Oromia is the largest constituent unit and Harari is the smallest. Thirty five point two (35.2) per cent of the Federation's total population lives in Oromia, while 0.3 per cent lives in Harar.⁹ Twenty six (26) per cent of the population lives in Amhara regional state.¹⁰

The Bill of Rights in the FDRE Constitution is divided into two parts. The first part enshrines the human rights and fundamental freedoms that apply to all individuals within the country's territorial jurisdiction. The second part affirms democratic rights, including political rights that citizens can enjoy. The Constitution enshrines civil and political rights, economic, social and cultural rights, and solidarity or people's rights. In addition to the federal Constitution, most of the 11-member States have their own 'Revised Constitution' that contains a Bill of Rights. Several of the rights recognised in the Regional States' Constitutions of the

2 Article 50(1) of the Constitution of Federal Democratic Republic of Ethiopia (FDRE), 1995.

3 Article 50(2) of the Constitution of the FDRE.

4 Article 47(1) of the Constitution of the FDRE.

5 Watts (n 1) 76.

6 Article 46(2) of the Constitution of the FDRE.

7 Article 49 of the Constitution of the FDRE.

8 Article 47(2) of the Constitution of the FDRE.

9 Watts (n 1) 73.

10 As above.

Regional States closely resemble the counterpart provisions in the FDRE Constitution. The States' Bills of Rights serve as the basis for protecting individual and collective rights against the state governments.

Ethiopia is a State Party to seven of the nine core international human rights treaties and other international instruments.¹¹ These include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). The country is also a party to the African Charter on Human and Peoples' Rights (Banjul Charter) (ratified in 1998), the African Charter on the Rights and Welfare of the Child (ratified in 2002), and The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ratified in 2018). The international human rights obligations contained in these treaties are most relevant to Ethiopia's response to the COVID-19 pandemic.

The question of whether Ethiopia is a monist or dualist country is contentious. The FDRE Constitution provides that all international agreements Ethiopia ratified are an integral part of the law of the land.¹² Nevertheless, the Federal Negarit Gazeta Establishment Proclamation provides that 'all laws of the Federal government shall be published in the Federal Negarit Gazeta'.¹³ The same Proclamation goes on to state that 'all Federal or Regional legislative, executive and judicial organs, as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta'.¹⁴ As a result, some point to these provisions as evidence that Ethiopia is a dualist country since international agreements have to be published to have legal effect in Ethiopia.¹⁵ Conversely, others argue that the 'publication of an act of parliament is

11 Article 10 of the UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, UNTS vol 999, p 171 (ICCPR).

12 Article 9(4) of the Constitution of the FDRE.

13 Article 2(2) of the Federal Negarit Gazeta Establishment Proclamation, 1995.

14 Article 2(3) of the Federal Negarit Gazeta Establishment Proclamation.

15 B Lisanework 'An appraisal of the enforcement of international and regional human rights obligations in Ethiopia' Master of Arts thesis, University of Addis Ababa, 2011, at 37.

not a necessary precondition for its entry into force'.¹⁶ They invoke the constitutional provision which states that a federal law the House of People's Representatives passes shall enter into force if the President does not sign the law within 15 days.¹⁷ Thus, proponents of monism contend that the fact that laws can enter into force without publication indicates that there is no incorporation requirement for ratified international agreements, therefore even without publication these agreements have legal effect on domestic order.¹⁸ Moreover, the FDRE Constitution requires judicial and other authorities to interpret the provisions of national legislation in line with the International Bill of Human Rights.¹⁹ Therefore, international law applies in Ethiopia as treaty law and an aid in construing domestic law.

2.1 Declaration of state of emergency in response to the COVID-19 pandemic

The FDRE Constitution vests the federal government with the power to declare and lift a national state of emergency, according to article 93(1)(a) which provides as follows:

The Council of Ministers of the Federal Government shall have the power to decree a state of emergency, should an external invasion, a breakdown of law and order which endangers the Constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.

The power to declare a state of emergency is divided between the executive and the legislative branches. The legislature must approve the state of emergency declaration that the Council of Ministers adopts. The aforementioned constitutional provision extends legislative power to the Council of Ministers on condition that the declaration is submitted to the House of Peoples' Representatives for approval or disapproval. If the House is in session, a state of emergency declared in line with article 93(1) of the FDRE Constitution must be submitted for the House of Peoples' Representatives within 48 hours of the decree.²⁰ The state of emergency will be repealed immediately if it is not approved by a two-thirds majority

16 G Gebregiorgis 'The incorporation and status of international human rights under the Federal Democratic Republic of Ethiopia Constitution' (2009) 1 *Ethiopian Human Rights Law Series* 94.

17 Article 57 of the Constitution of the FDRE.

18 Gebregiorgis (n 16)

19 Article 13(2) of the Constitution of the FDRE.

20 Article 93(2)(a) of the Constitution of the FDRE.

of all the representatives in the House.²¹ If the Council of Ministers enacts a State of emergency decree while the House of Peoples' Representative is not in session, the latter must submit the decree for approval within 15 days of its adoption.²²

As discussed above, the FDRE Constitution outlines the different types of emergencies which warrant declaring a state of emergency. These include external invasion, a breakdown of law and order, a natural disaster, or an epidemic.

The FDRE Constitution provides a six-month time limit for emergency rule. Once approved by the House of Peoples' Representatives, the state of emergency may remain in force for six months.²³ A two-thirds majority of members of the House of Peoples' Representatives must declare the state of emergency.²⁴ However, the period is normally renewable. The House may renew the state of emergency every four months, by a two-thirds majority vote.²⁵

The Declaration of a state of emergency vests the Council of Ministers with extraordinary powers to protect the country's peace and sovereignty, and to maintain public security, law, and order.²⁶ In particular, the FDRE Constitution provides that:

The Council of Ministers shall have the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of State of emergency.²⁷

Even if the FDRE Constitution grants the Council of Ministers extraordinary powers including suspension of the exercise of certain rights, it does not allow retraction from the five non-derogable rights including nomenclature of the state, equality, freedom from slavery, self-determination and the right not to be subjected to inhuman and degrading treatment.²⁸ Paradoxically, the FDRE Constitution does not include some of the key and fundamental rights which are recognised as non-

21 As above.

22 Article 93(2)(b) of the Constitution of the FDRE.

23 Article 93(3) of the Constitution of the FDRE.

24 Article 93(2)(a) of the Constitution of the FDRE.

25 Article 93(3) of the Constitution of the FDRE.

26 Article 93(4)(a) of the Constitution of the FDRE.

27 Article 93(4)(b) of the Constitution of the FDRE.

28 Article 93(4)(c) of the Constitution of the FDRE.

derogable under the ICCPR.²⁹ These include including the right to life, prohibition of torture, freedom of religion, thought and conscience, non-imprisonment for contractual obligation, non-retroactivity of criminal law and recognition as a person before the law.³⁰

Upon declaring a state of emergency, the House of Peoples' Representatives is required to establish a State of Emergency Inquiry Board.³¹ The State of Emergency Inquiry Board the power to publicise, within one month, the names of all individuals arrested because of the state of emergency and the reasons for their arrest. The State of Emergency Inquiry Board also has the power to inspect and ensure that no inhumane measures were taken during the state of emergency, recommend corrective measures to the Prime Minister or the Council of Ministers if it finds evidence of inhumane treatment, ensure perpetrators of inhumane acts are prosecuted and submit its views to the House of Peoples' Representatives on a request to extend the state of emergency.

3 Declaration of state of emergency by national and regional states in Ethiopia

A regional state is also given the power to declare a state of emergency within that particular region only under article 93(1)(b):

State executives can decree a State-Wide state of emergency should a natural disaster or an epidemic occur. Particulars shall be determined in State Constitutions to be promulgated in conformity with this Constitution.³²

This provision shows that declaring a state of emergency is a concurrent power shared between the federal and regional states. In Ethiopia, all the regional states' constitutions allow derogations in cases of state of emergencies.³³ As opposed to the federal government which can declare a state of emergency when a variety of emergencies occur, regional states can only declare a state of emergency on the occurrence of a natural disaster

29 Article 4(2) of the ICCPR.

30 As above.

31 Article 93(5) of the Constitution of the FDRE.

32 Article 93(1)(b) of the Constitution of the FDRE.

33 Article 114 of the Constitution of Amhara National Regional State; art 108 of the Constitution of Oromia National Regional State; art 121 of the Constitution of Southern Nations, Nationalities and Peoples' Regional State; art 103 of the Constitution of Tigray National Regional State; art 105 of the Constitution of Somali National Regional State; and art 106 of the Constitution of Afar National Regional State.

or epidemic.³⁴ The regional states' executive organs first proposes a state of emergency declaration which the State Council must then approve.³⁵

4 The lack of subsidiary legislation for coordination of emergency responses

No subsidiary legislation aims to operationalise and provide guidance on how a state of emergency could be declared and enforced at the federal and regional state levels. One of the gaps that the COVID-19 pandemic has exposed is the lack of subsidiary legislation or proclamation which regulates emergencies and the exercise of emergency powers by the federal and regional states in the country. Responses to emergencies like that of the coronavirus pandemic require coordination among the federal, regional, and local governments. As a result, there is a need for a detailed legal regime that regulates the coordination between these entities in an explicit manner. There is no better example than the debacle between Tigray national regional state and the federal government to demonstrate the adverse effects of the lack of such legislation.

Tigray national regional state, one of Ethiopia's 11 constituent regional states, declared a state of emergency in response to the COVID-19 pandemic before the federal government did. The Tigray Regional State Council announced a two-week state of emergency on 28 March 2020.³⁶ The regional state's State Council subsequently extended the state of emergency for three months.³⁷ The regional state banned all travel within its territory for 15 days. It also banned social activities such as weddings, market gatherings, and other festivities deemed likely to entice a mass gathering of people. The Proclamation also ordered border closures.

Tigray regional state is the only regional state in Ethiopia to have declared a state of emergency unilaterally. It appears the other regional states refrained from a unilateral declaration of state of emergency and instead opted for a concerted and synchronised federal legal response recognising that the pandemic poses a nationwide problem. Moreover, many of the regional states realised that the pandemic's trans-boundary nature requires the involvement and participation of other regional states.

34 As above.

35 As above.

36 'Tigray region declares state of emergency to prevent spread of #COVID19' *Addis Standard* 26 March 2020 <https://addisstandard.com/news-alert-tigray-region-declares-state-of-emergency-to-prevent-spread-of-covid19/> (accessed 17 September 2020).

37 *E Abera* 'Ethiopia: Tigray Region Relaxes #COVID19 State of Emergency' *Addis Standard* 24 April 2020 <https://addisstandard.com/news-tigray-region-relaxes-covid19-state-of-emergency-2/> (accessed 17 September 2020).

This implies that the multifaceted and overarching federal legal framework that was under active consideration at the time Tigray declared the state of emergency unilaterally was necessary. Consequently, a regional state declaring a state of emergency before the federal government's declaration raised constitutional concerns and triggered debates regarding the constitutionality of such measures.³⁸

The application of the unilateral state of emergency declaration at the regional level in response to the COVID-19 pandemic was ill-advised. Tigray's unilateral decision impeded the much-needed coordination necessary for addressing the pandemic's adverse effects for a variety of reasons. First, the duration of the state of emergency in Tigray exceeds that of the federal state of emergency which is slated to last for five months.³⁹ Secondly, the federal declaration of emergency provides for emergency measures that are not included in Tigray's state of emergency declaration. Additionally, the Tigray regional state decided to relax the state of emergency measures much earlier than the federal government – showing a lack of synchronisation.⁴⁰ Consequently, Tigray's residents have been particularly affected by the conflicting messages and legal measures adopted by the federal and regional governments.

Nevertheless, Tigray Regional State's intervention illustrates the extent to which the federal constitution and a region's revised constitution vests the regional states with a substantial ability to determine appropriate regulatory actions. Tigray regional state eased the restrictions it imposed to control the spread of COVID-19 before the federal government did.⁴¹ Although Tigray's relaxation of the preventive and repressive measures demonstrates regional variation, it contradicts and negates the federal state of emergency proclamation. Thus, the absence of cooperation between the federal government and Tigray regional state has complicated efforts to prevent and control the virus's spread not only in Tigray but beyond.

Additionally, article 93(4)(a) and (b) of the FDRE Constitution empowers the federal government to adopt measures suspending rights

38 D Yemane 'Is Tigray's COVID-19 state of emergency constitutional, practical?' *Ethiopia Insight* 17 April 2020 <https://www.ethiopia-insight.com/2020/04/17/is-tigrays-covid-19-state-of-emergency-constitutional-practical/> (accessed 17 September 2020).

39 As above.

40 *Abera* (n 37).

41 'Ethiopia: Tigray region relaxes state of emergency April 24 /update 11' *Garda* 24 April 2020 <https://www.garda.com/crisis24/news-alerts/335866/ethiopia-tigray-region-relaxes-state-of-emergency-april-24-update-11> (accessed 7 August 2020).

in accordance with.⁴² The Proclamation provides the federal government greater role in adopting measures deemed necessary to counter and mitigate the humanitarian, social, economic, and political damage caused by the pandemic.⁴³

5 Public Health Proclamation

The Public Health Proclamation (Proclamation 200 of 2000) empowers federal and regional governments to take monitoring, preventive, and repressive measures to protect public health.⁴⁴ The Proclamation requires any person who knows of any communicable disease's existence in his/her vicinity to immediately report to the nearest health institution.⁴⁵ The Proclamation also compels the institution receiving the report to take the necessary measures and inform the appropriate health authority.⁴⁶ The Proclamation imposes the duty to cooperate on any person suspected of having any communicable disease to seek medical examination or vaccination.⁴⁷ The Proclamation permits the Ministry of Health to restrict movements to certain countries, or to areas where there is an epidemic, to close schools or recreational areas, or to remove workers with communicable diseases from their workplaces.⁴⁸ The proclamation also includes a general clause enabling the Ministry of Health to take similar measures whenever an epidemic occurs.⁴⁹ Moreover, the Public Health Proclamation provides the legal basis for issuing detailed regulations aimed at the preventing and controlling communicable diseases.⁵⁰ Such provisions demonstrate that measures can be applied against infected persons, suspected cases, healthy or asymptomatic carriers, and the general public as well. Similarly, the State of Emergency Proclamation clarifies that the Proclamation and the regulation thereof applies to Ethiopians and foreign nationals residing in or transiting through Ethiopia.⁵¹

42 Article 4(1) of the State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact 3 of 2020.

43 As above.

44 Public Health Proclamation, 2000, Proc No 200, Neg Gaz Year 6, no 28.

45 Article 17(1) of the Public Health Proclamation.

46 As above.

47 Article 17(2) of the Public Health Proclamation.

48 Article 17(3) of the Public Health Proclamation.

49 As above.

50 Article 17(4) of the Public Health Proclamation.

51 Article 3(2) of the State of Emergency Proclamation.

6 Food and Medicine Administration Proclamation

The Food and Medicine Administration Proclamation (Proclamation 1112 of 2019) provides that the Ethiopian Public Health Institute (EPHI) shall perform regulatory functions under articles 3(2)(g), 4(14), and 4(15) of the Food, Medicine, Health Care Administration and Control Proclamation (Proclamation 661 of 2009).⁵² Thus, these two proclamations vest the EPHI with the power to quarantine suspected persons at entry and exit ports, to inspect planes entering the country to ensure the protection of health and control of communicable diseases, undertake fumigation and give certificates for planes departing the country, implement measures to curtail the spread of communicable diseases at entry and exit port on international travelers and, where necessary, prohibit them from entry or exit when outbreaks of trans-regional communicable diseases occur.⁵³

7 Emergency measures in response to COVID-19

Ethiopia is one of the countries which have adopted a plethora of measures in response to the COVID-19 pandemic following the declaration of a state of emergency. The Council of Ministers in Ethiopia adopted regulation 466 of 2020 to implement the state of emergency proclamation. The regulation enacted restrictions on mobility, assembly, educational services, and economic activities. The regulations outline several prohibited activities, adopted quarantine measures, restrictions on free movement, and social distancing rules.

7.1 Restrictions on assembly

Ethiopia is one of the countries which implemented strict social distancing measures. The country banned social gatherings and functions including conducting meetings for religious, government, social, or political purposes in places of worship, public institutions, hotels, meeting halls or any other place.⁵⁴ The regulations provide for exceptional situations where for proven compelling reasons permission may be granted for holding meetings.⁵⁵

52 Article 77(2) of the Food and Medicine Administration Proclamation, 2019.

53 Article 77(2) of the Food and Medicine Administration Proclamation. See also arts 3(2)(g), 4(14) and 4(15) of the Food, Medicine, Health Care Administration and Control Proclamation, 2009.

54 Article 3(1) of the State of Emergency Proclamation.

55 Article 3(2) of the State of Emergency Proclamation.

People have been urged not to leave home unless it is absolutely essential to do so. People are also required to stay at least two meters away from others in marketplaces.⁵⁶ The law prohibited handshaking as a greeting or for any other purpose.⁵⁷ Birthday celebrations and other similar occasions have been limited to members of the family without determining the maximum number.⁵⁸ Funerals are limited to 50 people.⁵⁹

7.2 Suspension of educational activities

The government has prohibited any campus, public or private school from conducting in-person classes on campuses, or any other place. Moreover, engaging in sports competitions or any group sports activities and providing playground services to the public has been banned.

7.3 Restrictions on economic activities

The regulations mandated closing cultural, leisure and wellness places (including night clubs, bars, establishments that serve shisha or *khat* and provide entertainment services at cinemas, theatres).⁶⁰ The regulation also suspends other forms of social gatherings by using the catch-all phrase ‘any such place where a large number of people will be assembled’.⁶¹

The regulations did not ban public transport. Private and public service vehicles were allowed to commute on condition that not more than 50 per cent of the seating capacity of the cross-country’ inter-city transport service providers, including shuttle services for public servants, private automobile, rickshaws, and horse-drawn carriages is filled at any time during the journey.⁶² The regulations impose limitations on visiting detainees in prison or at a police station.⁶³

The regulations provided that certain commercial activities can proceed on condition that they strictly enforce social distancing. For instance in

56 Article 22(1) of the Directive for the Enforcement of State of Emergency Proclamation and Regulation 2 of 2020

57 Article 3(3) of the State of Emergency Proclamation.

58 Article 21 of the Directive for the Enforcement of State of Emergency Proclamation and Regulation.

59 Article 18(2) of the Directive for the Enforcement of State of Emergency Proclamation and Regulation.

60 Articles 3(10)-(12) of the State of Emergency Proclamation.

61 Article 3(12) of the State of Emergency Proclamation.

62 Article 3(4)-(8) of the Council of Ministers Regulation 466 of 2020.

63 Article 3(9) of the Council of Ministers Regulation.

hotels, restaurants, and cafes, the regulations prohibit providing services to more than three patrons at a single table and require that tables which patrons are simultaneously using are at least two adult strides apart.⁶⁴ The regulation also stipulates that if patrons are served without tables, they have to maintain a distance of two adult strides.⁶⁵

7.4 Quarantine

The regulation the government adopted provides that everyone suspected of having COVID-19 and all international passengers shall be quarantined at a place the government has designated for this purpose and tested, with penalties for non-compliance.⁶⁶ The quarantine measures were instituted on 23 March 2020.⁶⁷ Tigray regional state took a further step when it closed its internal borders. This decision violates article 32 of the FDRE Constitution which enshrines respect for freedom of movement and freedom to choose one's residence. Such border closures impede trade and commerce among the different regional states in the country. Although restrictions may be imposed upon the freedom of movement in accordance with the FDRE Constitution and the Tigray Revised Constitution, it must be shown that such restrictions are necessary, proportional, and appropriate means for achieving their protective function, the least intrusive instrument for achieving that objective, and consistent with all other human rights instrument.⁶⁸

Nonetheless, the regulation did not authorise sweeping lockdown measures, a complete ban on movement of persons, or generally prohibition of leaving home. Any person who violates the suspension of rights, measures, an instruction or command issued per the state of emergency proclamation faces up to 3 years' imprisonment or a fine between 1 000 and 2 000 Birr.⁶⁹

64 Article 3(13) of the Council of Ministers Regulation.

65 As above.

66 Article 4(1) of the Council of Ministers Regulation.

67 Federal Ministry of Health and Ethiopian Public Health Institute 'COVID-19 Prevention and Control: Quarantine and Border Control Implementation Guide' (2020).

68 UN Human Rights Committee (HRC), CCPR General Comment 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9 (1999).

69 Article 6(1) of the State of Emergency Proclamation.

7.5 Contact-tracing

Ethiopia also adopted contact-tracing measures by monitoring the citizens' mobile phones to help track their movement and thereby prevent the spread of the virus.⁷⁰ This measure allows Ethio-Telecom, at that time the monopoly mobile service provider in the country, to hold each of its phone users' location information for unknown periods based on the State of Emergency Proclamation. Although this makes it possible for the authorities to get to know the travel history of citizens who tested positive for COVID-19 and contact individuals who have been near them, such intrusions have their own adverse effects on the right to privacy. Moreover, there is no guarantee that the technology which has been developed for legitimate reasons will not be also used for illegal purposes.

7.6 Other restrictions

Other restrictions imposed by the implementing regulation include barring entering into or exiting from the country, prohibiting or import or export of anything other than legal dry, or liquid cargo through inland entry ports. Additionally, the law placed a ban on evicting a lessee or increasing rent by the lessor without the lessee's consent, terminating employment contracts by organisations covered by Proclamation 1156 of 2019, except under the protocol the FDRE Ministry of Labour and Social Affairs (MOLSA) formulated.⁷¹

Thus, the regulation imposes limitations on fundamental rights such as freedom of assembly, freedom of movement and inviolability of the home. Although most of the emergency powers in the state of emergency declaration and accompanying regulation appear to appropriate, they need further scrutiny because they give substantial powers to the executive, which could be abused.

8 Material scope of the emergency measures and their compatibility with human rights standards

In addition to the necessity requirement, article 4 of the ICCPR sets forth a variety of procedural and substantive safeguards concerning derogation measures. There are several fundamental conditions that must be respected while promulgating states of emergency. Article 4(1) of the ICCPR also

70 S Marks 'Ethiopian diaspora champions digital apps in fight against COVID' *VOA* 3 June 2020.

71 Article 3(10)-(14) of the Council of Ministers Regulation.

clarifies that measures deviating from the Covenant must be limited to the extent strictly required by exigencies of the situation.⁷²

The proportionality requirement pertains to the state of emergency's temporal, geographical and material scope, and derogation measures.⁷³ Consequently, a state of emergency legislation should be strictly temporal in scope, the least intrusive measure to achieve the state's public health goals and must include safeguards such as sunset or review clauses to facilitate return to ordinary laws once the emergency is over.⁷⁴

The Human Rights Committee (HRC) has expressed concern the lack of sufficient attention to the principle of proportionality.⁷⁵ Consequently, the Human Rights Committee draws the States Parties' attention to the need for well-considered justification not only for the decision to proclaim a state of emergency but also for the specific measures taken based on this proclamation.⁷⁶ Essentially, states must show that the exigencies of the situation strictly require all the measures they adopted that derogate from the Covenant.⁷⁷ The HRC underscored that restrictions on Covenant rights such as freedom of movement or freedom of assembly are sufficient during situations that are believed to constitute a threat to the nation's life.⁷⁸ The Committee was quick to add that the fact that article 4(2) of the ICCPR provides a list of rights that are non-derogable should not give the wrong impression that other articles of the Covenant may be derogated from at will even if the situation threatens the life of the nation. The principle of proportionality implies a duty to narrow down all derogations to those the situation strictly requires.⁷⁹ This in turn calls for a careful analysis under each article of the Covenant to objectively assess the actual situation.⁸⁰

The state of emergency proclamation provides that regulations the Council of Ministers enacts and measures it takes shall not infringe on provisions specially protected under article 93(4)(c) FDRE Constitution

72 UN Human Rights Committee (HRC), CCPR General Comment 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11 (2001).

73 As above.

74 United Nations Office of High Commissioner for Human Rights 'Emergency measures and COVID-19: Guidance' (April 2020)

75 HRC General Comment 29 (n 72).

76 As above.

77 As above.

78 As above.

79 As above.

80 As above.

in any way. However, as discussed above, the catalogue of human rights which are identified as non-derogable under article 93(4)(c) of the FDRE Constitution does not include some of the key and fundamental rights which article 4(2) of the ICCPR recognises as non-derogable. The right to life is one of the key provisions which are not classified as non-derogable. It is a paradox that the right to life (under article 15 of the FDRE Constitution) which is an important basis for Ethiopia's response and justification for the COVID-19 response measures is not explicitly made non-derogable under the FDRE Constitution.

9 The implementation of emergency measures in Ethiopia

The aforementioned emergency measures the Ethiopian government has adopted entail several limitations on the exercise of civil rights and liberties including immunities, procedural fairness norms, equality and non-discrimination, positive liberty, and guarantees of political participation. In addition to the emergency measures, the implementation of the emergency measures has resulted in violations of rights and freedoms.

9.1 Immunities

The right to life, freedom from torture, inhuman, degrading, and cruel treatment as well as freedom from arbitrary arrest are enshrined under the FDRE Constitution. Nonetheless, the police force's lack of proper understanding of the emergency regulations has resulted in violations of these freedoms and some of the enforcement measures adopted by the government have been controversial. On 13 May 2020, the police arrested 2 800 people for violating COVID-19 rules, particularly, for failure to wear masks and flaunting social distancing rules.⁸¹ The Ethiopian Human Rights Commission issued a press statement stating that the arrests were needlessly arbitrary and too coercive and excessive.⁸² The arrests were in clear violation of article 17 of the FDRE Constitution which affirms the right to liberty which provides the principle of legality. The principle of legality implies that deprivation of the liberty of individuals must be carried out as per the law and must not be arbitrary. Thus, the principle of legality is violated when an individual is arrested or detained on grounds that are not established in the law. The HRC explained that the meaning of

81 T-A Tekle 'Ethiopian police arrest 2, 800 for violating COVID-19 rules' *Nation Media Group* 18 May 2020 <https://nation.africa/kenya/news/africa/ethiopian-police-arrest-2-800-for-violating-covid-19-rules-295476> (accessed 17 September 2020).

82 AG Tadesse 'Over 1 300 held for going out without masks' *Anadolu Agency* 13 May 2020 <https://www.aa.com.tr/en/africa/ethiopia-over-1-300-held-for-going-out-without-masks/1839883> (accessed 17 September 2020).

the term arbitrary in article 9(1) of the Covenant should not be interpreted as ‘against the law’. Instead, the HRC stated that the term ‘arbitrary’ includes elements of inappropriateness, injustice, unreasonableness, capriciousness, disproportionality, lack of predictability and due process of law.⁸³

In a press statement, the Ethiopian Human Rights Commission asserted that the police’s use of excessive force by the police has resulted in violation of the right to life affirmed under article 15 of the Constitution.

9.2 Equality and non-discrimination

Article 25 of the FDRE Constitution provides that all persons are equal before the law and are entitled, without any discrimination, to equal protection of the law. The provision states that the law shall guarantee to all persons equal and effective protection without discrimination on the grounds of race, nation-nationality, colour, sex, language, religion, political opinion, social origin, property, birth, or other status. Emergency measures adopted in the COVID-19 pandemic’s wake must be implemented in a non-discriminatory manner and consider the vulnerable groups who are likely to be disproportionately affected by the pandemic. For example, women are among the groups the pandemic has adversely affected. The United Nations has attested to the prevalence of domestic violence against women and children since the pandemic’s onset and concomitant social distancing measures requiring families to stay at home. Nevertheless, adequate measures have not been put in place to curtail the rise in domestic violence during the pandemic. Consequently, additional measures to support Ethiopians at heightened risk of domestic violence during the pandemic, such as counseling services, public communication campaigns, and provision of legal and social aid, must be adopted.

Persons with disabilities are also among the groups the coronavirus pandemic has disproportionately affected. The information and resources on COVID-19 pandemic are inaccessible to a significant number of persons with disabilities. For example, persons with visual impairment do not have access to print materials prepared in braille. Hearing impaired people cannot benefit from audio campaigns. Intellectually impaired persons cannot understand messages that are complicated and vague.

83 *AW Mukong v Cameroon* Communication 458/1991 (Views adopted on 21 July 1994), in UN Doc GAOR, A/49/40 (vol. II), p 181, para 9.8

Furthermore, even the scanty information and resources on the COVID-19 pandemic made available to persons with disabilities are not up to date.⁸⁴

Similarly, health workers have been targets of attack following the outbreak of the pandemic.⁸⁵ Health workers in Ethiopia are at high risk of contracting COVID-19 due to the lack of sufficient provision of personal protective equipment (PPE).⁸⁶ Health workers have also been subjected to discrimination and stigmatisation due to fear that they can infect others with the virus.⁸⁷

At the time of writing, Ethiopia sheltered 766 563 registered refugees and asylum-seekers and is the second-largest refugee-hosting country in Africa.⁸⁸ Due to overcrowding in refugee camps, the COVID-19 pandemic poses a far greater health risk to refugees than the general population. Consequently, the government needs to reconsider its encampment policy and release some of the refugees into the community. In April 2020, the Ethiopian government announced plans to shut down Hitsats refugee camp, one of the four refugee camps in Tigray region, telling 27 000 refugees there to relocate to two other refugee camps in the same region – the Adi Harush and Mai Aini refugee camps.⁸⁹ Moreover, in an apparent break from its celebrated open-door policy, the Ethiopian government declined to register some asylum-seekers, particularly unaccompanied children, thereby exposing them to abusive situations.⁹⁰ This unofficial change to the country's asylum violates the

84 DB Wakene 'Viewpoint: "The forgotten tribe": persons with disabilities in Ethiopia and the state's response to COVID-19' *Addis Standard* 22 June 2020 <https://addisstandard.com/viewpoint-the-forgotten-tribe-persons-with-disabilities-in-ethiopia-and-the-states-response-to-covid-19/> (accessed 25 November 2020).

85 S Magdy & E Schmall 'Health professionals around the world face hostility over virus stigma' *JEMS* 16 May 2020 <https://www.jems.com/2020/05/16/health-professionals-around-the-world-face-hostility-over-virus-stigma/> (accessed 25 November 2020).

86 'Coronavirus: Health professionals working in different regions of Ethiopia have been infected with COVID-19' *BBC News* 12 August 2020 <https://www.bbc.com/amharic/news-53742959> (accessed 17 August 2020).

87 'As the coronavirus cases grow, Ethiopian health workers feel abandoned' *Ethiopia Observer* 23 June 2020 <https://www.ethiopiaobserver.com/2020/06/23/as-the-coronavirus-cases-grow-ethiopian-health-workers-feel-abandoned/> (accessed 17 August 2020).

88 UNHCR 'Ethiopia factsheet' (June 2020) <https://data2.unhcr.org/en/documents/download/78059> (accessed 11 August 2020).

89 'Eritrean refugees in Ethiopia resist camp closure amid COVID-19 fears' *The New Humanitarian* 17 August 2020 <https://www.thenewhumanitarian.org/news-feature/2020/08/17/Ethiopia-Eritrea-refugee-camps-coronavirus> (accessed 18 August 2020).

90 Human Rights Watch 'Ethiopia: Unaccompanied Eritrean children at risk' (2020) <https://www.hrw.org/news/2020/04/21/ethiopia-unaccompanied-eritrean-children-risk> (accessed 18 August 2020).

progressive Refugee Proclamation the country adopted in January 2019.⁹¹ Although the government tried to justify its decision on budgetary constraint grounds, the United Nations High Commissioner for Refugees (UNHCR) disapproved of the move, stating that Adi Harush and Mai Aini refugee camps were already operating at capacity and the decision would expose the refugees to the risk of COVID-19.⁹² The UNHCR's concern materialised when in June 2020 it was announced that a 16-year-old Eritrean girl tested positive for the coronavirus.⁹³ Thereafter, many other asylum-seekers and refugees have been diagnosed with COVID-19.⁹⁴

Xenophobic attacks on foreigners occurred soon after the COVID-19 pandemic began in Ethiopia because the first reported COVID-19 sufferer was a foreigner, a 48-year-old Japanese man who traveled from Japan to Ethiopia through Burkina Faso.⁹⁵

The COVID-19 pandemic's adverse effects have been particularly debilitating for the poor in Ethiopia. Emergency measures adopted to prevent and address the pandemic's spread, such as social distancing, quarantine and others have taken their toll on the poor. The Ethiopian government has adopted a variety of economic measures to mitigate the pandemic's impact. These include direct and indirect tax measures, employment-related measures, economic stimulus measures and others.⁹⁶ Despite these measures, enough has not been done to address the plight of the poor and marginalised sections of society. The stimulus package the government adopted does not sufficiently benefit the poor.⁹⁷ Emergency measures adopted do not consider the particular vulnerabilities of the poor and marginalised sections of society who live hand-to-mouth with little to no savings or food stocks. Many people have lost their livelihoods and been rendered destitute. One of the rights the pandemic has affected is the right

91 Preamble of the Refugees Proclamation 1110 of 2019.

92 'Eritrean refugees in Ethiopia resist camp closure amid COVID-19 fears' (n 89).

93 As above.

94 As above.

95 L Kelly 'State warns foreigners "attacked" in Ethiopia over coronavirus fears' *The Hill* 18 March 2020 <https://thehill.com/policy/international/488322-state-warns-for-eigners-attacked-in-ethiopia-over-coronavirus-fears> (accessed 17 August 2020); World Health Organization 'First case of COVID-19 confirmed in Ethiopia' <https://www.afro.who.int/news/first-case-covid-19-confirmed-ethiopia> (accessed 17 September 2020).

96 'Ethiopia: Government and institution measures in response to COVID-19' *KPMG* 24 June 2020 <https://home.kpmg/xx/en/home/insights/2020/04/ethiopia-government-and-institution-measures-in-response-to-covid.html> (accessed 8 August 2020).

97 'Ethiopia: Stimulus and the economy during COVID-19' *Ethiopian Press Agency* 17 June 2020 <https://www.press.et/english/?p=24132> (accessed 17 September 2020).

to adequate housing. Accordingly, article 3(18) of the Implementation Regulation stipulates that it is prohibited for any lessor of residential or commercial property to evict a lessee or increase rent without the consent of the lessee.

10 Procedural fairness

On 28 June 2020, popular Oromo singer Hachallu Hundessa was assassinated. The singer's killing sparked widespread protests and a police crackdown. A blanket internet shutdown, which lasted for three weeks, was imposed following the singer's assassination.⁹⁸ In a statement issued on 30 June 2020, Amnesty International urged the government to lift the internet shutdown so people in the country could access information.⁹⁹ Amnesty International also issued a statement expressing concern about the detention of protestors, politicians, and journalists in unsanitary conditions amid a pandemic.¹⁰⁰ Such measures illustrate that the emergency powers ostensibly introduced in response to COVID-19 can also be used for political purposes. In its press release issued on 15 August 2020, Human Rights Watch reported that since June 2020, government authorities in Ethiopia have been detaining dozens of opposition members for prolonged periods without charge.¹⁰¹ Human Rights Watch's press release highlighted that detainees have been kept at sites where they face the risk of contracting COVID-19. Indeed, while in detention, some of the security guards and detainees reportedly contracted COVID-19.¹⁰² Human Rights Watch criticised the government and called upon the government to respect the rights to be free from arbitrary detention, humane treatment, and conditions of detention and fair trial guarantees.

98 'Internet cut in Ethiopia amid unrest following killing of singer' *Netblocks* 30 June 2020 <https://nestblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b> (accessed 11 August 2020).

99 'Ethiopia: Popular musician's killing must be fully investigated' *Amnesty International* 30 June 2020 <https://www.amnesty.org/en/latest/news/2020/06/ethiopia-popular-musicians-killing-must-be-fully-investigated/> (accessed 11 August 2020).

100 'Ethiopia: Account for all people arrested after Hachalu Hundessa's killing' *Amnesty International* 18 July 2020 <https://www.amnesty.org/en/latest/news/2020/07/ethiopia-account-for-all-people-arrested-after-hachalu-hundesa-killing/> (accessed 11 August 2020).

101 'Ethiopia: Opposition figures held without charge' *Human Rights Watch* 18 July 2020 <https://www.hrw.org/news/2020/08/15/ethiopia-opposition-figures-held-without-charge> (accessed 15 August 2020).

102 BA Boru 'Ethiopia hospital boss faces questions over opposition leader' *BBC News* 4 August 2020 <https://www.bbc.com/news/topics/cw1w3xz047jt/ethiopia> (accessed 17 August 2020).

Similarly, Ethiopia holds a large number of detainees in prison facilities in the country. The conditions prevalent in the prison facilities make it virtually impossible to implement social distancing rules. Therefore, prisons are also high-risk environments for the transmission of coronavirus. Consequently, international and global health experts have been calling for governments to reduce overcrowding in jails.¹⁰³ As a result, the federal government has released some of the prisoners and facilitated the release of many children living with their imprisoned mothers.

Although such measures are instrumental in reducing the population in detention facilities, they are inadequate to prevent the spread of coronavirus in detention centers. The Ethiopian Human Rights Commission also urged the government to take action to reduce the number of detainees in places of detention in Addis Ababa.¹⁰⁴ Specifically, it recommended the need to discharge prison inmates by granting them amnesty or pardon.¹⁰⁵ In August 2020, it was confirmed that at least 13 inmates in Dessie town contracted the coronavirus.¹⁰⁶ Various media outlets also reported an increase in COVID-19 infection rates in detention centres because the clampdown on and arrest of protesters in the wake of the Hachallu Hundessa's death resulted in overcrowded prisons.¹⁰⁷

11 Freedom to entitlements

On 6 May 2020, Human Rights Watch (HRW) issued a press statement accusing the Ethiopian government of using the declared state of emergency as a pretext to restrict free speech.¹⁰⁸ In particular, the statement mentioned

103 'Urgent action needed to prevent COVID-19 "rampaging through places of detention" – Bachelet' *OHCHR* 25 March 2020 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E> (accessed 17 August 2020); see also Inter-Agency Standing Committee (IASC) 'COVID-19: Interim guidance, focus on persons deprived of their liberty' (March 2020) <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf> (accessed 17 August 2020).

104 The Arrest and Condition of Persons Detained in Connection With the State of Emergency Requires Urgent Attention, Press Release, Ethiopian Human Rights Commission (November 18, 2021).

105 As above.

106 M Brown 'Ethiopia to release inmates to curb coronavirus spread' *VOA News* 26 March 2020 <https://www.voanews.com/science-health/coronavirus-outbreak/ethiopia-release-inmates-curb-coronavirus-spread> (accessed 17 August 2020).

107 S Marks 'COVID-19 spreads inside Ethiopian detention centers' *VOA News* 20 August 2020 <https://www.voanews.com/episode/covid-19-spreads-inside-ethiopian-detention-centers-4394116> (accessed 21 August 2020).

108 'Ethiopia: Free speech at risk amid COVID-19' *HRW* 6 May 2020 <https://www.hrw.org>

the Elizabeth Kebede (a lawyer) and Yayesew Shimelis (a journalist) cases. Both individuals have been detained for their comments on social media about the government's response to the pandemic. On his personal Facebook page and a YouTube channel, Yayesew Shimelis stated that the government ordered the preparation of 200 000 graves in anticipation of deaths from the virus.¹⁰⁹ On 27 March 2020, he was arrested and taken to Addis Ababa Police Commission. Although he was accused of spreading false news, he was held for three weeks without formal charges pressed against him. The Federal Police intervened when the judge granted him bail for lack of sufficient evidence. However, he was re-arrested on a new charge of violating the country's anti-terrorism law, namely the Prevention and Suppression of Terrorism Crimes Proclamation.¹¹⁰ A federal judge once again granted Yayesew Shimelis bail for lack of evidence to charge with terrorism charges and he was released on 23 April 2020.¹¹¹

Dissemination of false information claims resulted in the adoption of the Hate Speech and Disinformation Prevention and Suppression Proclamation which came into effect on 23 March 2020.¹¹² HRW expressed its concern that the Proclamation provides an overbroad definition of 'disinformation' which vests authorities excessive discretion to declare unpopular or controversial opinions as 'false'.¹¹³ HRW acknowledged the need for the government to address the increase in inter-communal violence which has been raging in the country since mid-2018, spurred on by hateful online speech. HRW expressed its concern that the law on hate speech may be used to violate rights of free expression.¹¹⁴ Consequently, the organisation recommended the adoption of a comprehensive strategy to stem out incitement of violence, discrimination, and hostility instead of punitive measures.¹¹⁵

On 4 April 2020, police accused Elizabeth Kebede, a lawyer, of disseminating false news and detained her in Addis Ababa. Subsequently, she was transferred into the custody of Harari regional authorities. In one of her Facebook posts, Elizabeth Kebede identified individuals who are

[org/news/2020/05/06/ethiopia-free-speech-risk-amid-covid-19](https://www.hrw.org/news/2020/05/06/ethiopia-free-speech-risk-amid-covid-19) (accessed 18 August 2020).

109 As above.

110 Prevention and Suppression of Terrorism Crimes Proclamation 1176 of 2020.

111 'Ethiopia: Free speech at risk amid COVID-19' (n 108).

112 Hate Speech and Disinformation Prevention and Suppression Proclamation 1185 of 2020.

113 'Ethiopia: Free speech at risk amid COVID-19' (n 108).

114 As above.

115 As above.

allegedly infected with the coronavirus and suggested that Harar regional state authorities who came into contact with them to be quarantined. HRW stated that it did not condone the adverse effects of Elizabeth Kebede's Facebook post since it reveals the private medical information of individuals with COVID-19 to third parties without the individuals' consent, which clearly violates the right to privacy. Disclosing the personal information of individuals with COVID-19 is also likely to expose them to stigma and discrimination and violence.¹¹⁶ Be that as it may, HRW criticised the decision to arrest Elizabeth Kebede since her actions should not be dealt with through the criminal justice system on the ground civil remedies should suffice in this case.

12 Political participation and the postponement of elections

The FDRE Constitution asserts a gamut of rights within the ambit of the right to political participation.¹¹⁷ The right of citizens to take part in public affairs directly or through freely chosen representatives is also one of the rights enshrined in the ICCPR.¹¹⁸ Although holding periodic elections is an essential feature of a functioning democracy, general elections scheduled for August 2020 were controversially postponed because of the COVID-19 pandemic. This decision triggers both constitutional and human rights considerations. There are concerns that COVID-19 was merely used as a pretext because even before the pandemic, the 2020 national elections were not going to happen as scheduled. In a way, the COVID-19 pandemic presented a much-needed respite and silver lining to the National Electoral Board which was already having difficulty in promptly conducting the polls due to several pre-existing reasons.

In June 2020, the House of Federation adopted a resolution postponing federal, regional and local elections. The resolution allowed the incumbent government to stay in power beyond its term (which was due to expire on 10 October 2020).¹¹⁹ The legitimacy of the decision to postpone the election purportedly due to pandemic-related public health

116 'Ethiopia: Free speech at risk amid COVID-19' (n 108). See also 'Kenya journalist freed from detention in Ethiopia' *BBC*, August 20, 2020, <https://www.bbc.com> (accessed 20 August 2020).

117 Article 38 of the Constitution of the FDRE.

118 Article 25 of the ICCPR.

119 'Ethiopia extends PM and lawmakers' terms after elections postponed' *CGTN* 11 June 2020 <https://news.cgtn.com/news/2020-06-11/Ethiopia-extends-PM-and-lawmakers-terms-after-elections-postponed-RewOTIWsx2/index.html> (accessed 25 November 2020).

risks has been a subject of extensive debate and discussion in Ethiopia and beyond.¹²⁰

Nonetheless, regardless of the federal government's decision to postpone the general national, regional and local elections, Tigray National Regional State's decision to proceed with provincial elections triggered a constitutional stand-off with the federal government. Tigray's government heavily criticised the federal government's decision to postpone the election. Tigray dismissed the reasons for not conducting the election as groundless arguing that it is still possible to carry out the election by putting sufficient measures in place, such as social distancing in place.¹²¹

13 Mechanisms of accountability

The state of emergency proclamation vests the responsibility of executing the proclamation in the Council of Ministers and a Ministerial Committee established for this purpose. It states that either one of these bodies will decide the detailed conditions concerning the suspension of rights and measures.¹²² The Deputy Prime Minister chairs the Ministerial Committee and is accountable to the Prime Minister for the exercise of the powers. The state of emergency proclamation and implementing regulation establishes the Committee.¹²³ The Committee is vested with broad powers to oversee and coordinate efforts to counter and control the spread of COVID-19 and mitigate its impact.¹²⁴ Thus, the Ministerial Committee is vested with the power to make regulations on extremely broad terms.

In some cases, the Ministerial committee or sub-committees established at different levels are empowered to grant exemptions from the restrictions in some cases. Moreover, the regulation also provides a safeguard clause whereby some of the restrictions would be subject to periodic reviews.¹²⁵ The periodic review requirement set forth in the regulation is one of the Proclamation's strong points.

120 AK Abebe 'Ethiopia's postponed elections: Governing in the interregnum' *Addis Standard* 14 April 2020 <https://addisstandard.com/commentary-ethiopia-postponed-elections-governing-in-the-interregnum/> (accessed 25 November 2020).

121 International Crisis Group 'Toward an end to Ethiopia's Federal-Tigray feud' Briefing 160 (14 August 2020) https://d2071andvip0wj.cloudfront.net/b160-ethiopia-federal-tigray-feud_0.pdf (accessed 25 November 2020).

122 Article 5(1) of the State of Emergency Proclamation.

123 Article 5(1) of the Council of Ministers Regulation.

124 Article 5(3)(a)-(e) of the Council of Ministers Regulation.

125 Article 5(3)(d) of the Council of Ministers Regulation.

The state of emergency proclamation allows federal and regional law enforcement agencies to employ force proportionate to the suspension of rights and measures the proclamation adopted.¹²⁶

It is evident that the provision of democratic safeguards is crucial to prevent abuse. The suspension of routine parliamentary and judicial activities on emergency grounds has further exacerbated the scrutiny of the COVID-19 response measures. With the exception of entertaining a few urgent matters, Federal courts have also been virtually closed during the state of emergency, thereby making it difficult for Ethiopians to challenge most of the emergency measures the federal government has taken.

To prevent the spread of COVID-19, Federal courts have been partially closed since 18 March 2020.¹²⁷ The Federal Supreme Court further extended its partial closure on 1 April 2020, 10 May and 6 June 2020 respectively. The Federal Courts were only working on urgent matters including cases involving the implementation of laws related to the COVID-19 pandemic, with fewer personnel during the partial closure.¹²⁸ Given that domestic violence cases are among the cases the Federal Supreme Court deems urgent courts are obliged to hear such cases during the partial closure. The Ethiopian Lawyers Association requested that the Federal Supreme Court end the partial closure and open courts by putting the necessary safeguards in place.¹²⁹

14 Conclusion

It is evident that the coronavirus outbreak necessitates adopting exceptional measures to deal with the emergency. It is also true that such measures need to be in compliance with human rights obligations of the country. Ethiopia, one of the countries the pandemic has adversely affected, declared a state of emergency to tackle the pandemic. The FDRE Constitution empowers both the federal and regional governments to declare state of emergency in response to an epidemic. The COVID-19 pandemic laid bare the systemic problems that can result when detailed

126 Article 5(3) of the State of Emergency Proclamation.

127 'Ethiopian Supreme Court extends partial closure of courts over COVID-19' *APA News* 7 June 2020 <http://apanews.net/en/news/ethiopian-supreme-court-extends-partial-closure-of-courts-over-covid-19> (accessed 12 August 2020).

128 'Coronavirus: Ethiopia Extends Partial Closure of Federal Courts' *Ethiopian Monitor* 1 April 2020 <https://ethiopianmonitor.com/2020/04/01/coronavirus-ethiopia-extends-partial-closure-of-federal-courts/> (accessed 12 August 2020).

129 M Teshome 'Lawyers request for the opening of courts' *Capital* 13 July 2020 <https://capitalethiopia.com/capital/lawyers-request-for-the-opening-of-courts/> (accessed 26 November 2020).

subsidiary legislation aimed at synchronising the state of emergency declared at the federal level and regional levels is absent. There is no subsidiary legislation which aims to operationalise and provide guidance on how a state of emergency could be declared and enforced at the federal and regional levels. Notwithstanding that the epidemic called for a concerted effort, some regional states adopted a unilateral state of emergency which is inconsistent with the federal state of emergency, resulting in a legal conundrum. The ensuing debacle between the federal government and Tigray regional state necessitates adopting a detailed legal regime on declaring state of emergency at different governmental levels.

Ethiopia has adopted a variety of emergency measures in response to the pandemic. The emergency measures the federal government took ranged from restrictions on assembly, suspension of educational activities, restrictions on economic activities, quarantine. Although the emergency measures the country adopted have been instrumental in responding to the threat, they have also triggered human rights and constitutional concerns. Although declaring a state of emergency was necessary, making concurrent and, sometimes, inconsistent, federal and regional state of emergency declarations is contrary to the legality principle. Although regional states are at liberty to declare state of emergency under the constitution, Tigray Regional State's declaration was not synchronised with the measures taken at the federal level and so resulted in inconsistencies and gaps in application.

The problem has been worsened by the fact that the FDRE Constitution runs counter to international standards on public emergencies as affirmed under article 4 of the ICCPR. Particularly, article 93 of the FDRE Constitution does not include the right to life, among the list of non-derogable rights in sheer violation of international standards.

The state of emergency declaration included a sunset clause on the emergency measures' temporal limitation. It has also clearly stated the geographical scope of the declaration's application. Nevertheless, there have been gaps and inconsistencies in the implementation of some emergency measures.

The gaps and inconsistencies in the implementation had an adverse effect on immunities, procedural fairness norms, equality, and non-discrimination, positive liberty, political participation as well as socio-economic rights. The police's excessive use of force to enforce the emergency measures has resulted in human rights violations. Arresting citizens for failure to wear masks in the absence of clear legal basis is an example. The emergency measures disproportionately impacted persons

with vulnerable groups, disabilities, health workers, refugees and asylum-seekers, detainees and foreign nationals.

The limited availability of parliamentary and judicial mechanisms has also constrained the screening and reviewing of the emergency measures' necessity and proportionality. The concerns of civil society groups, such as Ethiopian Lawyers Association, regarding the continued suspension of judicial services highlights the barriers militating against access to courts and justice. Be that as it may, the fact that courts remained active to hear urgent matters including domestic violence cases has been commendable to ensure protection for vulnerable groups.

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