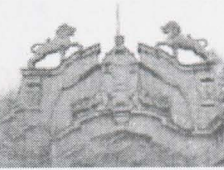


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ADDIS ABABA UNIVERSITY

College of Law and Governance Studies

LL.M PROGRAM (PUBLIC INTERNATIONAL LAW)

**DEROGATION OF HUMAN RIGHTS UNDER STATE OF EMERGENCY: A CRITICAL
EXAMINATION OF THE 2016 ETHIOPIAN STATE OF EMERGENCY AND ITS
APPLICATION IN OROMIA REGIONAL STATE SPECIAL ZONE SURROUNDING
FINFINNE**

BY

LEMI TUJO GURMESSA

**A Thesis Submitted to Addis Ababa University, College of Law Governance
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Declaration

I, the undersigned, declare that this thesis is my original work and all sources used have been duly acknowledged.

Declared by: Lemi Tujo

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Date: _____

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Abstract

This thesis reviews derogation of human rights under 2016 Ethiopian State of Emergency Declaration no. 01/2016 in Oromia Regional State Special Zone Surrounding Finfinne with greater emphasis in the context of Sebeta Town. The standards for assessing derogation of human rights regarding institutional and legal framework are identified and analyzed. Thus, parameters have been employed to assess the compatibility of application in line with the institutional and legal framework of Sebeta Town. In assessing, these study approaches qualitative research method. Data from primary and secondary sources are used. Data collection methods such as interview, focus group discussion and observation have been employed. Sebeta Town is selected because of the human right status during the first round of the state of emergency period where sever crackdown happened.

The research found that the performance of the institution in connection with implementing protection of human rights is far below the standards due to the fact that there was lack of limit scope, transparency, accountability and agency mentality.

The state machinery which was established to implement the state of emergency declaration was almost not serving in accordance with the standards that recognized by both national and international human rights instruments. Furthermore, the study has also identified that the command post office of Sebeta Town ignores the families of detainees and feedback that comes from rights groups.

The thesis argues that absence of transparency and national and international accountability and mechanisms of ensuring human rights protection during the state of emergency especially the activities of the command post results in lack of standards on the ground in implementing the law. The role of mass media, human rights defenders, public representatives, civic organizations, international organizations has been observed insignificant; in this regard mechanism such as considerable supervision or monitoring including international human rights institution was almost absent.

This thesis, thus, recommends that the problems of transparency, accountability, adhering institution principle has to be on board to protect state and individuals rights.

List of Abbreviations

- ACHPR----- African Charter on Human and Peoples' Rights
- ACHR ----- the American Convention on Human Rights
- ATP-----Anti-terrorism proclamation
- CEDAW-----Convention on the Elimination of All Forms of Discrimination
Against Women
- CRC-----Convention on the Rights of the Child
- ECHR -----European Convention on Human Rights
- FDRE -----Federal Democratic Republic of Ethiopia
- HoPR-----House of Peoples' Representative
- HRC-----Human Rights Committee
- ICCPR: -----International Covenant on Civil and Political Rights
- ICERD-----International Convention on the Elimination of All Forms of Racial
Discrimination
- ICESCR -----International Covenant on Economic, Social and Cultural Rights
- IHRL-----International Human Rights Law
- ILA----- International Law Association
- NGO -----Non-Governmental Organization
- SCAF -----Supreme Council of Armed Forces
- SOED-----State of Emergency Declaration
- USA-----United States of America
- VCLT-----Vienna Convention on the Law of Treaties

CHAPTER ONE

INTRODUCTION

1.1 Background

The term 'state of emergency' introduced in to scholarly discourse in the early eighteenth century. However, the birth of the 'modern state of emergency' became a noticeable legal concept since the nineteenth century across the globe and in Western Europe it was basically stemmed from the liberal democratic tradition.^{1 2}And its' jurisprudence is built on the slightly artificial dichotomy of norm and exception, which validates a diverged approach to strike a balance between the interests of societal goals and individual rights.

In the contemporary world, state of emergency is a situation in which a government assumed a power to balance the crisis situation that would normally not allowed for the state to act as ordinary circumstances.³ Accordingly, "State of Emergency" is a brand that might give rise to legitimacy to the greater restriction measures of government on human rights. This implies that, the declaration would give a legitimate power for the government to suspend certain normal functions, forced citizens to change their normal deeds and authorize the government to implement emergency to limit civil liberties and human rights under special circumstances.⁴

Despite its essential choice in balancing the adverse effects of crisis situation, state of emergency has become one of the most contentious mechanisms, and inducing significant constraints to the implementation of international human rights law (IHRL).⁵As it was depicted in the works of multiple scholars, state of emergency has become common practice and is associated with draconian human rights violations.⁶

The international jurisprudence on the state of emergency is incoherent and divergent. This is because of the fact that governments are playing without binding on mandatory principles. Currently, a state of

¹Scott P. Sheeran, Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics, 34 Mich. J. Int'l L. 491 (2013).p.491

³See at www.dcaf.ch

⁴ Ibid

⁵ Supra Note 1, p.491

⁶ Ibid

emergency is exercised all over the world.⁷ But it opens a door for violation of human rights due to the sovereignty legislative power of the state. Though the degree of human rights violation and its adverse aftermaths are different from country to country, the Ethiopian state of emergency implementation was not out of these inescapable flaws. Thus, the importance of researching on derogation of human rights during state of emergency is quite appreciated to contribute towards the development of democracy which in turn meaningfully assists the formation and expansion of crisis situation lessened.

The declaration of emergency is one of the clauses found in the International Covenant on Civil and Political Rights (ICCPR)⁸, the European Convention on Human Rights (ECHR)⁹ and the American Convention on Human Rights (ACHR) article 27.¹⁰ The situation that activates the power of the state to derogate from its obligations under human rights in the case of the ICCPR and the ECHR is a threat to the life of the nation, in the case of the ACHR is a threat to the independence or security of the state.¹¹

The African Charter on Human and Peoples' Rights (ACHPR) does not contain derogation clause in its all provisions.¹² This implies that a member State of the ACHPR cannot derogate human rights in case of any kind of emergencies for any seek exigency situation.¹³ Therefore, this view may lead to a conclusion that all rights under the ACHPR are not derogable and absolutely in contrary to those proponents of the school of sovereignty. Hence, it appears tenable to conclude that a state facing a situation that endangers the nation, should not at all derogate from the provisions of the ACHPR and makes it the unique home of an absolute proponent of the school of human rights.¹⁴

Emergency clause, which authorizes the state to derogate from human rights in times of emergencies, is found in the Federal Democratic Republic of Ethiopian (FDRE) constitution article 93 and this Constitution also provides for a derogation clause and a list of non-derogable rights.

⁷ Ibid

⁸ Article 4 of ICCPR

⁹ Article 15 of ECHR

¹⁰ Supra Note 4, p.8

¹¹ N Jayawickrama, *The judicial application of human rights law, national regional and international jurisprudence* (2002) p.202.

¹² Supra Note 4, p.8

¹³ Ibid

¹⁴ Supra Note 4, p.8

The aim of the study is to assess the legitimate application 2016 Ethiopian state of emergency in light of international rights instruments and national human rights in Oromia Regional State, Special Zone Surrounding Finfinne. The researcher focused on assessing the application of state of emergency through institutional performance and in light of individuals human rights protections at Sebeta Town in light of the established standards and theories of the international human rights laws by collecting firsthand data's from multiple informants' interview and substantiated with relevant secondary data's collected from multiple secondhand sources.

1.2. Problem Statement

Human rights studies have long focused on questions of state of emergence and participation to describe the most common conditions of human rights violence. Some attention has been paid to immediate human rights violence outcomes but limited attention has focused of human right derogation ground and its orientation. Regardless of multiple researchers work, human rights norms have continued to be center of debate among lawyers, academicians, and policymakers. The controversies embark the question of derogability of human rights norms in situations of emergency. The nexus between resorting to the declaration of the State of Emergency as apparatus to maintain and protect national security on one hand and protection of human rights, on the other hand, has flamed intense debate and become a point of controversy since the inception of the state of emergency as a legal framework¹⁵. State of Emergency gives more uncommon powers to the authorities and a government system which is a departure point to pave ways for human rights derogation, but the magnitude of derogation vary from country to country.

The center of debate on the legitimate application of state of emergency in Ethiopia also become the hot debate and exposed for criticisms like it has been in others countries. On October 9, 2016, the Ethiopian authorities have declared a nationwide state of emergency for six months. Though the intention of declaring state of emergency was supposed to bring about peace and stability for all peoples of the country, the Ethiopian government was alleged for maltreatment during the implementation of state of emergency. Human rights scholars argued that there is plausibility of

¹⁵Pro.FransiscoFracioni,Human rights in times of emergency:Analysis of the European convention and the UN covenant on civil and political rights,LUISS GUIDO,cerlil,2015-2016,p.6

derogation clause served as negative toward human rights developments rather than serving as restraints, derogation provisions might sometimes assist as tools to increase State subjugation.¹⁶

The allegation against the government of Ethiopia goes to the temperament of violations of national and international human rights law, due process of law and modern principles, and criminal justice system. Some strongly argue that the proclamation of state of emergency adversely affects the rights and people's freedoms particularly freedom of expression, privacy, assembly, and protest.

Thus, the research reconnoiters within a broad theme of an assessment between addressing national security and possible protection of fundamental human rights, but a focus on the nexus between the state of emergency application and individual's rights would be the researcher's concern.

1.3 Questions of the study

Therefore, in light of this, this research attempted to answer the following questions:

- 1) Was the declaration of state of emergency no1/2016 compatible with national and international legal standards?
- 2) Was proper institutional mechanism availed in the application of state of emergency properly functioning during state of emergency in Sebeta Town?
- 3) How was the state of emergency applied in Sebeta Town in protecting individual's rights during the state of emergency?

1.4 The Objectives of the Study

1.4.1 General Objective

The main objective of this study is to assess the legal protection of human rights under the State of Emergency in Oromia Special Zone Surrounding Finfinne particularly in Sebeta Town.

1.4.2 Specific Objectives

Specifically, the study is designed:

- To assess the legitimacy derogation under 2016 Ethiopian state of Emergency in light of human rights standards.

¹⁶ Jan-Peter Loop ,Crisis Situations, Counter Terrorism And Derogation From The European Convention Of Human Rights ,A Threat Analysis, Antwerp-Cambridge-Portland: Intersentia no.5 ,2010.p.42 available at. <https://openaccess.leidenuniv>

- To evaluate the institutional performance in implementing of state of emergency in light of the international and regional standards.
- To assess specific situations, violations, and challenges that individuals faced in Sebeta town during the 2016 state of emergency.
- To suggest recommendations for identified problems.

1.5 Scope of the Study

The scope of this research is confined to assessing the practical applicability of state of emergency in Oromia Special Zone Surrounding Finfinne, Oromia National Regional State, particularly in Sebeta town.

1.6 Methodology of the Study

1.6.1 Sources

The most significant data for this study were collected from both primary and secondary sources. The primary data sources include findings from an interview with lawyers, advocators, students, detainees, government officials, judges, public prosecutors, students, government officials and other concerned bodies. Secondary sources contain academic books, articles, prior conducted study, internet, TV programs, documentaries, and reports of concerned national and international institutions.

1.6.2 Research techniques

In the process of generating a response to the research questions, the study adopted a qualitative research approach for collecting and analyzing data. Qualitative research techniques are preferred in this reach is to assess and analysis the link between state of emergency declaration, implementation and the situation of human rights protection in Sebeta Town, which requires in-depth understanding which is characterized to understand the experience and attitudes of the society in a particular event, and 'its methods which entirely generate words.

In Contrast to quantitative method the qualitative techniques cannot be possibly measured or quantified, but it can be described or elaborated. As the study is about assessing the relation between State of emergency and the human rights of civilians, qualitative method fit the study. These methods enable the researcher to explore individuals or group observations and practices on specific situation to get detail information on the research area.

Moreover, it is an approach that allows the researcher ‘to examine people’s experience in detail from the perspectives of research participants’

1.6.3 Data collection methods

1.6.3.1 Primary Data Collection Methods

Field research was conducted in Sebeta Town during the period of March to mid of July 2017. The researcher used main methods of primary data collection: Focused group discussions, observation and in-depth interviews with key informants.

1. In-depth Interviews

In-depth interviewing is one of the data collection method used in qualitative research techniques. Qualitative research techniques are the technique that involves conducting intensive individual interviews with respondents to explore their perspectives views, experiences and motivations on a particular situation from individuals view point.¹⁷ In fact, in-depth interviews provide crucial conversations to find out detailed information about the depiction of the event from the interviewee. This method provides a form of conversation to collect information. The technique enables the researcher to ask respondents open-ended questions that is relevant to interview. In-depth interview is a method of data collection that involves researchers asking respondents open- ended questions.¹⁸

During fieldwork, in-depth interviews were used to collect empirical data. I have interviewed a total of 19 key informants: Thirteen male and six female. Interviews were conducted with key informants in Afan Oromo.

2. Focus Group Discussion (FGD)

Focus group discussion is a significant method for collecting qualitative data. FGD has a paramount importance to produce gigantic sympathetic of respondents’ experiences and viewpoint in the course of reaction of many participants at once.¹⁹ The researcher intended in using FGD to acquire information from group on the link between state of emergency implementation and fate civilian from the perspective of human rights situation and practice in Sebeta Town.

¹⁷ Boyce, C. and P. Neale Conducting in-Depth Interviews: A Guide for Designing and Conducting in-Depth Interviews for Evaluation Input. Pathfinder International Watertown, MA.2006.p.3

¹⁸ O’Leary, Zina, The Essential Guide to Doing Your Research Project. 2nd Edition. London: Sage,2004,p.162

¹⁹ Supra note 17 .p165

This method helps to produce shared information and views from the group discussion. In this FGD mixed composition is exploited from all angles: sex, ages and professional statuses of the participant as much as possible. At this research, I have conducted one FGD with the total of seven participants: Five are male while two are female

3. Observation

Observation is a systematic description of behavior, events and artifacts in the social setting chosen for study.²⁰ Researcher used observation methods to boost other empirical data collected. It enables to describe the nature and content of the existing situation of human rights, and implementation of state of emergency to support the relevant data.

I have observed how civilian react using their constitution rights to expression and protest. In particular, on march-17, 2017 I closely observed. The aim of the public meeting was to demand respect for human rights and for constitutional provisions mainly related to land policy. I also witnessed response from the police against the protesters. These and other personal observations assisted me in understanding the existing content and situation of the event in Sebeta town.

1.6.4 Secondary Data

Secondary data also reviewed in my study. Particularly, I considered legal frameworks such, constitution, state of emergency declaration no1/2016 and other related proclamations). Besides, international human rights instruments, ICCPR,UDHR,ACHPR,ACHR,ECHR were given due consideration. The secondary data that I used include academic literature, books, journals, articles, trial charges, constitution, the ATP, other legislations, resolutions and reports from state/non-state human rights institutions, TV channel and published work of government and non-governmental organizations. Thus, I took into account relevant and credible data sources that have been used by other researchers.

1.6.5 Sampling techniques and data analysis

This study adopted a purposive sampling method in order to determine samples of informants. Because, purposive sampling enables the researcher select depending on his own judgment to select the respondents from the total study population.²¹ Sampling is necessitated to gather in-depth information from a smaller number of carefully selected participants.²²

²⁰ Marshall, C. and G.B. Ross man 'Design Qualitative Research', California, 1989, p.79

²¹ Tongco, M.D.C. 'Purposive Sampling as a Tool for Informant, Selection (2007).p143

²² Ibid

Accordingly, I have chosen research participants on personal judgment. Participants who have relevant knowledge of the phenomena under study were selected. Their experience or closeness with the study topic is pertinent.

1.7 Significance of the Study

The finding of this research was expected to fill the research gap observed in this thematic area. More importantly, the study results can add knowledge to the existing lexical knowledge of current legal spectacle. This research is believed significant for it may serve as stepping stone for further researchers, serve as an input for policymakers, lawmakers, the government, human rights researchers, and emergency theory scholars.

1.8. Arrangement of the Paper

The study is organized into five chapters. The first chapter introduces the reader to the bird's eye view of the study. It briefly highlights study background, the reasons that necessitated undertaking the study and the objectives of the study. It also briefly provides significance of the study, the methodology of the study as well as limitations of the study. Chapter two presents a brief historical development as well as the theoretical background of the system of derogation of human rights in the state of emergency. Chapter three focuses on national and international instruments derogation and state of emergency general. Chapter four of the study focuses on case study i.e. assessing the application of Sebeta Town in light of the established standards and theories international human rights laws. And finally, the conclusion is provided and recommendation is forwarded based on findings of the study.

1.9. Ethical Considerations

In order to conduct and complete this study on the study area, the cooperation of officials of the Oromia Special Zone Surrounding Finfinne as well as the detainees during this state of emergency was highly essential to get relevant data. Thus, during data collection confidentiality of those from whom data were obtained are highly considered and to this end, the confidentiality and the objective of the study were told and given to them.

CHAPTER TWO

GENERAL OVERVIEW OF DEROGATION OF HUMAN RIGHTS IN STATE OF EMERGENCY

2.1 Historical and Conceptual Framework of State of Emergency

A state of emergency is a situation in which a government is assumed a power to balance the exigency situation that would normally not be permitted for the state to act as ordinary circumstances which derive from a governmental declaration.²³The declaration would give a power for the government to suspend certain normal functions, forced citizens to change their normal deeds and authorize the government to implement emergency plans to limit civil liberties and human rights under special circumstances.²⁴

Most constitutions in the world contain an emergency clause which is designed to strike a balance between public danger and individuals rights to reinstate public order.²⁵there is no similarity of application and theory state of emergency in the world, different legal systems follow different approach regarding emergency situations. In this regard, civil law countries state of emergency genealogy hark backs its origin in the French Revolution. On the other hand, common law countries follow various kinds of martial law.²⁶

To genealogically searching state of emergency, it would take us the state of exception in the Roman law institution of the *iustitium*. In order to declaring a decree of state of emergency a *tumultuous*– that is, a situation of severe danger on the nations for the safety of the Republic the Senate would issue a *Senatusconsultumultimum*, by which gives the power to the consuls, citizens and concerned body were urged to take a necessary measures to save the state.²⁷

²³See at www.dcaf.ch

²⁴Ibid

²⁵Pro.FransiscoFracioni,Human rights in times of emergency:Analysis of the European convention and the UN covenant on civil and political rights,LUISS GUIDO,cerlil,2015-2016,p.5

²⁶Ibid

²⁷Ibid

In reality, the state of emergency is a point of debate between the juridical and the political, between the norm and law. This ambiguous character resulted in a propagation of different philosophical theories on the states of exception and its legal justification and consequences.²⁸

Some legal scholars related the origin of the state of exception in the theory of necessity which emerged from the Latin maxim *necessitas legem non habet*. The exception is aimed bargain to *status necessitates*, which would lead the acceptance of the latter results in the justifications of the former. Such assertion might not help, because the Latin adage can be interpreted in two contrasting ways: as ‘necessity does not fit to recognize any law’ or as ‘necessity creates its own law’.²⁹ From the legal contextual meaning of necessity, it can be implicit as freeing a particular situation from the application of the law, to assume the power to render legitimate what is illegitimate.³⁰

Emergencies require states to act faster and more effectively than normal condition. But the tyrannical governments can enact ad-hoc legislation for solid problems of the executive; processes of legislative decision making and execution are faster since no majority consensus is necessary, and checks and balances exert little control on the executive.³¹

The liberal democracies ideology has mainly four tools at their disposal to deal with emergencies situations.

1. *Moving legislative power to the executive;*
2. *Granting extended administrative power to the executive (vis-à-vis the rights of the citizen);*
3. *Reducing the democratic control (checks and balances) over the executive;*

*Installing accelerated judicial procedures (e.g., the martial law norm that civilians can be tried before military courts).*³²

²⁸Supra note 14,p,6

²⁹ Ibid

³⁰ Ibid

³¹ Andrej Zwitter, “The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy,” Archives for Philosophy of Law and Social Philosophy 98, no. 1 (2012): 107.

³² Andrej Zwitter, “The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy,” Archives for Philosophy of Law and Social Philosophy 98, no. 1 (2012): 107.

In contrast, authoritarian regimes tend to violate these principles during states of emergency through the unnecessary declaration, the undue extension of emergency status, and/or the disproportional use of emergency powers. This is possible because constitutional checks and balances are not in place or disregarded. The constitutional checks and balances that democracies have at their disposal to limit the abuse of emergency powers are as follows

Regarding the state of emergency, there are two broad schools of thought on legality during a state of exception. Those who favor a rule-of-law method for the state of exception on one hand, and others who "criticize the deception of regulating by law what by definition" they say the state of emergency cannot be reduced to legal norms on the other hand.³³ The latter "understands the state of exception to be 'essentially extra-judicial', or how could it be possible to control unlawful act by lawful means? This thought has a sentiment of dictatorship.³⁴ Could be called the school sovereignty and firmly believe that it is neither possible nor appropriate to control executive action in times of emergency using standard juridical accountability mechanisms.³⁵ The follower of this school propagated that the exigency situation is an extraordinary situation which cannot reinstate by legitimate means rather its ultimate goal is to reinstate lawfulness in the country by any means via granting executive superior power without much interruption of judiciary control.

In contrary, many intellectuals disregarded sovereignty approach. The contrary view, the followers of the other school which pre-dominant in IHRL, is that even in a state of emergency the rule of law must still prevail to govern the exigency situation and as some call it "the principle of legality."³⁶ Under this concept, the rule-of-law approach grants a challenge to the balance of powers between the branches and may endanger the domestic legitimacy of the courts. The IHRL scholarship on states of emergency and derogations has referred very little to the separation of powers.³⁷ This looks as if intentional drop on the issue or unwillingness to recognize the unlimited and unlawfulness act of executive branch with disregarding de-jure approach of the judiciary. This assertion would lead us to

³³ Giorgio Agamben, *the state of exception* (Kevin Attell Trans., Univ. Of Chi. Press (2005),P.10

³⁴ Scott P. Sheeran, Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics, 34 Mich. J. Int'l L. 491 (2013).pp.500. Available at: <http://repository.law.umich.edu/mjil/vol34/iss3/1>

³⁵ Ibid

³⁶ Ibid

³⁷ See Stephen Humphreys, Legalizing Lawlessness: On Giorgio Agamben State of Exception, 17 EUR. J. INT'L L. (2006) ,p.677, 677-78

choose between the legitimacy of judiciary and democratic decision. Because, it has been observed over a half-century that many countries, declare a state of emergency not to defend human rights but to maintain their own power, by systematically subjugate opposition or by pseudo-legitimacy.³⁸ Derogation clause plays a crucial role in the system of protection for human rights by using both procedural and substantive means.³⁹

Derogation clause lets for a state party unilaterally to derogate temporarily as part of its international human rights obligations, but not in absolute sense, hence, international human rights law had come up with the solutions to strike balance between to protect the rights of individuals on the one hand and to maintain state sovereignty on the other hand. Still, there is an argument on to compromise for beseeching the sovereignty and non-compromise on the fundamental breach and blanch of human rights. Because it has been deduced from this assertion that the power of the state to derogate from its obligations under human rights is not limitless nor is it open-ended some rights are considered basic and fundamental that no crisis justifies their derogations theoretically. Consequently, non-derogable rights that out not be derogated in times of emergency should prevail.⁴⁰

2.2 The conceptual framework of derogation during state of emergency

Derogation is a circumstance, where states may need to take measures which may infringe human rights for temporary nature and it would give a state to have the power to preventatively detain, without resort to normal judicial procedures under strict situation with great care- and provided measures taken are not contradictory to international human rights law.⁴¹ A derogation measures are only allowed only in a situation when the “life of the nation” is at stake, and no other means to avert the emergency situation States may unilaterally derogate from some of its obligations under international and national human rights instruments. For the state to take derogation measures the has to follow certain mandatory elements. Exceptional circumstances, Non-derogable rights Strictly required – proportionality, Temporary, Procedure – international and domestic applicable law during

³⁸ Supra Note 4, p.8

³⁹ Ibid

⁴⁰ General Comment No. 29: States of Emergency (General Comment 29) (article 4) : . 31/08/2001.

CCPR/C/21/Rev.1/Add.11.<http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361?Opendocument>

⁴¹ Art 15 of ECHR

emergencies, Humanitarian law and international criminal law and parts of international human rights law.⁴²

In order for the state to take the derogation measure, there are mandatory requirements to be fulfilled

1. *It must be actual or imminent.*
2. *Its effects must involve the whole nation.*
3. *The continuance of organized life in the community must be threatened*
4. *The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health, and order, are plainly inadequate.*⁴³

Derogations measures may neither be contrary to international law nor to the rights which are listed as “non-derogable” under Art 15 of the ECHR or Article 4 of the ICCPR.⁴⁴

2.3 Fundamental Principles of Governing Derogation of Human Rights during the State of Emergency

States were not totally prohibited from derogating certain rights during a state of emergency; rather special procedure was imposed on the state to be followed during derogating human rights. This would help the state properly exploiting suspension rights for proper measures.

For the firm application of this assertion, international human rights instruments forward seven principles employed to regulate the government’s declaration and administration of states of emergency.⁴⁵

2.3.1. Substantive Principles to Derogate Human Rights during the State of Emergency

To amicably solve the problem during state of emergency international human rights instruments bench on board the substantive principles which enclose the principle of strict necessity, non-derog

⁴² See: Art. 4 ICCPR, Art.15 ECHR, ECHR Protocol 6, Art. 3.

⁴³ See report of the EHRC Commissionen, 5 November 1969, YB XII (1969), p. 72 and pp.. 76, 100 (also pp. 45-71)

⁴⁴ see Human Rights Commtee Gen. Comment 29, on states of emergency

⁴⁵ GetachewAssefa (PhD), Ethiopian constitutional law with comparative notes and materials, Addis Ababa University School of Law, 2012, pp. 496-504

ability, the principle of exceptional threat, the principle of nondiscrimination, and the principle of compatibility to regulate the measures of state during state of emergency.⁴⁶

A. The Principle of strict necessity

It is internationally granted right for the state take measures derogating from its international human rights obligations under special circumstance only when they faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation under strict necessity. A threat to the life of the nation is one that affects the whole of the population and either the whole or part of the territory of the State and threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic performance of institutions.⁴⁷

B. The Principles of non-derogability

Even though rights are inseparable, they do have different status by very nature of those rights, regarding this, state shall in no means, even in time of emergency threatening the life of the nation, cannot derogate the right to life, freedom from torture, cruel, inhuman or degrading treatment punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.⁴⁸

C. The Principle of non-discrimination

The principle of non-discrimination entails the state that emergency measures taken by the derogating State should not employment discrimination for the mere fact of an individual's race, color, sex, language, religion or social status.⁴⁹

D. The Principle of compatibility

The rights of the states to derogate from human rights norms have to adhere to the principles and the state has to be sure as such measures are not inconsistent with their other obligation under

⁴⁶ Ibid

⁴⁷ See, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984).p.4

⁴⁸ Ibid

⁴⁹ Supra note 38 p. 496-504

international law which intended to create compatibility and complementary among different obligations of the derogating State under international law.⁵⁰

E. The Principle of Proportionality

The principle of proportionality has a great importance in an emergency situation that there must be proportionality between the severity of the situation and scope of the state application to the emergency that the principle of proportionality states that rights can only be derogated to the extent required by the exigencies of the situation.

2.3.2 Procedural Principles to Derogate Human Rights during the State of Emergency

For the state declaring state of emergency, they were required that a State which in need of to suspend rights and freedoms has an obligation to officially proclaim the existence of the emergency situation that was threatening the life of the nation. The official proclamation of a state of emergency has a paramount important in terms of avoiding abuse of state of emergency rights, by forcing the state to comply with their international obligation by leading to strictly follow formal suspension procedures,⁵¹ the other importance of proclaiming state of emergency to aware the peoples to know the extent and nature of the state of emergency applications for alerting the population. Furthermore, it has also a lot to do with legislative and judiciary of the state to play their legal supervision role.⁵²

In connection with of public declaration of emergencies, States are required to inform, the other contracting parties to the covenants the nature of the declaration to enable them to act in accordance with their treaty obligation which would serve to check whether derogations from human rights are necessary and proportional to the danger posed by exigencies situation. To strength, this principles both ICCPR and ECHR refers them to inform secretary general the declaration and termination nature of the state of emergency by declaring state.⁵³

⁵⁰ Ibid

⁵¹ YehenuwTsegayeWalilegne, "State of Emergency and Human Rights under the 1995 Ethiopian Constitution," in Journal of Ethiopian Law, Vol. 21, No. 1 (2007)p.97

⁵² Ibid

⁵³ Ibid

2.4 Derogation Vs limitation of rights

Derogations are only permitted under exceptional circumstances, when the "life of the nation is at stake", while limitations to rights may be made to serve certain legitimate aims. In limitation Core of the right" may not be affected while the derogations: only exercised in exceptional circumstances under strict procedure where there is a possibility of the core might be affected. Limitations to the rights they stipulate. There must be a proportionate relationship between the restriction of the right as such and the reason for the restriction .the principles of proportionality is the common principles for both limitation and derogation

1.1.1 State of Emergency and International Human Rights Instruments

International human rights instruments like Universal Declaration of Human Rights and the United Nations Covenant on Economic, Social and Cultural Rights and on Civil and Political Rights (the so-called "International Bill of Rights" and Regional treaties, the European Convention on Human Rights and the American Declaration of the Rights and Duties of Man and the American Declaration on the Rights and Duties of Man, the American Charter on Human and Peoples' Rights and the American Declaration on the Rights and Duties of Man, were signed for the protection of the core of human rights in the world community.

1.1.2 Derogation after the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights permits states to derogate from certain human rights obligations, subject to conditions. The article provides states in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that

CHAPTER THREE

STATE OF EMERGENCY UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, THE 1995 ETHIOPIAN CONSTITUTION AND STATE OF EMERGENCY DECLARATION NO 1/2009

Introduction

This chapter going to examines the international instruments and the Ethiopian constitutional and state of the emergency declaration concerning human rights and states of emergency. It explains the procedures of declaring states of emergency, the constitutional safeguards against potential abuse of emergency powers, derogable and non-derogable rights, in limiting the emergency powers of the government. It also attempts to identify school of state of emergency thought in the position of the Ethiopian constitution in light of the generally accepted international governing principle.

3.1. State of Emergency and International Human Rights Instruments

International human rights instruments like Universal Declaration of Human Rights and the United Nations Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights founding the “International Bill of Rights” and Regional treaties, the European Convention on Human Rights and Fundamental Freedoms, The African Charter on Human and Peoples’ Rights and the American Convention on Human Rights were signed for the protection of the core of human rights in the world community.

3.2. Derogation under the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights permits states to derogate from certain human rights obligations, subject to conditions. The specific provision states: In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that

such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin⁵⁴

The prevalence and existence of a relationship between the state of emergency and gross violation of human rights were acknowledged by the international community.⁵⁵ International organizations surged to take the necessary measure to keep track with emergency situations on. To this effect Commission on Human Rights, by means of decision 1998/108, demanded the Office of the United Nations High Commissioner for Human Rights to submit to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-first session and every second year thereafter, a list of all States that declared a state of emergency or which persistent to implement it throughout the reporting period.⁵⁶

On the other hand, the Human Rights Committee (HRC) the treaty body established pursuant ICCPR-also made some determination toward the clarification of the state of emergency issue. It issued General Comment NO. 5 on Article 4 ICCPR, encouraged by the complications it had found in assessing some reports received by State.⁵⁷

From a comparative review of the major human rights agreements, it transpires that the ECHR, ICCPR, and ACHR all contain emergency clauses, namely Article 15 ECHR, Article 4 ICCPR and Article 27 ACHR. Even though the ICCPR and ACHR provisions were modeled after Article 15 ECHR, the three of them differ substantially in wording and contents, while the African Charter does not encompass any derogation clause.⁵⁸

a. State Practice and Fate of Derogations Clauses

The legal rationalizations for the presence of emergency clauses in international treaties have been provided as much as possible by different international and regional human right instruments but, yet it worth value to analyze their significance in practice and to get a sense of how States implement derogation provisions. Actually, there are different tendencies which have been observed ranging from the manipulation to the complete negligence of derogation clauses. Still another sense, in some States,

⁵⁴ Article 4 ICCPR.

⁵⁵ Supra note 24,p13

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Human Rights Committee, General Comment NO. 5, UNHRCOR, thirteenth session, 1981.p, 1

emergency and other states of exception have become the rule as a normal form of exercise of power, concealing into the normal constitutional order. This solicitation of exceptional measure become persistent apparatuses of government risks aversion.⁵⁹

Evaluating in a practical sense, it was recognized that a danger of misuse of derogation a clause by States was a tangible and UN Human Rights Committee disappointment by state practice under Article 4 of ICCPR.⁶⁰

Under the arena of ICCPR, whose 168 State Parties have many and different forms of state, a tendency to exploit the state of emergency powers to maintain de facto positions of power, Emergency legislation has been invoked under the slogan of national security to justify – inter alia - arrests, incommunicado detention, torture, exile and summary proceedings, forced disappearance.⁶¹

There are multiple examples of misuses of Article 4 ICCPR across the world. The nature of derogation of human rights is based on temporary nature but the State of Israel has proclaimed the state of emergency only once, in May 1948 – and notified it to the Secretary-General in October 1991- but it has remained into forever since up to present. In Egypt, the state of emergency was declared in October 1981, and declined in November 2013.⁶² Egypt is one of the most prominent countries to misuse of emergency laws. Effectively, Egypt has remained under declaration of a state of emergency since the Arab-Israeli War of 1967. The state of emergency was lifted for an 18-month period in 1980 but was re-imposed after Anwar Sadat's assassination in 1981. The state of emergency in Egypt derived from the Egyptian constitution and since 30 March 2011, from the constitutional declaration adopted by the Supreme Council of Armed Forces (SCAF).⁶³

On the other hand, from March 1983 on, Peru has transmitted an incredible amount of notifications under Article 4, each concerning the establishment or continuation of one or more states of emergency in different parts of the country. An extreme case in this direction is the notification that the Secretary-

⁵⁹ Supra note 4,p3

⁶⁰ Supra note 24,p 17

⁶¹ Ibid

⁶² Ibid

⁶³ "The Constitution of the Arab Republic of Egypt, 1971 (As Amended to 2007)," Constitution .net, accessed 6 March 2014, <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>; and Supreme Council of the Armed Forces, Constitutional Declaration 2011, adopted on 30 March 2011, World Intellectual Property Organization, accessed 6 March 2014, <http://www.wipo.int/wipolex/en>

General received by Peru in March 1992, which encompassed as many as 64 declarations or extensions of a state of emergency.⁶⁴ Peru notified under Article 4 of ICCPR to UN Secretary-General on March 4, 2015.⁶⁵

Many Latin American States have been abuses of derogations clause. In this region likewise been others they bent by authoritarian regimes to impose a state of emergency as the de facto normality has been wide-ranging (see, inter alia, Paraguay, Uruguay, Brazil or Colombia) in this regard the Committee expressed its concern and reservations with regard to the length of derogation measures taken by Chile, Uruguay, Peru and El Salvador.⁶⁶

Considering the Council of Europe, the jeopardizes resulting from the abuse of derogation proclamation are evident also in the context of ECHR under Article 15. The European Convention has a more limited number of State Parties, members of the Council of Europe. The council declared in the Preamble the same intention of a common tradition of values and political principles aimed at the safeguarding of justice, peace and common understanding and protection of Human Rights, consequently, Democracy served not only an ideal condition but also a concrete requirement for the defense and application of human rights. Moreover, it is beyond doubt that concept of “democratic society” is vested of fundamental importance throughout the whole Covenant of the council.

In general, State Parties under different regional human rights instruments have different tendency level of application but the European council state member usually refrained from invoking their derogation powers under Article 15 ECHR. The United Kingdom (which has used this capacity under both treaties) and Turkey are the States that has derogated more under ECHR. While other States that have filed a notification of derogations to the Secretary-General of the Council of Europe are Ireland, Greece, France, Albania, and Georgia.

⁶⁴ Angelika Siehr, “State practice with respect to derogations” LL.M. Yale University

⁶⁵ Peru: Notification under article 4 (3) ICCPR, 4 March 2015 C.N.159.2015.TREATIES-IV.4 (Depositary Notification)

⁶⁶ Supra note 24,p,18

3.3 Substantive and procedural principles of state of emergency

There are both substantive and procedural principles of the state of emergency were embedded relevant provisions of the ICCPR, the Siracusa principles and the Paris minimum standards provide each of them as follows.

In order to declare a state of emergency, there should be an exceptional threat intimidating the life of the nation. Art 4(1) of ICCPR Provides that” in time of public emergency which threatens the life of the nation.....the state parties to the covenant....may take measures derogating from their obligation under the covenant...” Secondly, the principle of proclamation; Art 4(1) of the ICCPR provides that the existence of a public emergency threatening the life of the nation by itself is not sufficient to exercise emergency power but there should be “official proclamation” is the pre-requirement of the state party to derogates from its obligation in the instruments.

Thirdly, the principle of proportionality, Art 4(1) of the ICCPR provides that “the state parties to the covenant may take measures derogating from their obligation...to the extent strictly required by the exigencies of the situation, in time of emergency.” And the action of the state should be the same.

To declare a state of emergency, fourthly, the principle of non-discrimination should be in place; the derogation measures should be implemented equally to all persons in the region or state whereby the state of emergency is declared without discrimination exclusively on the grounds of race, color, sex, language, religion.

Fifthly, the principle of compliance; the derogation measure by the state parties to the ICCPR shall not be inconsistent with their obligations under international law as it is provided in Art 4(1) of the covenant. It refers to the consistency of measures of derogation with the states’ other international obligation. The state is not at liberty to decide based on their own scope and there should not be absolute discretionary.

Sixthly, the principle of non-derogability of fundamental rights; notwithstanding the state parties have the sovereign right to take derogation measures from their obligation in the covenant as per Art 4(1) of the ICCPR, but there are rights which are under no circumstance to be suspended even in times of

public emergencies threatening the life of the nation pursuant to Art 4(2) of the same covenant. The non derogable rights listed under Art4 (2) of the ICCPR are: The right to life, the right not to be subjected to torture or cruel, in human or degrading treatment or punishment (Art 7); the right not to be held in slavery or involuntary servitude (Art 8(1) (2)); prohibition of retroactive penal laws (Art 15); the right to recognition as a person before the law (art 16), freedom of thought, conscience, religion and belief (Art 18).

The ICCPR under its Art 5(2) bans a derogation measure on the pretext that the covenant does not recognize such right or that it recognizes them to a lesser extent. Furthermore, Art 5(2) of the covenant prohibits using of the treaty as an excuse for limiting or derogating from the human right acknowledged in municipal law or in other treaties. Art 5(1) of the same that prohibits the state from taking part in any activity aimed at destroying or limiting to a greater extent than is provided in the covenant. And Art 2(3) of the covenant which provides the right to an effective remedy before domestic courts, or other competent body provided by the legal system of the state in case of violation of human rights should be considered as non- derogable by implication. Otherwise, it will be futile for the covenant to adopt the substantive and procedural principles discussed earlier as prerequisites of derogation without making such prohibition to abuse, and the right to remedy provision non-derogable. It makes very difficult, if not impossible, to control the state not to take excess measures at the pretext of the constitutional reason of state emergency.

And the expression public emergency which threatens the life of the nation as used in the covenant, in general, that could be abused and be characterized based on different grounds. It is to avoid the abuse of constitutional reason of state-state of emergency, to balance security and freedom, and to ensure rule of law during emergency that efforts are made at international level through the “Siracusa principles on the limitation and derogation provisions of the ICCPR” and the “Paris minimum standards of human right Norms in a state of emergency”. For this purpose, the Siracusa principles and the Paris minimum standards have characterized emergency as it must be actual or at least imminent as opposed to the so called state of emergency of a preventive nature; its effect must involve the whole of the population including an emergency in one part of the territory that affects the whole as well as an emergency in one part of the territory that which it could be threat to the physical integrity of the population, the political independence or the territorial integrity of the state, the existence or the basic

functioning of the organization; the declaration of emergency must be a last resort to be taken only when the normal The stated principles and standards which were considered by the formulating experts and participants of the study to reflect the state of international law have provided limitation for the derogative measure, during emergency. They are formulated to assure as constitutional reason of state is not absolute, and rule of law shall still prevail in a state of emergency measures of public order have been exhausted and are not sufficient to deal with the situation; the declaration of state of emergency must be a temporary measure in which it must be for a well-defined period, and can only be extended in accordance with the law.⁶⁷

In order to interpret the provisions of the covenant that allow derogations during emergencies restrictively, and the constraining substantive and procedural principles be maintained, the Siracusa principles and the Paris minimum standards have emphasized on the institutional and minimum procedural safeguards to be established, and respected during an emergency. Accordingly, every state that assumes or exercises emergency power shall respect the following institutional and procedural safeguards.⁶⁸

Before declaring a state of emergency every state should define the procedure for declaring a state of emergency; whenever the executive authority is competent to declare a state of emergency, such official declaration shall always be subject to confirmation by the legislature, within the shortest possible time.

Notwithstanding that the declaration of a state of emergency shall never exceed the period strictly required to restore normal conditions, it shall be subject to the prior approval of the legislative organ if the extension is needed, and declared. Despite the fact that the executive will have an expanded authority, the fundamental functions of the legislature shall remain intact; it shall provide general guidelines to regulate executive discretion in respect of permissible measure of delegated legislation. In order to play such roles, the immunities of the legislature shall remain intact.⁶⁹

⁶⁷ Art 64 siracus

⁶⁸ Gebreabzgi w/slase , the extent of reason of state in the Ethiopian constitutional order: the quest for restraining and legitimizing,LL.M thesis (Addis Ababa University, unpublished, 2011).p 42

⁶⁹ Ibid

3.4.State of Emergency under the FDRE Constitution

Ethiopia is a State party to the International Covenant on Civil and Political Rights (ICCPR)⁷⁰, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷¹, the African Charter on Human and Peoples' Rights (ACHPR)⁷², the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁷³, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁷⁴, the Convention on the Rights of the Child (CRC), including its two Optional Protocols of 2000⁷⁵, the African Charter on the Rights and Welfare of the Child.⁷⁶

The accession and ratification of international human rights instruments by Ethiopian govern was part of intention- a declaration to limit the power of the state for the protection of human rights from other oppressor and promotion of human rights by the state by itself. Because limitation is the mandatory principle of any government even though, the nature of limitations will vary with the society, culture, political and economic arrangements, but the limitation principle is everlasting.⁷⁷ This principle leads the Ethiopian constitution to incorporate the human rights principle as fundamental principles.

3.5. The Status of Human Rights in the FDRE Constitution

Almost one-third of the Ethiopian Constitution is dedicated to fundamental human rights and freedom.⁷⁸ These are categorized as "Human Rights~ and "Democratic Rights" and, under Article 13 (2) rights and freedom are to be "interpreted in conformity with the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments ratified by the country without absolute discretionary interpretation of the government."⁷⁹ Moreover, the Constitution of FDRE imposes accountability and duty to the respect, promote and

⁷⁰ Acceded in 11 Jun 1993

⁷¹ Acceded in 11 Jun 1993

⁷² Acceded in 15 Jun 1998

⁷³ Acceded in 23 Jun 1976

⁷⁴ Signed in 8 Jul 1980 and ratified 10 Dec 1981

⁷⁵ Acceded in 14 May 1991,

⁷⁶ Acceded in 2 Oct 2002

⁷⁷ Abebe, A., 'Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical', CGHR Working Paper 1, Cambridge: University of Cambridge Centre of Governance and Human Rights ,April 2012).p.2

⁷⁸ Supranote (1)p.103

⁷⁹ Ibid

enforcement of fundamental rights and freedoms of human rights at all levels of the administrative ladder of the state. To demonstrate the highest level of respecting for human rights the FDRE Constitution established separate procedures for the amendment of the human rights and fundamental freedoms. This would help to avoid any simple plausibility of regression and safeguard the gains, a more stringent and rigorous procedure is required to amend the provisions fundamental human rights than the remaining parts of the Constitution. The Constitution strengthens these features through Article 9(1).⁸⁰

3.6. Interpretation approach of Derogation under FDRE Constitution

The inconsistency regarding the interpretation of international instruments in general and human rights instruments in particular in the FDRE Constitution become endless subject to academic debate among Ethiopian legal scholars. Article 9(1) of the Ethiopian Constitution declares the supremacy of the Constitution. Hence, reading of this provision clearly indicates that international instruments, which, under Article 9(4), are made an integral part of the laws of the land upon ratification, are subordinate to the Constitution.

Regarding the application of international human rights in domestically there is two governing principle. The first, as demonstrated in art.27 of the Vienna Convention on the Law of Treaties (VCLT),⁸¹ is that a party may not invoke the provisions of its internal law as justification for its failure to comply a treaty'. On another hand, a State Party should amend their domestic law as compulsory in order to give effect to their treaty obligations. The second principle is reflected in art.8 of the UDHR, according to which 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the covenant.'⁸²

But to the contrary of the above assertion Adam Kase on his article, *Human Rights under the Ethiopian Constitution: A Descriptive Overview*, he argued that the requirement that interpretations of the constitution should conform to international instruments only applies to human rights provisions

⁸⁰ Adem Kassie Abebe, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview', *Mizan Law Review* Vol. 5 No.1, Spring 2011, p.44

⁸¹ United Nations Treaty Series Vol. 1155 p.331.

⁸² Committee on Economic, Social and Cultural Rights General Comment 9 (1998) Domestic Application of the Covenant adopted at its 51st meeting (nineteenth session) (1 Dec. 1998) para.3

included in Chapter 3 of the Constitution.⁸³ He further argued about derogation of rights, where interpreting the derogation clause probably needs more guidance based on international and regional instruments and jurisprudence.

He also stipulates the provision dealing with the substantive and procedural requirements for derogation of rights in emergency exists outside Chapter 3, the interpretation of the derogation provision “*does not have to be in conformity with the international standard*”. However, he substantively affirms the interpretation provision should be understood purposively to oblige guidance and conformity in interpreting all provisions that have a direct or indirect bearing on the fundamental rights and freedoms enshrined in the Constitution⁸⁴. This seems like the compatibility between this two document based on the willingness of the state, which seems like self-contradicting because on one hand, he said that derogation clause is written outside chapter three of the constitution , state does not have a legal obligation to follow international standard, on the other hand, he stresses the interpretation of this provision should be in light of purposively ...this would create a mess that article 93 of FDRE constitution has not required following international standard or has to follow it, if Ethiopian government give a green card to interpreted it.

3.7. Substantive and procedure of derogation in FDRE constitution

Declaration of State of Emergency

1. (A) *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.*

(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.*

2. *A state of emergency declared in accordance with sub-Article I (a) of this Article:*

⁸³ Supra note 94,p.45

⁸⁴ Ibid

(a) If declared when the House of Peoples' Representatives is in session, the decree shall be submitted to the House within forty-eight hours of its declaration. The decree, if not approved by a two-thirds majority vote of members of the House of Peoples' Representatives, shall be repealed forthwith.

(b) Subject to the required vote of approval set out in (a) of this sub-Article, the decree declaring a state of emergency when the House of Peoples' Representatives is not in session shall be submitted to it within fifteen days of its adoption.

3. A state of emergency decreed by the Council of Ministers, if approved by the House of Peoples' Representatives, can remain in effect up to six months. The House of Peoples' Representatives may, by a two-thirds majority vote, allow the state of emergency proclamation to be renewed every four months successively.⁸⁵

4. (a) When a state of emergency is declared, the Council of Ministers shall, in accordance with regulations it issues, have all necessary power to protect the country's peace and sovereignty, and to maintain public security, law, and order.

(b) 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 a state of emergency.

(c) In the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Articles 1, 18, 25 and sub- Articles 1 and 2 of Article 39 of this Constitution.⁸⁶

The Council of Ministers of the federal Ethiopian government has the power to declare a state of emergency under all condition which stipulated in article 93 of FDRE constitution. Even though the power to declare a state of emergency lays on the hand of the council of the minister the power to approve a declaration of emergency, however, lies with the House of Peoples' Representatives

⁸⁵ See article 93 of FDRE constitution.

⁸⁶ Article 93 of FDRE constitution

(HoPR). This decision is required to be made within 48 hours if the HoPR is in session, or within 15 days of the session.⁸⁷

The Constitution allows the possible suspension of most of the fundamental human rights and freedoms with exceptions. This is a significant internal limitation that exacts necessity and proportionality which relates to the severity, duration and scope of the application of the emergency declaration on requirements of necessity and proportionality. The only non-derogable rights in FDRE constitution are the prohibition against cruel, inhuman, and degrading treatment or punishment, and slavery or servitude, and trafficking (Article 18), the right to equality and equal protection of the law (Article 25), and the right to self-determination up to secession (Article 39).

Critically reading article 93 of FDRE constitution, it does not address the compliment of the derogation clause in lights of any international standard both procedurally and substantively this asserted that the interpretation of Adam Kase was working from the side of FDRE constitution which emerged from the assertion of absolute sovereignty.

The Ethiopian Constitution recognizes possibilities that may require the suspension of protected rights.⁸⁸ Derogation clauses relate to provisions that permit the temporary suspension of the application and enjoyment of rights in response to incidences of emergency that threaten the life of a nation.⁸⁹ On its whims; there are substantive as well as procedural requirements that govern such emergency situations.

3.8. Non-Derogable Rights under the FDRE Constitution and ICCPR

There are also rights which may not be suspended even in threatening situations. These preconditions are designed as a protection against possible abuses of human rights on the pretext of emergencies.⁹⁰ But this non-derogable clause by itself is not exhaustible from the perspective of ICCPR and Siracusa principle of non-derogate causes.

⁸⁷ Ibid

⁸⁸ AdemKassieAbebe, Human Rights Under The Ethiopian Constitution: A Descriptive Overview, Mizan Law Review Vol. 5 No.1, Spring 2011.P.60

⁸⁹ Ibid

⁹⁰ See article 93(4)c of FDRE constitution.

Further this non-derogable under FDRE Constitution, Article 93(4) (b &c). The constitutional list of non-derogable rights evidently differs with the list of non-derogable rights in the ICCPR (Article 4) - the right to life and the prohibition of retroactive application of criminal law are omitted or not included in the constitutional list of non-derogable rights in FDRE constitution.⁹¹

A critical reading of Article 93(4) (c) of the Constitution FDRE and Article 4(2) of the ICCPR clearly demonstrate that the list of non-derogable rights and freedoms the FDRE constitution exclude some of the rights that are listed under the ICCPR. The non-derogable rights listed under Article 4(2) ICCPR are right to life, freedom against torture, cruel, inhuman or degrading treatment or punishment, freedom against slavery, freedom against imprisonment for contractual obligation, right to recognition everywhere as a person before a law to freedom of thought, conscience, and religion. The FDRE constitution fails to include the right to life, freedom against imprisonment for contractual debt, right to recognition everywhere as a person before the law and as well as the right to freedom of thought, conscience and religion in the list of non-derogable rights during a state emergency.⁹²

3.9. Legal watchdog of Emergency Power under FDRE Constitution

The FDRE Constitution dedicates more than one-third of its content to provisions on fundamental human and people's rights. Moreover, the Constitution levies a responsibility and duty to the respect, promote, protect and enforcement of fundamental rights and freedoms at all levels of the federal and state.⁹³

On the other hand, since the creation of the concept of states of emergency, numerous regimes have used emergency powers to maintain their position. On the contrary, the state of emergency is a basic feature of the democratic state.⁹⁴ Furthermore, Emergencies require states to act faster than usual legal operation is possible within limitations imposed by the law during normal conditions.⁹⁵ This intention emerged from the sense of effectiveness and efficiency to deal with emergencies:

⁹¹ Supra Note 102.p101

⁹² Supra note 83,p107

⁹³ Supra Note 102.p 43.

⁹⁴ Andrej Zwitter, The Arab Uprising State of Emergency and Constitutional Reform , ASPJ Africa & Francophonie - 2nd Quarter 2014 ,p 48

⁹⁵ Ibid

1. *Moving legislative power to the executive;*
2. *Granting extended administrative power to the executive (vis-à-vis the rights of the Citizen);*
3. *Reducing the democratic control (checks and balances) over the executive;*
4. *Installing accelerated judicial procedures (e.g., the martial law norm that civilians can be tried before military courts).⁹⁶*

This theory assertion by itself would create a dichotomy of the necessity of emergency power and the legitimate limitation of emergency power particularly through the principles of democratic control and the rule of law.⁹⁷ In this regard, FDRE constitution has two controlling mechanisms over emergency power.⁹⁸

3.9.1. Legislative mechanism

As a mandatory principle, overwhelming constitution in the world has provided emergency detail and circumstances under which a state of emergency may be declared, the nature of derogations, the monitoring role of the legislative and judicial organs, and the way in which the emergency regime could be extended and ultimately come to an end when the emergency situation stopped to exist.⁹⁹ This would let the executive body to know the detailed specification both procedural and substantive matters regarding emergency management and the role of legislation in the emergency domain. To this effect, the FDRE constitution forward solution In the Ethiopian Constitution. It gives HOPR control over the executive act of proclaiming an emergency. The constitution stipulates the time framework within which the executive has to bring to the legislation which ranged from 48 hours to fifty days when the legislator is of work and on work.¹⁰⁰ In both cases, if the emergency decree fails to get the endorsement of a two-thirds majority vote of the members of the HOPR, it has to be canceled immediately.¹⁰¹ The other limitation relates to the scope of the emergency regulations, i.e., the executive can only derogate from what the Constitution entitles. The third safeguard is temporal, i.e.,

⁹⁶ Ibid

⁹⁷ Supra note 108,p.50

⁹⁸ Supra note 83,p107-108

⁹⁹ Ibid

¹⁰⁰ FDRE constitution. Art 93(2)(a)

¹⁰¹ Supra note 83,p108

the declaration of emergency is limited to six months. Although the Constitution does not put an upper limit on the number of renewals to derogation the only it requires the HOPR reconsider.¹⁰²

Furthermore, the constitution of FDRE, under article 93(5) stipulates the admiration of state of emergency lied on the inquiry board which established by HOPR. The State of Emergency Inquiry Board shall have the following powers and responsibilities:

(a) To make public within one month the names of all individuals arrested on account of the state of emergency together with the reasons for their arrest.

(b) To inspect and follow up that no measure taken during the state of emergency is inhumane.

(c) To recommend to the Prime Minister or to the

Council of Minister's corrective measures...if it finds any case of inhumane treatment.

(d) To ensure the prosecution of perpetrators of inhumane acts.

(e) To submit its views to the House of Peoples' Representatives on a request to extend the duration of the state of emergency.¹⁰³

The commence a series tasks of inquiry board including examination and follow up to safeguard that actions taken during the state of emergency are not merciless and against the required procedure. Under such procedure inspection when the Board finds any case of inhumane treatment, it is mandated to suggest remedial actions to the Council of Ministers or to the Prime Minister and to ensure that the perpetrators of those acts are charged and necessary action has to be taken by that organ that runs the emergency area.¹⁰⁴ The inquiry board also vested to publicize the names of all persons detained by reason of the declared state of emergency within one month and to convey its views to the House of

¹⁰² Ibid

¹⁰³ FDRE constitution. Art 93(6)

¹⁰⁴ FDRE constitution. Art 93(6)(c)and(d)

Peoples Representatives on the extension of the duration of the state of emergency if the board believe that.¹⁰⁵

3.9.2 *Judicial Mechanism*

Emergency situation, which threaten the very existence of the state or the continuity of social organized life pose a difficult to the rule of law. The dichotomy can be explained as follows: on one hand if you do not authorize governmental extraordinary powers to strike a balance, you face two untold dangers: Either to allow the regime could collapse or, more probably, the government would act illegally.¹⁰⁶

Therefore, it seems necessary that constitutional regimes have to be recognizing the existence of emergency power to face this kind of crises. The essence of these powers, which some scholars call "constitutional dictatorship", is that they temporarily increase executive power and authorize the restriction of some constitutional guarantees and personal fundamental rights in order to protect the constitutional order of the state.¹⁰⁷

This constitutional contention has implications on judicial review of executive decisions in emergency situation. Some argue that judicial review is not necessary because the use of extraordinary powers in serious crises falls within the realm of pure necessity and, therefore, has not be subjected to any judicial scrutiny. This is clearer if judicial control operates during the ongoing crises. In this situation, judges tend to abdicate judicial responsibilities because of security concerns.¹⁰⁸ On the other hand, scholars debate that emergency power, that the emergency situation should be controlled by the judiciary.¹⁰⁹

Even though, there is explicit provision regarding of judicial control during state of emergency, it would be presumed that there is interpretative judicial control, It is thus imperative for nations to

¹⁰⁵FDRE constitution. Art 93(6)(e)

¹⁰⁶Uprimny Rodrigo and García Villegas, Mauricio. "Tribunal Constitucional e emancipacao social na Colombia" en Boavertura de Sous Santos (Org)-Democratizar a democracia. Oscaminhos da democracia participative,2002,p.1
<http://www.ces.fe.uc.pt/emancipa/research/en/texts.html>

¹⁰⁷ Ibid

¹⁰⁸ Supra note 120 p,4

¹⁰⁹ Ibid

strictly observe not only the norms governing the requirements for a valid declaration of a state of emergency but also there should be control of emergency powers to follow basic principle implementing the emergency power.

3.10. State Of Emergency Declaration in Light National and International of Human Rights Principles

The Ethiopian government declared a state of emergency on 9 October 2016 in response to the protests.¹¹⁰ The State of Emergency Declaration outlines broad restrictions on a range of human rights, including non-derogable rights such as the prohibition on the retroactive application of criminal law; and the prohibition of torture and other ill-treatment, as well as fundamental requirements of the fair trial.¹¹¹

The State of Emergency Declaration established a Command Post with the powers to determine the specific measures, restrictions, and areas for implementation of the state of emergency. The Prime Minister chairs the Command Post and the Minister of Defense serves as its Secretary. Other members include the Federal Police Commissioner and Regional Special Force Police Commanders.¹¹² Under the State of Emergency Declaration, the Command Post can impose the following measures:

Law enforcement officers may take the following measures, on any person contravening the prohibitions set out in part one of these directives:

- (1) *Detention without an arrest warrant,*
- (2) *Keeping the detained person in a location to be decided by the Command Post for the duration of the State of Emergency,*

¹¹⁰The House of Peoples' Representatives, the Lower Chamber of Federal Parliament, endorsed the State of Emergency Declaration on 20 October 2016.

¹¹¹ The International Covenant on Civil and Political Rights (ICCPR) explicitly lists rights which state parties cannot derogate from, even during public emergency. These rights are called non-derogable rights. The African Charter on Human and Peoples Rights (ACHPR) does not have a provision for derogation of rights in states of emergency. Any state party to both the ICCPR and the ACHPR needs to ensure that any measures taken which derogate from the ICCPR nonetheless comply with its obligations under the ACHPR. This commentary uses the framework provided by the ICCPR as further elaborated by the UN Human Rights Committee in its General Comment Number 29.

¹¹²Fana BC, The Command Post Aims to Restore Peace and Order in the Country-Ministry of Defence (translation from Amharic news ኮማንድ ፖስት ስላሳ ለገራ ቱንሰ ላም እና መረጋጋት በአጭር ጊዜ ለመመለስ ይሰራል - የመከላከያ ሚኒስቴር): <http://www.fanabc.com/index.php/news/item/19388> (accessed on 28 November 2016)

- (3) *To provide rehabilitation training and release or to bring to court as the case may be,*
- (4) *To undertake search without court warrant on any premises at any time with the participation of the local people and police and to seize any item that has been used or could be used for commission of crime or to order its preservation,*
- (5) *To monitor or restrict messages transmitted through any radio, television, writings, images, photograph, theater and film,*
- (6) *To conduct searches without court warrant and return looted property to their owners,*
- (7) *Take legal measures against students or employees who take part in educational institutions disturbance and riots and order the institutions to take administrative measures,*
- (8) *To prevent certain persons or groups, who are suspected and anticipated to be likely to cause disturbances or to be vulnerable to harm, from entering or being present in a certain area or to restrict them to a designated area, and*
- (9) *To undertake appropriate measures.*¹¹³

The ICCPR provides, in Article 4, that in time of an officially proclaimed public emergency which threatens the life of the nation, states may take measures derogating from certain obligations under the Convention. Those derogations shall be limited to the extent strictly required by the situation, be consistent with their other obligations under international law and not be discriminatory. However, Article 4 of the ICCPR also explicitly lists certain rights which may not be derogated from at all.

The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with their obligations under that treaty, has clarified that not only the decision to derogate in itself but each specific measure taken under the derogation, must be demonstrably required by the exigencies of the situation. States availing themselves of this derogation provision must notify the UN Secretary-General and other states parties to the ICCPR of the provisions of the convention from which they have derogated and the reasons for the same.

¹¹³ Command Post, Directive for the Implementation of the State of Emergency, Article 28(1)-28(9)

3.10.1. Notification status of SOED

During a state of emergency, States Parties to the ICCPR who forced to declare a state of emergency has an obligation to notify all other States Parties of the provisions they are derogating from ICCPR, through the UN Secretary-General. The notification statement should indicate the provisions of the ICCPR from which they have derogated and the reasons for so doing.¹¹⁴

Notification is crucial not only for other states parties, but also to enable the UN Human Rights Committee to monitor the human rights situation in the country during the emergency period. The UN Human Rights Committee has stressed the requirement of notification is important “...in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation”.¹¹⁵

As of 11 January 2017, the Ethiopian government had not sent notification of the declaration of the state of emergency and the derogations as required.¹¹⁶

3.10.2. Legality of SOED

The principle of legality requires that laws shall be available and accessible to the public. The exact content of the State of Emergency Declaration was still not officially available to the public by the end of 2016, even though it was approved by HoPR. The failure to make the text publicly available also fails to meet requirements of the national law

Both the State of Emergency Declaration and its implementation directive also fail to comply with another element of the principle of legality, the requirement that provisions with legal consequences be clear and precise. Clarity and precision are important so that people know actions allowed or prohibited. When laws are clear and precise, people can also foresee the consequences of breaking the law. However, the State of Emergency Declaration and its implementation directive use imprecise terms such as ‘national security’ and ‘sovereignty’

¹¹⁴ ICCPR, Article 4(3).

¹¹⁵ UN Human Rights Committee, General Comment Number 29, Paragraph 17.

¹¹⁶ UN website

Finally, the state of emergency measures violates the principle of non-retroactive application of criminal laws, a non-derogable right, as they authorize the detention of people for their involvement and role in coordinating protests against the Ethiopian government since the end of 2015.

3.10.3. Non-Derogable Rights vs. State of Emergency Declaration

Pursuant to Article 4(2) of the ICCPR rights are classified as derogable and non-derogable even during a public emergency. The rights that are non-derogable during state of emergency are: Article 6 (right to life and freedom from arbitrary deprivation of life); Article 7 (freedom from torture and other forms of ill-treatment); Article 8(1 and 2) (freedom from slavery and servitude); Article 11 (freedom from imprisonment due to failure to fulfil contractual liability); Article 15 (freedom from non-retroactive application of criminal law); Article 16 (right to recognition before the law); and Article 18 (freedom of thought, conscience and religion).

3.10.4. Torture and Other Ill-Treatment

The right to freedom from torture and other ill-treatment is one of the non-derogable rights explicitly listed in Article 4(2) of the ICCPR.¹⁹

The implementation directive provides discretionary powers to the Command Post to implement ‘rehabilitation measures’ against people who participated in violence and unrest in the past year. While the exact meaning and duration of these ‘rehabilitation measures’ is unclear,

3.10.5. The Right to Fair Trial

Even though the ICCPR’s Article 4(2) does not specifically mention it, the UN Human Rights Committee has identified the non-derogable nature of the right to fair trial as follows

The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offense. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to

*enable the court to decide without delay on the lawfulness of detention must not be diminished by a State party's decision to derogate from the Covenant.*¹¹⁷

The State of Emergency Declaration, however, allows the Command Post to suspend implementation of non-specified substantive and procedural laws of the country. Accordingly, remedies for human rights violations as provided for in substantive and procedural laws of the country may not be applicable during the state of emergency. For instance, people in detention under the state of emergency provisions may not be able to pursue the habeas corpus remedy as provided for in the Ethiopian Civil Procedure Code and the judiciary may not be able to oversee the conditions of detention to ensure the rights of those detained are respected, including their right not to be subjected to torture and other ill-treatment.

3.10.6. Necessity and Proportionality Required By the Exigencies of the Situation

Any measure taken under a state of emergency must be strictly required by the exigencies of the situation that gave rise to the declaration of the state of emergency. As the UN Human Rights Committee has stated clearly in its General Comment

A fundamental requirement for any measures derogating from the Covenant...is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage, and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant. Nevertheless, the obligation to limit any derogation to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers.¹¹⁸

The UN Human Rights Committee referred to the principles of necessity and proportionality, set out in Article 4(1) of the ICCPR, which apply to measures derogating from or limiting certain rights under the ICCPR. The principles of necessity and proportionality require that any measures imposed in the

¹¹⁷ UN Human Rights Committee, General Comment Number 29, Paragraph 16.

¹¹⁸ UN Human Rights Committee, General Comment Number 29, Paragraph 4.

context of a state of emergency which derogate from provisions of the ICCPR must be demonstrably necessary for the achievement of their intended purpose, must be proportionate to that purpose and must not jeopardize the rights restricted.

However, the geographic extent and material scope of the measures imposed under the state of emergency exceed what is required by the exigencies of the situation, as discussed below

The Ethiopian government has repeatedly affirmed that the violence after the Errecha slaughter prompted the declaration of the state of emergency. The violence following the Errecha incident was restricted to the Oromia and Amhara Regions, but most of the following prohibitions as per the implementation directive for the State of Emergency Declaration apply across the country.

CHAPTER FOUR

ASSESSING APPLICATION STATE OF EMERGENCY IN SEBETA TOWN IN LIGHT OF THE ESTABLISHED STANDARDS: CASE STUDY

Introduction

Assessing derogation of human rights during a state of emergency is a broad concept and assessment may be made from various viewpoints. However, due to various constraints and scope of this study, this chapter focuses on the main points for assessment applicability of state of emergency against the established standards and the fate of human rights protection in Sebeta Town during 2016 state of emergency.

Starting from 2014 the government faced different violent and non-violent protest across the country with special and prolonged protest from Oromia and Amhara regions. Contrary to the previous non-persistent protest, the 2016 turmoil was turbulent and tenacious than prior protest in the history of the current regime.

In this regard, various sources, including Al Jazeera America¹¹⁹, The Guardian¹²⁰, Reuters¹²¹ and The Independent¹²² explained and discuss that the Addis Ababa Master Plan is a long-term project of the Ethiopian government to expand the territory of the capital, Addis Ababa (Finfinne) to the interior part of Oromia.

¹¹⁹ Al Jazeera America, 'Protesters in Ethiopia reject authoritarian development model', 19 December 2015, <http://america.aljazeera.com/opinions/2015/12/protesters-in-ethiopia-reject-authoritarian-development-model.html>. Date accessed: December 9 2016.

¹²⁰ The Guardian, 'Stop the killing!': farmland development scheme sparks fatal clashes in Ethiopia', 18 December 2015, <http://www.theguardian.com/global-development/2015/dec/18/ethiopia-oromia-farmland-development-fatal-clashes>. Date accessed: 9 June 2016.

¹²¹ Reuters, 'Ethiopia industrialization drive met by violent protests over land', 19 December 2015, <https://www.yahoo.com/news/ethiopia-industrialisation-drive-met-violent-protests-over-land-073018725-business.html?ref=gs>. Date accessed: 9 December 2016.

¹²² The Independent, 'Ethiopia security forces kill up to 50 people in crackdown on peaceful protests', 17 December 2015, <http://www.independent.co.uk/news/world/africa/ethiopia-security-forces-kill-up-to-50-people-in-crackdown-on-peaceful-protests-a6777631.html>. Date accessed: 9 June 2016.

Furthermore, multiple sources, including the BBC¹²³, International Business Times¹²⁴ and Human Rights Watch¹²⁵ reported that in January 2016, the Ethiopian government subsequently announced the revoking of Addis Ababa Master Plan .but the master plan controversy never end and no consensus has been reached between the government and the protesters when the 2016 ERRECHA, Thanksgiving day was reached

Unlike before, the 2016 *Errecha* (Oromo's Thanks giving) celebration, become bloody, horrific death, unforgettable incident where two and above individuals died from the same family which triggers persistent protest across the Oromia. Due to this extensive turmoil the Ethiopian government On October 8, 2016, declared a state of emergency for six months.¹²⁶

The EHRC reported for the Ethiopian HPR 173 deaths in Oromia which including 28 of security force members and officials, and in which the commission purported that security forces used proper force.¹²⁷In contrary On August 13, Human Rights Watch (HRW) reported that security forces killed more than 500 protesters across the region.¹²⁸

In October the prime minister of Ethiopia specified the deaths in Oromia Region alone “could be more than 500.”¹²⁹

Moreover, the UN High Commissioner for Human Rights asked the government of Ethiopia to allow access to an international, independent and impartial investigation, cease the violent crackdown on the Oromo Protests unfolding since November 2015, and ensure that the current state of emergency does not lead to further violations of fundamental non-derogable human rights as they are enshrined in the

¹²³ BBC, ‘Ethiopia cancels Addis Ababa master plan after Oromo protests’, 13 January 2016, <http://www.bbc.co.uk/news/world-africa-35300471>. Date accessed: 13 March 2017.

¹²⁴ International Business Times, ‘Addis Ababa master plan: Oromo clashes end capital's expansion plans’, 13 January 2016, <http://www.ibtimes.co.uk/addis-ababa-master-plan-oromo-clashes-end-capitals-expansion-plans> 1537656. Date accessed: 13 March 2017.

¹²⁵ Human Rights Watch, ‘Ethiopia: No Let Up in Crackdown on Protests’, 21 February 2016 <https://www.hrw.org/news/2016/02/21/ethiopia-no-let-crackdown-protests>. Date accessed: 14 March 2016.

¹²⁶ Supra note 32

¹²⁷ Ethiopia 2016 human rights report, Country Reports on Human Rights Practices for 2016 United States Department of State • Bureau of Democracy, Human Rights and Labor.p.1

¹²⁸ Ibid

¹²⁹ Ibid

African Charter on Human and Peoples' Rights and international covenants which Ethiopia had ratified, but the government rejected the request.

Following, festival (*Errecha*) in Bishoftu, on October 2, hundreds death of civilian, property damage has occurred. But the figure of the fatal vary from one source to others for instance

On November 9, Amnesty International reported the death of more than 800 persons since November 2015.¹³⁰

The declaration was a nationwide State of Emergency on October 8 following several months of tensions between anti-government protesters and security forces and related insecurity, including a deadly during mass gatherings for the *Errecha* holiday in Oromiya Region's Bishoftu town on 2 October 2016.

The first round of State of Emergency, which could remain in effect at nationwide until April 2017, permits the Government to exercise several extraordinary powers, including restricting population movement and assembly restrictions. In early October, the Office of the UN High Commissioner for Human Rights expressed concern regarding insecurity in Ethiopia and called for an independent investigation of the October 2 incident but did not succeed in apprehended investigations.

During the 2016 state of emergency source reported¹³¹ tremendous human rights violation like arbitrary killings, forced disappearances, torture and other cruel, inhuman or degrading treatment or punishment, harsh and life-threatening prison conditions, arbitrary arrest, detention without charge, and lengthy pretrial detention, a weak, abused judiciary subject to political influence, infringement on citizens' privacy rights, including illegal searches, restrictions on civil liberties including freedom of speech and press, internet freedom, academic freedom and of cultural events, and freedom of assembly, association, and movement; interference in religious affairs, societal violence including violence based on ethnicity, property destruction, and the killing of security force members are among the highly risky area of human rights.

¹³⁰ Supra note 126.p.1

¹³¹ Ethiopia 2016 human rights report, Country Reports on Human Rights Practices for 2016 United States Department of State • Bureau of Democracy, Human Rights and Labor.p.1

During the first round of State of Emergency, the command post took the leading role which was assumed its power from The State of Emergency Declaration with the powers to determine the specific measures, restrictions, and areas for implementation of the state of emergency with discretionary power.

The Emergency Declaration established operational wing which would run the operation of State of Emergency and listed the members of command post like Prime minister, Ministers of Defense, federal police commissioner and regional police commander and prime minister as chairs and Ministry Defense as secretary of the command post to take the leading role during a state of emergency.¹³² The purpose of the researcher is not to determine whether the state of emergency was required or not but how the state of emergency was applied in Sebeta Town in light of both national and international law. This section will address the specific human rights status and challenges faced both parties’-

As highlighted in the preceded chapters the Proclamations State of Emergency Declaration restrict the enjoyment of human rights however it is not possible to discuss the analysis of all infringed and protected rights in the context of the state of emergency declaration. The following rights and challenges were selected to be discussed depending on their vital role and status they owe under both national and international legal protections.

Furthermore, due to sensitive to the issue and time limitation, the researcher prefer to emphasizes on limited selected human rights subject matter during the first round state of emergency in Sebeta Town.

4.1. Arbitrary Deprivation of Life (Extrajudicial Killings)

After *ERRECHA INCIDENT*, this triggered demonstrations on 2 October 2016 despite the government prohibited demonstration. Confrontations between security forces and protestors instigated the beginning of occurrence of violent clashes on 3rd October 2016 on the streets of Sebeta town. These protests and the ones that followed were very lethal.

¹³²Fana BC, The Command Post Aims to Restore Peace and Order in the Country-Ministry of Defense <http://www.fanabc.com/index.php/news/item/19388> (accessed on 28 November 2016).

The right to life is the fundamental right that was embedded in article 4 of the ACHPR.¹³³ From the aspiration of ACHR, the right as a whole is not absolute as the word ‘arbitrarily’ implies recognition of some exceptions circumstance that could justify deprivation of life under strict circumstances.¹³⁴

In Ethiopia, the right to life has constitution guarantees.¹³⁵ Despite having constitutional protection against death threat, receive death threats the most common practice, death threats against protestors are mostly carried out by the state machinery, especially police and security agents would take the leading position in performing death threat against citizens who demanded their rights.

In International case between *Saro-Wiwa v Nigeria (International Pen case)* the African Human Commission broadened the scope of the right to life to include a duty for the state not to intentionally let a person die while in its custody of the government which might include the denial of medical treatment during under custody of the government.¹³⁶ The same assignment and responsibility would work for Ethiopian government.

Regarding extra-judicial killing, the government of Ethiopian, unlawful killings were committed thorough Security forces by exploiting excessive disproportional force against protesters.¹³⁷

On June 10, 2017, EHRC reported to parliament that it counted 173 deaths in Oromia, including 28 of security force members and officials, and asserted security forces used appropriate force without proving the indicator of proportionality of the measure.

4.2. Forced Disappearances

A large number of individuals remain unknown whereabouts during the first month of state of emergency period, respondents told the researcher that they do not know the whereabouts of the detainee center since they were arrested by the authorities and the family could not locate whereabouts of their children’s too.¹³⁸ My (respondent 13) and parents of one detainee told to the researcher that

¹³³ Supra Note 4, p.24

¹³⁴ Ibid

¹³⁵ Article 15 of 1995 FDRE constitution

¹³⁶ Supra note 4, p.26

¹³⁷ ETHIOPIA 2016 HUMAN RIGHTS REPORT, p.3

¹³⁸ (FG, 5, 8,6 and 7).

they had asked at the police station and security officials failed to tell them. In each of these cases, witnesses had informed the parents that their children had been arrested and kept at unknown place. Such cases appear to be enforced disappearances under international law.¹³⁹ An enforced disappearance is defined under international law as the arrest or detention of a person by state officials or their agents followed by a refusal to acknowledge the deprivation of liberty or to reveal the person's fate or whereabouts.¹⁴⁰

4.3. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The rights of detainees are mainly addressed through Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, State parties have to make a review of arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.¹⁴¹

Regarding this assertion, the government Ethiopia arbitrarily arrested thousands of protestor all over Oromia. Many of those detained are being held in formal and informal without charge and contact with family members and faced torture. Many of those who have been released told to the researcher that they suffered torture in the detention center. The security force continued use of unlawful, excessive and lethal force to curb the movement but contrary to the intent of the government, the act of the government has broadened and sparked the grievances of the protesters¹⁴²

Many former detainees (my current respondents) had informed the researcher that they had been subjected to both physical and psychological tortures. According to the respondents, the torture, particularly the physical one, took the form of compelling the detainees to seat in heavy rains for long hours; forced seating in a sun and compulsory barefoot walking on asphalt road at midday in an area where weather is as high as 40 degree centigrade and heavy and unbearable sporting activities. Insult

¹³⁹https://www.hrw.org/report/2016/06/16/such-brutal-crackdown/killings-and-arrests-response-ethiopia-oromo-protests#_ftn77

¹⁴⁰ Ibid

¹⁴¹ ICCPR, art 13

¹⁴² DefendDefenders, "HRC33: Addressing the escalating human rights crisis in Ethiopia", 8 September 2016,

<https://www.defenddefenders.org/2016/09/hrc33-addressing-escalating-human-rights-crisis-ethiopia/>

Accessed on 19 October 2016

and other forms of psychological torture were also a commonplace. These were taking place on a daily basis according to almost all of the respondents.

4.4. Arbitrary Arrests

The government arbitrarily arrested thousands of protestors all over Oromia and some Amhara during and after protests in the state of emergency period, many individuals, including journalists and human rights activists, workers, students. Many of those detained are being held in formal and informal without charge and contact with family members. The security force continued use of unlawful, excessive and lethal force to curb the movement but contrary to the intent of the government, the act of the government has broadened and sparked the grievances of the protesters.¹⁴³

The 2016 State emergency declaration empowers the command post and security forces to arrest, detain and take similar activities without a court warrant, arrested people can be held in the place assigned by the command post until the end of the state of emergency.¹⁴⁴ My entire respondent's argued against this provision by raising this law to threaten people's rights and liberty. Moreover, it contradicts the constitution of 1995 and international conventions.

In Sebeta Town, infringement of human rights violations enclosed civilian's who have no idea about protest and protestors were subjected to arbitrary arrest and detention without trying to identify the criminal nature of individuals.¹⁴⁵ The federal security forces have been arbitrarily arrested and detained tens of thousands of protesters throughout Oromia and Amhara region. The arrest including numerous human rights activists, students, journalists, farmers, civil society, the security forces have frequently carried out mass arrests, without regard to any unlawful action by individuals during first round of State of Emergency (08 October 2016-16 April 2016). A factory worker who have been arbitrarily arrested and released from detainee center said...

On 14 October 2016, I was back from work right at 6:30 from work to my home to had my launch to near bye home, from the far, I heard loud chanting, a large number of peoples were coming towards

¹⁴³DefendDefenders, "HRC33:AddressingtheescalatinghumanrightscrisisinEthiopia", 8September2016, <https://www.defenddefenders.org/2016/09/hrc33-addressing-escalating-human-rights-crisisethiopia/> Accessedon19October 2016

¹⁴⁴State of Emergency Directive, art.28(1) & (2).

¹⁴⁵ (informants 7, 8, 10 and 12)

*me...then, I run to the adjacent compound and as soon as I was surrounded by two members of the security forces (command post) came into me and asked me why I was running? I told them as I was factory worker (chemical Engineer) but they did not want to hear me. They said that I was also one of them. Then they took me to the police station and arrested me without a warrant. I was detained. When I was in the detention center there was no adequate food, formal investigation or questioning. After one month, I was released on bail. The conditions in the detention center were very poor, it was crowded. I was frequently mistreated by those in authority; including with beatings and suffered of torture like sunny, rainy torture.*¹⁴⁶

In principle, detention is not a crime. In Some instance, it is permitted during a state of emergency, but the mass detention is enabled under the directive and has been practiced in Ethiopia since November 2015 is not legitimate under international law. Furthermore, torture and arbitrary detentions are non-derogable under any circumstance and infringing of those rights are non-justifiable.¹⁴⁷

The history of unlawful arrest is a habitual behavior of security in Ethiopia. In October 2016, two prominent bloggers have been arrested by security forces. Seyoum Teshome, the Ambo University lecturer, and blogger on EthioThinkThank.com, who is popular for his commentary on the contemporary Oromo protests, was arrested at the eve of *ERRECHA CELEBRATION* on 1 October 2016 from Woliso campus. Seyoum remains in detention until 22 December 2016.¹⁴⁸ On 4 October Natnael Feleke, a prominent a member of the Zone 9 blogger, was arrested by security agent with other two of his friends, Tsedeke Digafe and Addisalem Mulugeta, and accused of “uttering rebellious remarks in a public place.”¹⁴⁹

Some people under arrest sometimes do not know why they were arrested whereas the other only know that they were under arrest because of their participation in the peaceful demonstration.¹⁵⁰ On the other hand, the way through which detainees’ rights are disrupted manipulating different mechanism like keeping them without declaring the place where the detainees are kept for long period

¹⁴⁶ (Respondent 5: factory worker).

¹⁴⁷ ICCPR, art. 4(2)

¹⁴⁸ Ethiopian human rights assembly, volume 142.p39

¹⁴⁹ Overview of the Human Rights Situation in the East and Horn of Africa April – October 2016 , Report submitted to the 59th Ordinary Session of the African Commission on Human and Peoples’ Rights (ACHPR) Banjul, The Gambia, October 2016 p.15

¹⁵⁰ (Respondent 5, 6,7,and 8 FG).

of time without a family visit.¹⁵¹ The USA State Department's report exposed, arrested people have kept the place where family and detainees were not feel secured and Charges are rarely brought against detainee's.¹⁵²

Human rights protection is a canon written in the constitution of 1995 like the state of utopia and it remains at the worst level since EPDRF come to power and the state of human rights has been worsening from declaration of state of emergency in the country in general to protect not the citizen's rights rather to protect the corrupt business owner, Government affiliated business and international investment.¹⁵³ This could be expressed through various proclamations ATP; SOD, CSO have even severed already worsening condition of human rights in Ethiopia.¹⁵⁴

Following *ERRECHA INCIDENT* massive protests, arbitrary arrests, and detentions have been escalated at most part of Oromia including Sebeta Town. Students, farmers, traders, teachers, workers, members of opposition party were targeted during a state of emergency.¹⁵⁵

On the other hand, the researcher strives to access information, data and another relevant document from the government office, especially from the command post office (police office) of sebeta Town to strike a right balance between respondents allegation and government response but they refused to give any in formations, data's and surprisingly the police refused the researcher for the mere fact that the researcher asked them about state of emergency situations in their town. Amazingly, the researcher found other researchers were allowed because of the non-connection of their research with the state of emergency. (Discrimination)

On the state media, Government rejects these claims. It says these allegations are baseless and utter fabrications to tarnish the image of the country and praise legal protection which was provided in the constitution of 1995.¹⁵⁶

¹⁵¹ (US State Department, 2016:8).

¹⁵² Ibid

¹⁵³ (FG, 5, 8,6 and 7).

¹⁵⁴ Ibid

¹⁵⁵ Ibid

¹⁵⁶ FANA BROADCAST.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1. Conclusion

The nexus between resorting to the declaration of the State of Emergency as apparatus to maintain and protect national security on one hand and protection of human rights, on the other hand, has flamed intense debate and become a point of controversy since the Inception State of Emergency as a legal framework.

This study analyzed the impact of the application of the 2016 Ethiopian State of Emergency on human rights in Oromia Special Zone Surrounding Finfinne, particularly in Sebeta town. The study employed qualitative research approach and was conducted from the perspective of human rights protection. The Assessment of the State of the Emergency application has been done to understand whether the state had violated or adhered to the human rights during the first round of the 2016 state of emergency.

Since 2 October 2016, Oromia region has been shaken by largely peaceful protests which were instantaneously triggered by *Errecha* incident and the hallucination formerly agitated by Ethiopian government plans to expand the capital, Addis Ababa (Finfinne). Consequently, to calm the situation in the region the government had used excessive and lethal force to respond to the protests. During these periods, among the people who took their grievances to the street, an estimated 12 people were killed and hundreds were injured in and around the research area. Based on more than 19 interviews conducted in Sebeta town, the government security forces had also arrested hundreds of people and hundreds of others have been forcibly disappeared.

Protesters and eyewitnesses, whom the researcher contacted on different dates in Sebeta town, Special Zone Surrounding Finfinne, had described that members of the security forces were shooting live ammunition into crowds of people, were killing people summarily, and they were also carrying out mass arrests.

Many former detainees (my current respondents) had informed the researcher that they had been subjected to both physical and psychological tortures.

Security forces, including members of the federal police and military, have arbitrarily arrested and detained students, teachers, musicians, opposition politicians, health workers, and people who provided support for and helped the students running from the police during the 2016 state of emergency periods in Sebeta town.

Destruction of property materialized by unidentified peoples has been committed in the area to a certain extent. The research conclusions so far indicate that the protestors have been mostly peaceful with the presumption of a democratic state to demand their constitutionally granted rights.

Findings disclose State of Emergency Declaration is used to legalize the illegitimate act of government and to delegitimize the legitimate act of peaceful protestor and to give a wide range of power for security as legal coverage to discredit and criminalize protestors in the name of pseudo-public security.

The Declaration of the State of Emergency, gave excessive and extraordinary power to the command post, the security and intelligence apparatuses of the government. Moreover, the finding reveals that the declaration has placed restrictions on fundamental human rights such as freedom of expression, assembly, demonstration and privacy rights. These led to the misuse and abuse of the fundamental rights and freedoms of the citizens.

The law has made unwarranted arrest and detention, which has a destructive effect on civilian and protestors. Consequently, extensive use of restrictive legislation, pooled with lack of capable, corrupt and transparent institutions to enforce the rights the constitution provides, which would have a significant adverse effect on rights of citizens without discrimination.

The research participants argued that act of command post and other government organ were incompatible with the constitution of 1995 and international standards in restricting human rights.

In this research, the researcher concluded that there is need to strike a balance between national securities and protecting the human rights during a state of emergency properly would matter for the

development, proper protection of human rights in general and saving the democratic state and democratic institution always.

In sum, though the use of the state of emergency to avert national dangers and threats to the security and sovereignty of nations is a common practice across the globe, striking a balance between the national security rhetoric and the protection of the fundamental rights and freedoms of individuals has paramount significance in these circumstances. The state of emergency should not be applied in a manner that contravenes fundamental values such as democracy, rule of law, good governance, the respect and promotion of human rights.

5.2. Recommendation

- The declaration state of Emergency has to clearly stipulate the institution power and accountability.
- There has to be the special protection of non-derogable rights during a state of emergency.
- The government of Ethiopia has to allow national, international, independent and impartial investigating organ to see the status of human rights protection during the state of emergency in lights of national and international human rights standard.
- Proper protection for detainee during under custody of the government has to be properly protected.
- A constitutional guarantee has to be in place to protect state on one hand and human rights on the other hand.

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