



***ADDIS ABABA UNIVERSITY COLLEGE OF LAW  
AND GOVERNANCE STUDIES***

***CENTER FOR FEDERALISM AND  
GOVERNANCE STUDIES***

**THE ROLE OF COURTS IN PROTECTING HUMAN RIGHTS DURING A STATE OF  
EMERGENCY IN ETHIOPIA**

**A Thesis Submitted in Partial Fulfillment of Master of Art (MA) in  
Federalism and Governance Studies**

**By**

**Getachew Jima**

**Advisor: Sisay Mengiste (PhD)**

June, 2020

Addis Ababa, Ethiopia

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DECLARATION

**I, Getachew Jima, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged and cited.**

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## **Acronyms**

ACHPR	African Charter on Human and Peoples Rights
ACHR	American Convention on Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRP	Ethiopian Human Rights Project
EPDRF	Ethiopian People's Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
HOF	HOUSE of Federation
HOPR	House of Peoples Representatives
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations

## **Abstract**

The need for exercising emergency powers arises when a nation is faced with grave danger, which threatens the nation state and its citizens. So we can define State of Emergency as a sudden and extraordinary situation that threatens the life of a nation and which requires taking extraordinary measure to averting such dangers. Most general international human rights treaties allow state parties to derogate from many of their human rights obligations in times of emergency, while at the same time setting stringent safeguards against abuse. In Ethiopia, both the federal and state constitutions provide for the derogation of human rights and embrace certain norms as non-derogable rights, which are not suspended during emergency.

However, the main problem in exercise of emergency powers is abuse of such powers. The challenge of exercise of emergency powers, therefore, is striking an appropriate balance between managing the threat to the nation state and protecting the people from abuse of such powers. One of the mechanisms of controlling abuse of emergency powers is existence of independent judiciary. Under the FDRE Constitution, courts have the duty to respect, protect and fulfill human rights as one organs of the government. However, the role of judicial organ during a state of emergency is not clearly provided in the FDRE constitution. The constitution entrusts the duty to administer a state of emergency to the Emergency Inquiry Board constituted by the HOPR. Hence, the main objective of this paper is to investigate and analyze the role of Ethiopian courts in protecting human rights during state of emergency. To this end, qualitative research approach was employed. Accordingly, judges, public prosecutors, police officers, lawyers and victims of the human rights violation during state of emergency were interviewed. Thus, the existing theoretical and practical challenges related to the role of courts in protecting human rights during state of emergency are identified. The major setback emanates from the FDRE Constitution itself which grants apparent power of interpretation of constitution to House of Federation. The other problems include: challenges on the independence and impartiality of courts, non-publication of international human rights instruments and ambiguity on the status of international instruments in the FDRE Constitution. The author of this paper argues that these challenges cannot hinder courts from exercising their inherent role of ensuring rule of law by reviewing executive actions including during state of emergency. Accordingly, the paper concludes that Ethiopian Courts have legitimate role in protecting human rights during state of emergency.

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 Background of the Study**

It is an undeniable fact of life that many states are confronted with serious crisis, and in such situations they may consider to limit enjoyment of individual rights and freedoms and possibly even to suspend their enjoyment altogether in order to restore peace and order<sup>1</sup>. States may apply various terms to the special legal order introduced in crisis situations such as “a state of exception”, “a state of emergency”, “a state of alarm”, “a state of siege”, “martial law” and so forth. Hence, a state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to a country<sup>2</sup>. As DERRI AND FAWEI<sup>3</sup>, a state of emergency is a government declaration which suspends some normal functions of the executive, legislature and the judiciary. So, the objective of a state of emergency is to control a situation of grave national crisis.

The declaration may suspend certain normal function of government, may alert citizens to alter their normal behavior, or may authorize government agencies to implement emergency preparedness planes as well as to limit or suspend civil liberties and human rights<sup>4</sup>. Most general international human rights treaties allows state parties to derogate from many of their human rights obligations in times of emergency, while at the same time setting stringent safeguards against abuse<sup>5</sup>.

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1 . Human Rights in Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers, p.851.

2 . Geneva Center for the Democratic Control of Armed Forces(DCAF): State of Emergency, 2015 <http://www.dcaf.ch>

3 . DERRI and FAWEI: Comparative examination of exercise of emergency powers (Nigeria, India and Egypt)

4 . Geneva Center for the Democratic Control of Armed Forces (DCAF), Supra note 2 p.3.

5 . Awol Allo, Protests, Terrorism, and Development: on Ethiopia’s Perpetual State of Emergency, Yale Human Rights and Development Journal, Vol.19 (2018).

Article 4(1) of the International Covenant on Civil and Political Right provides that

*In time 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 inconstant with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.*<sup>6</sup>

Similar provisions which allow states parties to resort to derogatory measures on certain strict conditions were included in the American Convention on Human Rights (Art.27)<sup>7</sup>and the European Convention on Human Rights(Art.15)<sup>8</sup>.

Regarding Ethiopia, as per article 93(1) of FDRE Constitution<sup>9</sup>, the Council of Ministry 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. Similarly, state executives can decree a state-wide state of emergency should a natural disaster, or an epidemic occur. Article 93 describes procedures for times of emergency, including which fundamental rights and freedoms are derogable<sup>10</sup>. The same article provides that all fundamental rights and freedoms are derogable during a state of emergency,

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6 . Article 4(1) of the International Covenant on Civil and Political Rights.

7 . Article 27of the American Convention on Human Rights.

.8 . Article 15 of the European Convention on Human Rights.

9 . Article 93 of the FDRE Constitution.

10 .Chimgbako, Sarah Braasch, Aron Degol, Melisa Morgan, Felice Segura, and Teramed Tezera (2008); Silencing the Ethiopian Courts; Non-Judicial Constitutional Review and Its Impact on Human Rights: Fordham International Law Journal, Vol.32.

except for article 18 (prohibition on cruel, inhuman, or degrading treatment), article 25 (equality before the law) and article 39(1) and (2) (ethnic group rights).

On the other hand, once the state authority proclaims emergency it automatically starts exercising unlimited powers. The danger of this unchecked power is that the state may resort to arbitrary methods to silent people opposing the government. Such abuse negates the objective of the declaration of a state of emergency which is to protect the nation and its citizens from situations which threaten their safety. The challenge of exercise of emergency powers, therefore, is striking an appropriate balance between managing the threat to the nation state and protecting the people from abuse of such powers<sup>11</sup>.

An independent and impartial judiciary have a key role to play in ensuring accountability, addressing impunity and ensuring remedies to the victims of human rights violations during a state of emergency. Courts play a major role in ensuring that victims or potential victims of human rights violations obtain effective remedies and protection, that perpetrators of human rights violations are brought to justice and that anyone suspected of a criminal offence receives a fair trial according to international standards.<sup>12</sup>So, the international human rights law, the principle of legality and the rule of law must be guaranteed at all times, including during state of emergency<sup>13</sup>. In this regard, the courts can play a major role in decisions concerning the legality of a declaration of a state of emergency as well as in reviewing the legality of specific emergency measures<sup>14</sup>. In Ethiopia too, courts have the duty to respect, protect and fulfill human rights as one organs of the government.

To this end, states must at all times provide effective domestic remedies allowing alleged victims to vindicate their rights before domestic courts or other independent and impartial authorities.<sup>15</sup>The judicial system must continue to ensure the right to fair trial. It also must

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11 DERRI and FAWEI, *supra* note 3.

12 International Commission of Jurists, *International principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, A Practitioners Guide Series No.1.1(Geneva,2004)

13 . Human Rights in Administration of Justice, *Supranote1* p 851.

14. Geneva Center for the Democratic Control of Armed Forces (DCAF), *Supra* note 2 p.3.

15 . *Ibid*

provide individuals with an effective means of recourse in the event that the government officials violate their human rights.

Generally, this research tries to deal with the role of Ethiopian courts in protecting human rights during a state of emergency. Therefore, this paper tries to explore whether the Ethiopian courts can accept and adjudicate cases concerning the legality of specific measures taken by government institutions as well as ensure remedies to the victims of human rights violations during a state of emergency.

## **1.2. Statement of the Problem**

It is clearly stated in ICCPR that every state has an obligation under article 2(1) not only to respect human rights but also to ensure the protection of these rights for the citizen<sup>16</sup>. Thus, it is an obligation of a state to allow the functions of a competent and impartial court established by law not sit up arbitrarily.

The 1995 constitution of the Federal Democratic Republic of Ethiopia (FDRE) undeniably incorporated lists of fundamental rights and freedoms<sup>17</sup> and extended unprecedented power and independence to the judicial branch.<sup>18</sup> Making human rights domestically justiciable by clearly defining their content and subjecting them to judicial and quasi-judicial mechanisms of enforcement is important for their effective protection.<sup>19</sup> The constitution also imposes a responsibility and duty up on all federal and state legislative, executive and judicial organs at all levels to respect and enforce the provisions of the fundamental rights and freedoms.<sup>20</sup> The duty of the judiciary to enforce rights is an expression of the justifiability of the fundamental rights and freedoms provided by the constitution<sup>21</sup>. Article 37(1) further provides that everyone has the right to bring a justiciable matter to the court, and to obtain a decision or judgment by a court of law or any other competent body with judicial power<sup>22</sup>. While article 13 declares the judicial enforceability of fundamental rights and freedoms, article 37 makes bringing justiciable matters before judicial and quasi-judicial organs and get decision thereon a right by itself.

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16. Article 2(1) of the International Covenant on Civil and Political Rights.

17. Articles 13-44 of the Constitution

18. Article 78 of the Constitution.

19. Sisay Alemahu Yeshanew, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia, 8 Af. Hu. Rts, L.J. 273 (2008) pp. 284.

20. Article 13(1) of the Constitution.

21. Sisay, supra note 19 p. 285.

22. Article 37 of the Constitution.

However, there is a confusion regarding the mandate of the House of Federation to interpret the constitution. The major source of this confusion is created from the exclusivity of the HOF's authority over constitutional interpretation in relation to court. The preliminary assessment by the researcher on judicial enforcement of the fundamental rights and freedoms in Ethiopian courts reveals that most judges are in doubt whether they can interpret chapter three of the FDRE constitution which enumerates fundamental human rights and freedoms. The task of interpreting and applying the fundamental human rights and freedoms in the constitution is arguably the most challenging task facing lawyers and courts. Lawyers and courts tend to avoid invoking and applying human rights provisions in the constitution and ratified international human rights treaties which form part of the law of the land<sup>23</sup>.

On the other hand, the main problem in exercise of emergency powers is abuse of such powers. Judicial review of an administrative action is one of the mechanisms of human rights protection during state of emergency. Under the FDRE Constitution the role of judicial organ during State of Emergency is not clearly provided in the FDRE Constitution. In the constitution, reviewing measures of state during state of emergency is given to State Emergency Inquiry Board. If so, what is the role of the judiciary is questionable.

The preliminary assessment by the researcher on the appropriate role of courts on adjudication of fundamental human rights and freedoms before Ethiopian courts during state of emergency reveals that there are many theoretical and practical challenges. One of these challenges is the challenges on the independence and impartiality of judiciary, which are adversely affecting its role on protecting human rights. There are clear and convincing legal as well as practical challenges on the independence and impartiality of judiciary<sup>24</sup>, which are adversely affecting its role of protecting human rights especially during state of emergency.

Hence, the judiciary is not ideal in carrying out its constitutional mandate and is not in a firm position to exercise its powers and responsibilities clearly stated in the FDRE constitution during a state of emergency in the country.

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23Sisay, supra note 19 p.285

24 . Abdurrahman SeidHussen, AN Independent Judiciary for the protection of Human Rights in Ethiopia, available at <http://www.abbyssinialaw.com> (accessed May 28, 2018) p.13.

Generally, the judicial practice in Ethiopia reveals some critical problems. This study, therefore, revolves around such existing challenges and inconsistencies in the practice of the role of courts in protecting fundamental human rights and freedoms in Ethiopia during state of emergency and tries to provide options.

### **1.3. Research Questions**

The main question of this research is what are the roles of Ethiopian courts in protecting human rights during state of emergency in the study area? Having this as a core research question for this study, the following specific research questions are formulated.

- Do fundamental human rights and freedoms are justiciable in general and during state of emergency in particular under FDRE Constitution?
- What are the practical challenges and controversies involved in the justiciability of human rights in Ethiopia?
- Do the Ethiopian courts have the legitimacy on the adjudication of fundamental human rights and freedoms which has been enshrined in chapter three of the constitution in general and specifically during state of emergency?
- What are the legal frameworks regarding the roles of judiciary in protecting human rights during state of emergency?
- Do the Ethiopian Courts have the power of judicial review regarding whether an emergency legislation or particular exercise of emergency power is inconformity with international substantive and procedural requirements that regulates derogation of human rights during state of emergency?
- What are the theoretical and practical challenges regarding judicial protection of human rights during a state of emergency?
- What shall be done to have better enforcement of fundamental human rights and freedoms before court of law during a state of emergency?

## **1.4. Objective of the Study**

### **1.4.1. General Objective**

The major objective of this study is to assess the role of Ethiopian courts in protecting human rights during state of emergency.

### **1.4.2. Specific Objectives**

Based on the above general objective, the following specific objectives are set and attained in the course of the study. These include:

- To examine the controversies involved in the justiciability of fundamental human rights in general and specifically during state of emergency.
- To explore the practical challenges that Ethiopian courts face in adjudicating fundamental human rights in general and specifically during a state of emergency.
- To examine whether the Ethiopian courts have the legitimacy on the adjudication of fundamental human rights and freedoms which has been enshrined in chapter three of the constitution in general and specifically during state of emergency.
- To analyze the relevant international, regional, and national legal documents those related to the roles of judiciary in protecting human rights during a state of emergency.
- To examine whether the Ethiopian Courts have the power of judicial review regarding whether an emergency legislation or particular exercise of emergency power is inconformity with international substantive and procedural requirements that regulates derogation of human rights during state of emergency.
- To assess the theoretical and practical challenges regarding judicial protection of human rights during a state of emergency.
- To recommend some measures that should be taken by the government, courts, litigants as well as other human rights activists to ensure the better protection of human rights by the judiciary in Ethiopia.

## **1.5. Scope of the Study**

The study, with the objective of investigating the roles of courts in protecting fundamental human rights and freedoms during a state of emergency, evaluates practical implementation of human rights laws before court of laws. To handle practical study, the research study spatially focuses on Addis Ababa and its surrounding. Specifically, the study was conducted in Addis Ababa city, Finfinnee surrounding Oromia Special Zone and West Shoa Zone. Conceptually, the scope of this research is delimited to the role of courts in protecting fundamental human rights during a state of emergency.

## **1.6. Significance of the Study**

This study is essential to assess the role of courts in protecting human rights during a state of emergency in Ethiopia. It is believed that the research output contributes a lot in strengthening the legal frameworks and practical performance of courts in protection of human rights and freedoms even during a state of emergency.

The research, being specifically devoted to the role of Ethiopian courts in protecting human rights during state of emergency, is hoped to add on the existing literatures and contribute its part to the development of jurisprudence on the role of courts on human rights in Ethiopia.

It explores the practical implications of role of Ethiopian courts in protecting human rights during state of emergency. It also provides some important findings and possible recommendations that contribute significantly to protect non-suspend able rights during state of emergency in Ethiopia.

## **1.7. Research Methodology**

### **1.7.1 Method and Instrument of Data Collection**

To obtain reliable data the researcher personally collected all data in the research. The data collecting instruments was initially prepared in English version and then translated into Afan Oromo and Amharic which are the working languages of the study area to make it easier for participants to understand the question. Data collected is presented in descriptive style.

In this study qualitative research approach were employed. Accordingly, different types of interviews were used to collect in-depth information from federal and Oromia judges, public prosecutors and police officers for they are major stakeholders in the application of rights before

courts of laws during state of emergency. Moreover, lawyers and victims of the human rights violation during state of emergency were interviewed.

Accordingly, it descriptively analyzed the theoretical and practical role of courts in protection of human rights during a state of emergency. The study is principally based on reviewing the relevant literatures on the role of judiciary in protection of human rights when emergency declared.

### **1.7.2. Sources of Data**

As stated earlier, the objective of this study is to explore the role of courts in protecting human rights during a state of emergency. For this purpose, both primary and secondary sources were employed to come up with more comprehensive understanding on the questions raised in this proposal. However, as primary data are closest to the truth and are often the most valid, illuminating and the most truth- manifesting<sup>25</sup> more emphasize were given to them.

The primary sources include interviews made with judges and victims of the state of emergency. Besides, judgments of courts which are relevant for the title were analyzed. Moreover, different international, regional, and national documents which have direct relation to the topic were also taken in to consideration in relation to their practical implementation. These legal documents include Federal Democratic Republic of Ethiopian Constitution, different international and regional conventions, guidelines and standards on the role of courts during the state of emergency.

Among the secondary sources relevant literatures like books, journals, articles, research papers and online sources were consulted.

### **1.7.3. Sample Size and Sampling Technique**

This study covers the State of Emergency declared in 2005, 2016 and 2018GC. Since most of the protests which resulted in the declaration of a state of emergency took place in towns of Oromia National Regional State particularly those towns surrounding Addis Ababa, the research gave due emphasis to Addis Ababa city and Oromia towns surrounding Addis Ababa. Accordingly,

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<sup>25</sup>Leedy, P.D, &Omrod, J.E, Practical Research-Planning and Design (8<sup>th</sup> ed.2005). p.12

the research included three tiers of courts at federal level; i.e. the Federal Supreme Court, Federal High Court and Federal First Instance Court and from the towns of Oromia National Regional States surrounding Addis Ababa: Oromia National Regional State Supreme Court, a Special High Court of Finfinnee surrounding Oromia Zone, West Shewa Zone High Court, Sululta town court and Ambo town court. Thus, the researcher has purposively selected well experienced 3(three) judges from each of the selected courts and made intensive an in-depth interview with them.

Moreover, 3 (three) public prosecutors from Federal Attorney General and 3 public prosecutors from Oromia Attorney General were interviewed. Similarly, 3 investigative Police Officers from Federal Criminal Investigation Bureau and 3 investigative police Officers from Oromia Police Administration Office were interviewed.

Besides, the researcher has made intensive in-depth interview with 3(three) lawyers and 15 (fifteen) victims of emergency i.e. 5 who live in Addis Ababa City, 5 who live in Oromia Special Zone surrounding Finfinnee and 5 who live in West Shoa Zone. Generally, the data was collected from 54 (fifty-four) sample respondents.

#### **1.7.4. Data Interpretation and Analysis Method**

Data collected from primary sources such as international, regional, and national laws, and data collected through interviews of target population and personal observations as well as secondary sources including books, journals, articles, thesis/ research papers, and review of judgments on the study title were analyzed qualitatively to assess the role of courts in protecting human rights during a state of emergency in the study area. Data collected were continuously interpreted as the nature of the data necessitates since qualitative research is inherently reflective.

I have requested and received the consent of all my interviews whose words I have included in my research. With the exception of the few interviewees who consented to having their names in my research I have preserved the anonymity of my interviewees for their safety.

### **1.8. Limitation of the Study**

Undertaking the research is not an easy task; particularly, obtaining information for the purpose of the research has been a demanding and burdensome task owing to the tedious bureaucracy in some government organizations. Worst of all, it is difficult to get relevant data to be used as input to the research due to the absence of organized information on the title. The first constraint that encountered this study is lack of relevant cases, especially court decisions related to human rights during state of emergency. I tried to minimize this problem by collecting data through interviews as much as possible from all stake holders. Therefore, the data for this research would not be collected without encountering difficulties. Additionally, shortage of time has been the prime limitation as opposed to the required time ideal for an in-depth study. Moreover, sufficient budget to conduct the research was also a challenge in conducting this research. Yet, I tried all the best to reach all the sampled areas and then I collected available materials both in hardy and soft copy.

### **1.9. Organization of the Thesis**

As stated above, the research tries to explore the role of courts in protecting human rights during a state of emergency in Ethiopia. To this end, the research is classified into six chapters. Chapter one introduces background of the study, statement of the problem, research methodologies, objective, scope and significance of the study among others. Chapter two focused on a brief explanation of the conceptual, factual and theoretical frameworks of international human rights law. In addition, chapter two will deal with the analysis of those international and regional instruments as well as Ethiopian laws which are related with the protection of human rights laws. Chapter three is particularly covers the state of emergency and role of judiciary under international human rights system. This part covers the back ground and history of the state of emergency. In addition, chapter three deals with the analysis of those international and regional instruments as well as Ethiopian laws which are related with state of emergency and the role of courts. Separate chapter is given for the concept of emergency declaration and derogation of human rights under international human rights instruments because it is helpful in getting a clear picture of role of courts in protecting human rights during state of emergency from international experiences.

Chapter four discusses human rights, state of emergency and administration of justice under Ethiopian legal system.

Chapter five, being the major chapter, on its part is devoted to show judicial experience in Ethiopia. It would discuss the role of courts in protecting human rights during state of emergency in Ethiopia. Under this chapter efforts will be made to disclose the various practical and legal uncertainties that the courts and concerned bodies will face. The last part, chapter six conclude the findings and provide list of recommendations.

## CHAPTER TWO

### THE CONCEPTUAL FRAMEWORK OF HUMAN RIGHTS

#### 2.1 Definition, Nature and Feature of Human Rights

The question regarding what human rights are and how they should be defined has attracted a number of thinkers who advance diverse arrays of theories on the nature of human rights<sup>26</sup>. At a very basic level, human rights can be defined as entitlements that all human beings assert merely because they are human<sup>27</sup>. So human rights are innate rights for which all human beings are entitled by nature. Hence, the only criteria to enjoy human rights is to be born as a human being.

Human rights are the most fundamental rights of human beings<sup>28</sup>. They are the fundamental entitlements which every human being enjoys without discrimination. This notion of human rights as inherent to the dignity of the human person is explicitly noted in several documents on human rights such as the international human rights covenants.

In general, human rights are often characterized by the following basic features: -

**Universality**: -refers to the applicability of human rights to all people everywhere at all times<sup>29</sup>. Human rights have no geographical limitation; they should be fully realized across the world and all human beings should enjoy them. This positioning of human rights as universal is often questioned and debated upon among scholars of relativist convictions who argue that human rights are relative. But human rights are the birth rights of all human beings and that the universal nature of these rights and freedoms is beyond questions<sup>30</sup>. Universalism rejects their particularity in essence.

**Inherence**: -refers to the existence of rights independently of the will of either an individual human being or a group of people. Human rights emanate from humanity. They are not given

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26 Tsegaye Regassa (2009) Making Legal Sense of Human Rights; The Judicial Role in Protecting Human Rights in Ethiopia, Mizan Law Review, vol. 3(2)

27 Ibid

28 Nowak Manfred (2005), Human Rights; A Hand book for Parliamentarians, Geneva: OHCHR.

29 Tsegaye Supra note 27.

30 Ibid

by the government or anybody else nor be given because of being member of a certain group or citizen of a certain country. Hence, they are purely originated from human nature.

**Inalienability:** -implies human rights are neither renounced nor deprived. Nobody can deprive anyone of these rights by himself. This is because they are naturally given thus should not be deprived by anybody save under clearly defined legal circumstances<sup>31</sup>. Hence, they are inseparable from human nature under normal circumstances.

**Equality:** -they are fundamental rights which belong to everyone. Human rights are founded on respect for the dignity and worth of each person.

## **2.2 Historical Development of Human Rights**

The struggle for human rights is as old as world history itself, because it concerns the need to protect the individual against the abuse of power by the monarchy, the tyrant or the state<sup>32</sup>. All societies have grappled with human rights issues. Philosophers of every race and creed have for centuries, been concerned with the nature of humanity interpersonal relationships, and the position of individuals as members of group<sup>33</sup>.

Historically, the Greeks particularly the stoics were known to be the first in advancing thoughts concerning the natural rights based on the existence of natural law<sup>34</sup>. From the Greek stoics' point of view, the natural rights are rights which "every human being is entitled everywhere and at all times, by virtue of being human". The stoics underline that human beings must live consistent with the laws of nature<sup>35</sup>.

In the Jewish tradition, human rights are understood to be responsibilities obligatory on the Jewish individual by Devine Decree. These are seen in the positive and negative commandments which phrased the human rights of our time as religious duties. Thus, one correspond, "thou shall not kill" with rights to life, "thou shall not steal"<sup>36</sup> with rights to own property and so forth.

In addition, philosophers like John Locke and Jean-Jacques Rousseau, spoke about the notion of natural rights in pre-industrial societies. John Lock for instance spoke about the three rights of

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31 Nowak Supra 3

32 Michelo Hansungule, The Historical Development of International Human Rights, Center for Human Rights, Faculty of Law, University of Pretoria, South Africa.

33 Ibid

34 Beyene Lisanework, An appraisal of the enforcement of human rights obligations in Ethiopia, MA thesis, unpublished, Addis Ababa University, 2011.

35 Ibid

36 Holy Bible, King James, Nash Ville, 1987

man in a state of nature-life, liberty and property<sup>37</sup>. Following John Locke's Treatise, some western scholars formed the notion that human rights ideas first developed in the modern western society.

There are several documents which influenced human rights throughout the history of mankind. These include the Code of Hammurabi, Magna Carta, the French Declaration on the Rights of Man and the citizen, and the American Bill of rights. The code of Hammurabi, the first codification of laws that contains refers to individual rights about 4000 years age, protects the people from arbitrary persecution and punishment<sup>38</sup>. This document, though considered as barbaric by today human rights standards, is a sign that the concept of human rights existed even in times immemorial<sup>39</sup>.

Magna Cart (1215) was a contract between subjects (the barons), the kind and his descendants and their descendants "forever"<sup>40</sup>. Therefore, most of its provisions applied to specific abuses of the time. For instance, it guarantees the freedom of the English church from royal interference, protected the property and inheritance rights of underage heirs and widows, limited taxes established standing and roving court to deal with criminal and civil issues and etc.<sup>41</sup>. It also puts on paper, for the first time, the English concept of due process of law and forbade bribery of judges and other legal authorities<sup>42</sup>.

Though the above document have irrefutable historical relevance, it is the French Declaration on the Rights of Man and Citizen (1789), and the US constitution and Bill of Rights (1791) that are considered as initial document in the history of human rights movement<sup>43</sup>. The American Declaration of Independence of 4 July 1776 was based on the assumption that all human beings are equal. It also referred to certain inalienable rights such as the rights to life, liberty and the pursuit of happiness<sup>44</sup>. The French Declaration *des Droits de l'Hommeetducitoyen* of 1789, as

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37Michelo Supra note33.

38 Germander Alfredsson& Jonas Grimheden, International Human Rights Monitoring Mechanisms, (2001, MartinusNijhoff publishers) p.15,

39SebleTeweldeberhan, The Role of Media in the Promotion of Human Rights in Ethiopia, AM thesis, unpublished, Addis Ababa University, 2011.

40Mckechniew, Magna Carta, a commentary on the Great Charter of King John, with Historical Introduction (1914, Glasgow Maclehose), p.32

41 Ibid

42 Ibid

43Seble, supra note 40.

44 Ibid

well as the French Declaration of 1793, reflected the emerging international theory of universal rights contained for the first time the term “human rights”<sup>45</sup>.

The contemporary idea of human rights was formulated and given content during the Second World War and its aftermath. During the war, the Allied powers had proclaimed the assuring respect for human rights was their war aim. In 1945, at Nuremberg, the Allies included crime against humanity among the charges on which Nazi leaders were tried<sup>46</sup>.

After the atrocities and abuse of the Second World War, governments were motivated to establish asset of standards for the treatment of people and to avoid such atrocities in the future<sup>47</sup>.

The first attempt to codify such standards was made by the general Assembly that adopted Universal Declaration of human rights on 10 December 1948. This Declaration has come to be recognized as a common standard for all peoples and all nations towards the promotion of human dignity.

The adoption of the subsequent Covenants on Civil and Political Rights and International covenant on economic, social and cultural Rights in 1966(to come in to force in 1976) was a gradual but immense tried to ward completing what later comes to be the regime of the International Bill of Rights<sup>48</sup>.

Through these and other important instruments the UN has discharged its responsibilities to set normative standards on human rights. Most countries also recognized most of these rights and incorporated in their constitution, national legislation and other laws.

## **2.3 Human Rights System Under International and Regional Instruments**

### **2.3.1 The charter of the United Nations**

Following the shock of Second World War, the United Nation Charter was signed in which members’ states pledged to take action to secure peace and human rights<sup>49</sup>.The three most important tasks and aims of the United Nations are peace and international security, development and human rights<sup>50</sup>.There can be no security (free from fear and violence) without development

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45 Ibid

46Henkin (1990), The Age of Rights

47RakebMessele, Enforcement of Human Rights in Ethiopia, Research Subcontracted by Action Professionals’ Association for the people(APAP), Human Rights and Gender Consultant,2002.

48 Tsegaye Supra note 27.

49 Human Rights Manual Guidelines for implementing a Human Rights Based Approach in ADC, prepared by Austrian Development Agency and Ludwig Boltzmann Institute of Human Rights, Vienna, July 2010)

50 Ibid

and no development (free from want and poverty) without security. Both goals can, however, only be achieved through the Universal implementation of all human rights.

The preamble of the United Nations Charter which makes a reference to human rights reads; “ We the peoples of the United Nations are determined... to reaffirm in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small.”<sup>51</sup>

From this we can understand that, it was strongly believed recognized as a prerequisite for international peace and friendly relations among nations and for creating a just order and conditions of stability and well-being of people.

The Charter of the United Nations does not define human rights in detail. However, there are several provisions which illustrate that UN recognized the importance of the promotion of human rights to achieve all of its objectives.

Article 1(3) of the Charter recognizes that the purpose of UN is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for all without distinction as to race, sex, language, or religion. Under articles 55 and 56, Member states are committed to ‘joint and separate action’ to create ‘conditions of stability and well-being across the world, including the promotion of ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. Thus, the signing of the UN Charter was a significant step in bringing human rights more firmly within the sphere of international law<sup>52</sup>.

### **2.3.2 The International Bill of Rights**

The International Bill of Rights’ consists of the Universal Declaration of Human rights, the International Covenant on Economic, social and Cultural rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and its two optional protocols. The international Bill of rights is the basis for numerous conventions and national constitutions.

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51 For detail see preamble of UN Charter

52 Beyene Supra note 35.

### **2.3.2.1. Universal Declaration of Human Rights**

The adoption of the Universal Declaration of Human Rights (Universal Declaration), in 1948, was the first step so towards the progressive codification of international human rights<sup>53</sup>. The UDHR consists of a preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled without distinction of any kind. The preamble of UDHR claims that recognition of the inherent dignity and equal and in a liable right of all members of the human family is the foundation of freedom, justice and peace of the world. Another important element of the preamble is the recognition of the rights and freedoms contained in the Declaration as a common standard of achievement for all peoples and nations.

Article 1 of the Declaration, contains an affirmation of the philosophical foundations of human rights by saying that “human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This pioneering article is a grand reflection for what the Declaration stands for<sup>54</sup>.

In terms of content, the Universal Declaration of Human Rights has a holistic approach, and it deals with both the civil and political rights as well as economic, social and cultural rights. The first nineteen articles of the declaration captured rights related with liberties and human dignities, while article 20 – 26 address the second generation of human rights, those related to economic, social and cultural rights and more over article 27 – 28 describe about the third generation rights<sup>55</sup>. The adoption and content of the Universal Declaration has been a great success. On the international level, the Declaration has established the very first international catalogue of human rights as a common standard of achievement for all peoples and all nations<sup>56</sup>. Moreover, many scholars argued that although the declaration is not a legally binding document, it achieved the status of customary international law<sup>57</sup>.

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53 Human Rights: A Basic Handbook for UN Staff

54 Demelash Shiferaw and Yonas Tesfa: Human Rights Law Teaching Material prepared under the sponsorship of The Justice and Legal System Research Institute, 2009.

55 Abadir Mohamed, The human rights provisions of the FDRE constitution in light of the theoretical foundations of human rights, Series on Ethiopian Human Rights Law, vol. 1, Addis Ababa University Printing Press, Addis Ababa, 2008, p.5.

56 Demelash and Yonas, supra note 55

57 Ibid

### **2.3.2.2. International Covenant on Civil and Political Rights (ICCPR)**

The second component of international bill of rights is the so called International covenant on civil and political Rights. International covenant on civil and political Rights was signed in 1966 and entered into force in 1976. It contains 53 articles, of which 27 are of a normative character. The preamble of the ICCPR makes clear that the civil and political rights are derived from the inherent dignity of every individual and that they accord with the spirit of the Universal Declaration.

In essence, the ICCPR contains what some commentators regard as first generation human rights, like the right to life, to liberty, to expression and so forth. But, there are also some articles in the ICCPR, which mention not strictly the presumed civil and political rights. For instance, we can refer article 23 (2) more of social right, article 1 mainly a group rights, article 27 (social and cultural rights) and article 47 embraces economic rights.

According to article 2 (1) of the ICCPR each states party under takes to respect and to ensure to all individuals with in its territory and subject to its jurisdiction the rights recognized in the covenant, without discrimination of any kind. To do so;

At the primary level, the states must refrain from arbitrary intervention on the freedom and autonomy of the individuals. This obligation is negative character of civil and political rights.

At the second level, the state is required to protect or ensure citizens' rights from unjust interferences from others. Hence, the state is required to take positive steps to words the effective enjoyment of rights. This includes the obligation to enact legislation and create the framework to prevent violations of rights and enable citizens enjoy their protected rights without the interference from others. Hence, this categories of rights require both negative and positive action from the state depending the circumstances of the case<sup>58</sup>.

With regard to monitoring civil and political rights, the human rights committee is the body of independent experts that monitors implementation of the international covenant on civil and political rights by its states parties. All state parts are obliged to submit regular reports to the committee on how the rights are being implemented. The committee examines each report and addresses its concerns and recommendations to the state party in the form of "concluding observations".

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<sup>58</sup>RakebMalese, supra note 48.

### **2.3.2.3, The International covenant on Economic, social and Cultural rights (ICESCR)**

The third component of international bill of human rights is the covenant providing economic, social and cultural rights (herein after ICESCR). The ICESCR consists of 31 articles, of which the first 15 are of a normative character and the last 16 of a more procedural nature.

Rights in this covenant are: **Economic rights**, such as the right to work (article 6), to formal join trade union (article 8), to social security (article 9), to adequate standard of living (article 11); **Social rights**, such as the right to highest attainable standard of physical and mental health (article 12), to education (article 13) and **Cultural rights**, such as the right to participate in the cultural life of the community and enjoy the benefits of scientific progress and its applications (article 15).

As per article 2 (1) of the covenant, each party to the covenant is under obligation to undertake to take step to the maximum of its available resources to achieve progressive the full realization of the rights in the treaty. The rights in shrined in the ICESC are conditional; subject to available resources and, accordingly the lack strength.

### **2.3.3, Regional Human Right Systems**

The development of human right is not limited only to at international level, but there are many regional human right instruments that protect human rights and fundamental freedoms at regional level. This sub section briefly deals with the following three main regional human right systems that aim to protect and promote human rights at regional level.

#### **2.3.3.1 European Convention on Human Rights**

The European Convention on Human Rights (here in after called ECHR) was adopted by the Council of Europe on 4<sup>th</sup>November 1950, and entered in to force on 3 September 1953<sup>59</sup>.The ECHR entered in to force in 1953, stressing in its preamble that the protection of human rights and fundamental freedoms is one of the ways, that will promote unity in Europe, and emphasizing the importance of the European democratic traditions<sup>60</sup>. The ECHR mainly protects civil and political rights, imposing up on member states obligations to secure these to everyone with in their jurisdiction (article 1). It guarantees rights such as the right to life (article 2), the prohibition of torture and in human and degrading treatment (article 3), the right to a fair trial

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59Rhona K. M. Smith, Text book on international human rights, 4<sup>th</sup>edn, Oxford University Press, New York, 2010, p.1.

60 Virginia Mantouvalou and Panayiotis Voyatzis: Research handbook on international human rights

(article 6), the right to privacy (article 8) and freedom of expression (article 10). The ECHR also includes certain labor rights such as the prohibition of slavery and compulsory labor (article 4), the right to form and join a trade union for the protection of workers' interest(article 11). Finally, it protects a hand full of entitlements that could be describe as socio-economic in separate protocols, such as the right to property and the right to education.

The ECHR initially established two institutions to monitor compliance with its provision; the European Court of Human rights (ECtHR) and the European Commission on Human Rights<sup>61</sup>.

In 1998, protocol 11 abolished the European commission on human rights and left the full-time ECtHR as the sole body responsible for the examination of individual and inter-state complaints under the ECHR<sup>62</sup>.Individuals can submit an application to the European court of human rights alleging a violation of the ECHR.

### **2.3.3.2. Inter-American Convention on Human Rights**

The American Convention on Human Rights (ACHR) was signed in 1969 and entered into force in 1978.<sup>63</sup>The purpose of the convention is articulated in the preambular paragraphs as being to further the intention of the states to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential right of man. The convention restricts itself to a detailed tabulation of civil and political rights; economic, social and cultural rights are coved in a single article, i.e.26.But, on the latter the Organization of American State adopted an additional protocol in the area of; economic, social and cultural rights in 1988, which is called the Protocol of Sansalvador.<sup>64</sup>

The states parties to the ACHR under take 'to respect' and 'to ensure' the free and full exercise' of these rights to all people subject to their jurisdiction (Article 1 of the convention). These obligations are monitored by two bodies, each composed of seven experts the Inter American Commission on Human Rights established in 1959, and the Inter-American Court of Human Rights<sup>65</sup>.

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61 Ibid

62 Ibid

63Rhona K. M. Smith, supra note 60.

64 Ibid

65Demelash and Yonas, supra note 55.

### **2.3.3.3 The African Charter on Human and Peoples' Rights**

The other regional human rights instrument is the African Charter Peoples' Rights (ACHPR). The adoption of the African Charter on Human Peoples' Rights in 1981 was the beginning of a new era in the field of human rights in Africa. It entered into force on 21 October 1986, and as of 29 April 2002 had 53 states parties<sup>66</sup>. The Charter recognizes not only civil and political rights, but also economic, social and cultural rights, not only rights but also duties, and it has a singular system for the restrictions on rights<sup>67</sup>.

Furthermore, though a number of provisions of the African Charter allow for limitations to be imposed on the exercise of the rights guaranteed, no derogations are ever allowed from the obligations incurred under this pact, which is one notable features of the charter unlike other regional human rights system<sup>68</sup>. In addition to the ACHPR, the OAU and thereafter AU have adopted many other treaties dealing with human rights.

### **2.4 Limitation of Human Rights**

In spite of the claim to Universality and in alienability, human rights are not exercised in an absolute manner<sup>69</sup>. There is a limitation imposed on the exercise of rights for the sake of making an optimal "utilization" or enjoyment of rights<sup>70</sup>.

Limitations are lawful infringements of rights<sup>71</sup>. They are acceptable or justifiable violations. Limitations can take various forms such as restriction, suspension, or derogation from. Each of these forms affects the exercise of rights in different ways and to a varying degree. Thus restrictions circumscribe the manner, or place, and the extent to which rights can be enjoyed or exercised in a particular set of circumstances, often in normal times.

Suspension leads to the temporary non-application of one or more rights because of an unusual difficulty in which a state finds itself. Derogation refers to possibility of acting in a manner

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66 Christof Heyns and Magnus Kill Ander, 'The African regional human rights system', in Felipe Gomez Isa and KoendeFeyter (eds), p.509

67GuyoHuka, Derogation of Human Rights in a state of Emergency under Ethiopian Constitution: A comparison of The Federal and State constitutions in Light of major Human right instruments, LLM thesis, ECSU(unpublished), 2013, P. 55-58

68 Christof Heyns and Magnus Kill Ander, supra note 67

69 Tsegaye Supra note 1

70 Ibid

71 Ibid

deviating from the accepted standards of behavior vis-à-vis rights. It entails acting like there are no human rights at all<sup>72</sup>. The latter two come in to play extra-normal situation.

Conventions and other instruments may contain a number of restrictions or limitations to the rights they stipulate. It is generally accepted that only few rights and freedoms are ‘absolute’<sup>73</sup>. At the same time, such restrictions must be used only to establish the proper limits of the protected right and not as an excuse for undermining the right itself or destroying it altogether. There must be a proportionate relationship between the restriction of the right as such and the reason for the restriction.

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72 Ibid

73 Demelash Shiferaw and Yonas Tesfa Supra note 29

## CHAPTER THREE

### THE STATE OF EMERGENCY AND ROLE OF JUDICIARY UNDER INTERNATIONAL HUMAN RIGHTS SYSTEMS

#### 3.1 Introduction

The need for exercising emergency powers arises when a nation is faced with grave danger which threatens the nation, state and its citizen's. So the power is exercised to save the nation and its citizens. However, the main problem in exercise of emergency powers is abuse of such powers. One of the mechanisms of controlling abuse of emergency powers is existence of independent judiciary. The means used to limit governmental authority, such as separation of powers, checks and balance, and promulgation of human rights cannot be enforced without an independent body that can determine whether the government has exceeded the limits of its constitutional authority<sup>74</sup>. This chapter is dedicated to discussing the role of courts in protection fundamental human rights and freedoms during state of emergency. In so doing, the chapter will provide the definition of state of emergency, significance and effect of state of emergency, principles governing state of emergency and the role of judiciary in protecting human rights during state of emergency under international legal instruments.

#### 3.2 Definition and Concept of State of Emergency

It is widely agreed that at present state and societies face a number of complex threats and challenges including pandemics, terrorist attacks, transnational organized crime, sudden and large scale population flow, as well as natural catastrophes resulting from global warming<sup>75</sup>. Political leaders often do not know how to tackle such multifaceted and unfamiliar challenges, in particular if they emerge suddenly and take of large proportions. As a consequence, the reflex of resorting to emergency powers i.e. to grant the government extraordinary powers beyond its normal constitutional role<sup>76</sup>. States may apply various terms to the special legal order introduced in crisis situations such as “state of exception”, “state of emergency”, “state of alarm”, “state of siege”, “martial law” and so forth<sup>77</sup>.

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74Chimngako, supra note 10.

75 Anna Khakee, 'Securing Democracy? A comparative Analysis of Emergency Powers in Europe, Geneva Center for Democratic Control of Armed Forces(DCAF), Policy Paper No.30

76 Ibid

77. Geneva Center for the Democratic Control of Armed Forces (DCAF), Supra note 2 p.3.

On the other hand, defining and identifying the exigencies that constitute emergency is a cumbersome task<sup>78</sup>. The complexity it entails and the legality it requires make the concept more difficult. Thus, state of emergency has not yet been defined in an objective and descriptive manner that could clearly illustrate its nature, scope and application<sup>79</sup>. However, as DERRI and FAWEL (20118) defined, a state of emergency is “a government declaration which suspends some normal functions of the executive, legislature and judiciary.”<sup>80</sup> A declaration of state of emergency alerts or prompts citizens of a country to change their normal behavior or order government agencies to implement emergency preparedness plans.<sup>81</sup>

Declaring a state of emergency does, however, come at a cost of derogation of human rights. Derogation refers to a temporary suspension of human rights during state of emergency. Derogating measures are exceptional and temporary nature.<sup>82</sup> The rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies and the protection of the rights of the individual from abuse by the state.

A state of emergency is classified into **dejure** and **defacto**<sup>83</sup>. Dejure state of emergency exists when states comply with legal requirements for its declaration. If states exercise their emergency power without complying with preconditions prescribed in their constitutions and international human rights instruments, they are in a de facto state of emergency. A dejure state of emergency becomes de facto when emergency “measures are extended beyond the format termination of a declared state of emergency”.<sup>84</sup>

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78GuyoHuka, supra note 42

54. Gross, Emmanuel ‘How to justify an emergency regime and preserve civil liberties in time of terrorism’, South Carolina Journal of International Law and Business, vol. 5, iss.1, article 2, 2008, pp. 1-34. See also YibeltalAssefa, Upholding International Human Rights Obligations during a State of Emergency: An Appraisal of the Ethiopian Experience; LLM thesis, AAU (unpublished), 2019.

80 DERRI & FAWEL, Comparative Examination of Exercise of Emergency Powers (Nigeria, India and Egypt), 2018.

81 Ibid

82MulukenKassahun; The Rights of Minorities during states of Emergency; The Case of FDRE Constitution, available at <http://www.abyyssinialaw.com> (accessed Dec 28, 2018.)

83Abdijibril Ali, “Distinguishing Limitation on Constitutional Rights from Suspension; A comment on CUD Case”, Haromaya Law Review, vol.1 No.2, 2012, p.2

84 Ibid

### 3.3 Derogation of Human Rights under International and Regional Instruments

All the major international and regional human rights instruments, with the notable exception of the African charter on Human and People's Rights, recognize the rights of states to suspend human rights norms contained there in cases of exigencies that threaten the life of the nation<sup>85</sup>. Similarly, these instruments lay down conditions and requirements for a valid derogation, as well as enumerate certain rights that may not be suspended or derogated during emergencies. Article 4 of the ICCPR recognizes the right of states to derogate from their treaty obligation in certain circumstances. It also provided a clear set of standards that state parties have to comply with when they take measures derogating from their obligation under the covenant.

These criteria's are ;(a) emergency measures can only be taken when the life of the nation is threatened ;(b) a state of emergency must be officially proclaimed; (c) such measures are strictly required by the exigencies of the situation or proportional to emergency ;(d) such measures should not be in consistent with other obligations under international treaties;(e) non-derogation are made from the core rights ;and state parties taking derogation measures should inform the other states parties through secretary general ; and (f) such measures do not involve discrimination solely on the ground of race, color, sex, language, religion, or social origin. Similarly, the European convention on Human Rights<sup>86</sup> and the American convention on Human Rights<sup>87</sup> also provide rules for how and in what circumstances emergency regulations which derogates from certain rights can be established. According to the ECHR Art15, derogations can only be made in times of "war or other public emergency threatening the life of the nation" and the Secretary General of the Council of Europe shall be kept fully informed. A number of qualifying criteria, developed in European court of Human Rights case law, further restrain the usage of emergency rule<sup>88</sup>.

With some modification as compared to article 4 of ICCPR and article 15 of the ECHR, article 27 of the American convention on human Rights also foresees the possibility for the states parties to derogate from the obligations incurred under the convection. The convection establishes a detailed series of requirements governing the suspension of derogable rights .These

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85GuyoHuka, supra note 66

86 Article 15 of the European Convention on Human Rights

87 Article 27 of the American Convention on Human Rights

88 As developed in the following leading cases: Lawless vs Ireland (No.3) (1961) 1EHRR15; Askey vs Turkey, judgment of 18 December 1996, 23 EHRR 553.

requirements are; necessity, Temporality, Proportionality, non –discrimination ,compatibility with other in International obligation ,and adherence to domestic law<sup>89</sup>.

On the other hand, certain human Rights are non-derogable under any circumstance. Many of the most important international human rights treaties such as ICCPR, ECHR and the American Convection on Human Rights, enumerate a number of so- called non-derogable humanRights, which cannot be suspended in any circumstances,including during a state of emergency.

The list of non-dirigible Rights in the international instruments vary somewhat, but generally in compass the right to life, the prohibition of slavery and of torture or cruel, in human or degrading treatment or punishment, as well as the principle of non-retro activity of panel law.

### **3.4 principles Governing State of Emergency**

As discussed above, some of the major international human rights instruments recognize the right of states parties to derogate from some of their obligations under treaties in exceptional situation. Besides the already discussed major treaties set a number of conditionality for the justifiable exercise of the right of the rights of states to restrict some of the rights contained therein. Hence, the international human rights law prescribes a set of substantive and procedural limitation on emergency powers. Now, let's see each requirement in detail.

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89 Article 27 of the American Convention on Human Rights

### **3.4.1 Substantive Principles**

The Substantive requirements are those rules which govern the material, temporal, and geographical scope of the state of emergency and the emergency measures, including derogation of human rights<sup>90</sup>.

#### **3.4.1.1 The Principle of Strict Necessity**

The main idea of this requirement is that exceptional crisis that “threatens the life of the nation “must occur before a state party declares state of emergency and derogate from its international human rights obligation<sup>91</sup>. It is said necessary when the existence of a country is likely to be shaken to the core, or the system is so destabilized as to lead to a crisis in governance.

Thus, limitative law are said to be necessary if the exercise of the rights is a threat to public order, public morals, health, public peace, safety, and security, or to the rights and freedom of others<sup>92</sup>. Moreover, in order to fulfill the requirements of rationality, one must establish the existence of a cause effect relationship between the exercise of the right and the impending harm, and/or between the limitative action and the impeding harm in tended to be prevented by such action.

In addition to justifying the exercise of a grave situation, a derogating state must also show that it has become impossible to control the danger through the regular laws be for derogation of rights<sup>93</sup>.

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90YibeltalAssefa, Upholding International Human Rights Obligations during a State of Emergency: An Appraisal of the Ethiopian Experience; LLM thesis, AAU (unpublished), 2019.

91 ICCPR, art 4(1), Geneva Comment 29, para2, ECHR art 15(1)

92 See Syracuse, Principles on interpreting of limitation cause, see also Tsegaye supra note 1

93YibeltalAssefa Supra note 91

### **3.4.1.2 The Principle of Proportionality**

The Proportionality requirement prescribes that an emergency measures should be directed to achieve a legitimate public interest and it must be proportionate to the danger posed helps to making a proper balance between individual rights and public interests. The Requirement of Proportionality is met through comparing the impending harm intended to be prevented on the one hand and the gravity of the limitative action or decision on the other<sup>94</sup>. The length of time during which the limitation is imposed, the kind of rights that are restricted suspended or derogated from, etc. should be considered in order to weigh proportionality.

### **3.4.1.3 The Principle of Non-derogability of certain human rights**

International Human rights law put further limitations on emergency powers by stating some rights as non-derogable at any time<sup>95</sup>. In addition to what is stated under the main instruments, there is an international effort to expand the list of non-derogable rights by treaty monitoring and other advisory bodies<sup>96</sup>. Hence, the principle of non-derogability of fundamental rights means that even in the worst period, when there is a real need for recourse to the state of emergency, there are some rights which can never be infringed upon. Those are non-derogable human rights.

### **3.4.1.4 The Principle of Non-Discrimination**

The principle of non-Discrimination requires that emergency measures adopted by the derogating state should not entail discrimination solely on the basis of race, color, language, religion sex, ethnic group, political belief, or other status<sup>97</sup>. According to Grossman, the multiple references to the principle of non-discrimination in international instruments shows that the principle has already attained a status of *juscogens* which could render a legitimate suspension of human rights invalid if done in a discriminatory manner based on the above grounds<sup>98</sup>.

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94 Tsegaye supra note 27.

95 ICCPR, art 4(2), ECHR, 15(2), ACHR, Art 27(2).

96 Yibeltal Assefa Supra note 91

97 ICCPR, art 4(1), And ACHR, Art 27(1)

98 Grossman, A Framework for the Examination of State of Emergency Under the American Convention on Human Rights, 1AM.U.INT'L, REV.35(1986).

### **3.4.1.5 The Principle of Consistency with Other International obligations**

This requirement prescribes that a derogation measure taken based on a certain international treaty must be consistent with the derogating states' obligations under other international treaties<sup>99</sup>. In regard, the human right committee notes that a state party's right to derogate human rights as per the ICCPR cannot be justified "if such derogation would entail a breach of its other international obligations, whether based on treaty or general international law"<sup>100</sup>.

In **Oraa**'s word this principle means that "the rights of state to take measures of derogations are limited by the condition that the measures must not be inconsistent with other obligations under international law"<sup>101</sup>. This criterion is intended to create Compatibility, concordance and complementarities among the different obligations of the derogating state under international law and maintain better protection of human rights in emergency situation.

### **3.4.2. Procedural Principles**

The procedural requirements are those norms determining the procedures for initiation, execution, and termination of the emergency powers.

#### **3.4.2.1 The Principle of Official proclamation**

The requirement of official proclamation of the emergency appears only in ICCPR, whereas there is no such formal requirement in the two other treaties<sup>102</sup>. As per article 4(1) of the ICCPR, official proclamation is one of procedural requirements that should be fulfilled during state of emergency. Similarly the HRC notes that official proclamation of the state of emergency is a fundamental prerequisite for invoking derogation power by state<sup>103</sup>. The purpose of this requirement is to aware the public of the declaration of state of emergency and its territorial, material, and temporal consequences which also helps to "(maintain) the principle of legality and rule of law"<sup>104</sup>.

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99YibeltalAssefa Supra note 91.

100 General Comment 29, para2.

101 Jaime Oraa, Human Rights in State of Emergency in International Law, Clendon press, Oxford, 1992, p.2

102 ICCPR, art 4, ECHR, 15, ACHR, Art 27.

103 General Comment 29, para2.

104 Ibid

### **3.4.2.2. The Principle of International Notification**

According to this requirement, notification of the measures taken must be made to other states and relevant treaty. Monitoring bodies ;for instance, if a state is to derogate from its obligations under the ICCPR or ECHR then it must inform the Secretary General of its derogation, the measures it has taken and the reason therefore as well as the termination of the derogation<sup>105</sup>. This requirement is useful to insuring international supervision over derogation measures by other state parties or treaty monitoring organs<sup>106</sup>.

### **3.5 The Role of Judicial System in protecting Human Rights during State of Emergency Under International Instruments**

Experience suggests that many of the most grave and systematic human rights abuses occur during public emergencies, when states employ extraordinary powers to address threats to public order<sup>107</sup>. In responding to this challenge, each of the leading international and regional covenants on civil and political rights have provides remedies to those citizens whose fundamental rights have been violated. Judicial review of an administrative action is one of the mechanisms of human rights protection during state of emergency.

Of course, it is undeniable fact that emergency actions depend on the executive. It has all the power to decide as to how the situation can be controlled. But international jurisprudence has, to some extent succeeded in establishing that the courts cannot be barred from reviewing the executive actions. Hence, under this sub-topic the researcher tries to discuss the role of judicial system in protecting both non-derogable and derogable rights during state of emergency.

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105 Geneva Center for the Democratic Control of Armed Forces (DCAF), Supra note 2 p.4.

106 ICCPR, art 4

107 Jaime Oraa, supra note 103.

### 3.5.1 The Role of Courts in protecting Non-derogable Rights

To ensure full and effective protection of non-derogable rights in emergency situations, it is not sufficient to make them non-derogable; rather these rights must, in addition, be accompanied by the availability at all times of effective domestic remedies to alleged victims of violations of these rights<sup>108</sup>.

In General Comment No.29 on article 4 of the International Covenant, the Human Rights Committee states that:

*“It is inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2 that they must be secured by procedural guarantees, including often judicial guarantees. The provisions of the covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. Thus, for example as article 6 of the covenant is non-derogable in its entirety; any trial leading to the imposition of the death penalty during state of emergency must conform to the provisions of the covenant, including all the requirements of article 14 and 15”<sup>109</sup>.*

With regard the principle of legality and the rule of law, the Committee states that:

*“Safeguards related to derogation, as embodied in article 4 of the covenant, are based on the principles of legality and rule of law inherent in the covenant as a whole. 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 state of emergency. Only court of law may try and convict a person for criminal offence. 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”<sup>110</sup>*

In addition to containing a long list of rights that can not in any circumstances be derogated from, article 27(2) of the American Convention in Human Rights makes non-derogable “the judicial guarantees essential for the protection of such rights.” This show that at the American

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108 Human Rights in Administration of Justice, Supranote 1 p 851

109 UN Doc. GAOR, A/56/40(VOL.1), P.206, PARA 15.

110 Ibid

level, domestic remedies to ensure the full enjoyment of non-derogable rights must be judicial in nature, such as the Writ of habeas and amparo, and the proceedings concerned must respect the principles of due process of law<sup>111</sup>. These principles are therefore to that extent also non-derogable under the American Convention on Human Rights.

Generally, in international human rights law, the principle of legality and rule of law must be guaranteed at all times, including during state of emergency<sup>112</sup>. Non-derogable rights must be fully protected in such emergency situations. To this end, states must at all times provide effective remedies allowing alleged victims to vindicate their rights before, domestic courts or other independent and impartial authorizes. No derogatory measures, however, lawful, are allowed to undermine the efficiency of these remedies.

This means that, in order to guard against infringement of non-derogable rights, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be safeguarded through independent of the judiciary<sup>113</sup>. Hence, the courts can play a major role in decisions concerning the legality of a declaration of a state of emergency as well as in reviewing the legality of specific emergency measures<sup>114</sup>.

### **3.5.2 The Role of Courts in protecting Derogable Rights**

The Human Rights Committee notes in General Comment No.29 that article 2(3) of the International Covenant “requires a state party to the covenant to provide remedies for any violation of the provisions of the covenant”.

“This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the covenant as a whole. Even if a state party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of their procedures governing judicial or other remedies, the state party must comply with the fundamental obligation, under article 2, paragraph 3, of the covenant, to provide a remedy that is effective”<sup>115</sup>.

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111 Human Rights in Administration of Justice, Supranote 1 p 851

112 Ibid

113 Geneva Center for the Democratic Control of Armed Forces (DCAF), Supra note 2 p.3.

114 Ibid

115 UN Doc. GAOR, A/56/40(VOL.1), P.206, PARA 15.

In other words, even in situations in which a state party concludes that a threat to the life of the nation requires it to derogate from its obligations under the covenant, it remains legally bound to provide effective remedies to victims of Human rights violations, including those who are victims of an excessive or wrongful application of emergency measures.

In its advisory opinion on Judicial Guarantees in states of emergency, The Inter-American Court stated with regard to derogatory measures that from article 27(1) comes the general requirement “that in any state of emergency there be appropriate to the needs and do not exceed the strict limits imposed by the convention or derived from it”<sup>116</sup>.

With regard to rights that have not been suspended or derogated from, the court has an equivocally ruled that “the declaration of state of emergency whatever its breadth or denomination in international law-cannot entail the suppression of the judicial guarantee that the convention requires the states parties to establish for the protection of such rights”. In other words, “the judicial guarantees essential for the effectiveness of rights and freedoms that are not subjected to derogation must be preserved “<sup>117</sup>.

So the legal duty of the states to provide effective domestic remedies for violations of human rights remains in full force in public emergencies in respect of rights that have not been derogated from, including non-derogable rights that must be fully guaranteed at all times. To the extent that states resort to derogations from their obligations under human rights treaties, they have to provide effective remedies for the purpose of assessing the strict necessity of the emergency measures and preventing abuses both in general and in any given case<sup>118</sup>.

Regarding the right to fair trial, every person has the right to all times to be tried by a court or tribunal which is competent, independent and impartial and which respects the right to fair trial or due process guarantees as well as the right to be presumed innocent until proved guilty<sup>119</sup>. On the other hand, as the right to fair trial by a competent, independent and impartial tribunal is not made non-derogable *expressis verbis* either by the International Covenant or by the American and European Conventions, questions arise as to what elements of this fundamental right may be derogated from in states of emergency.

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116 I.A Court HR, Advisory Opinion OC.9/87 of october6, 1987, Judicial Guarantees in State of Emergency (arts. 27(2), 25 and 8 of the American Convention Human Rights) Series a, no.9, p.31, para.21

117 Ibid, p.34, para.21.

118 Human Rights in Administration of Justice, Supranote 1 p 851.

119 Ibid p.876

In General Comment No.29, the Human Rights Committee states that; “As certain elements of the right to fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the committee finds no justification for derogation from these guarantees during other emergency situations”<sup>120</sup>.

In case of *M.Gonzalez del Rio vs. Peru*, the committee held, furthermore, that “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception”<sup>121</sup>.

With regard to international humanitarian law, the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 provide a number of fundamental fair trial guarantees. Although the guarantees vary from treaty to treaty, they include such aspects of a fair trial as: -

- The right to be tried by a court offering the essential guarantees of independence and impartial;
- The right to have access to a lawyer;
- The right to an interpreter;
- The right of accused to be without delay of the particulars of the offence alleged against him and the right before as well as during the trial to all necessary rights and means of defense;
- The right not to be convicted of an offence except on the basis of individual penal responsibility;
- The right to be tried in one’s presence;
- The right not to be compelled to testify against oneself;
- The right to examine, or to be examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witness against;
- The right to have the judgment pronounced publicly;
- The right to an appeal<sup>122</sup>.

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120 UN Doc. GAOR, A/56/40(VOL.1), P.206, Para. 16

121 Communication No.263/1987, *M. Gonzalez del Rio vs Peru (VIEWS ADOPTED ON 28 October 1992)*, GAOR, A/48/40(V.2), P.20, PARA.5.2.

122 See article 49 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; article 50 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwreck Members of Armed Force at Sea, 1949; articles 105-108 of Geneva Convention

It seems clear that, the fair trial standards laid down in international humanitarian law establish a minimum threshold beneath which no state may at any time lower fair trial guarantees. As these standards are laid down for armed conflicts of an international or internal character, crisis situation of a less serious nature call for higher standards. The minimum guarantees for criminal trials prescribed in article 14(3) of the ICCPR, article 8(2) of the ACHR and article 6(3) of the ECHR provide an important, insufficient, yardstick for fair trial guarantees that should be applicable at all times, including during state of emergencies<sup>123</sup>.

Therefore, the courts can play a major role in protecting derogable rights under international human rights instruments.

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Relative to the Treatment of Prisoners of War; articles 71-73 of Geneva Convention Relative to Protection of Civilian Persons in Time of War, 1949, Common article 3 of the four Geneva Conventions, article 74(4) of Protocol 1 to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts and article 6 of Protocol 2 to the Geneva Conventions of 12 August 1949.

123 Human Rights in the Administration of Justice; A Manual on Human Rights for Judges, Prosecutors and Lawyers

## CHAPTER FOUR

### HUMAN RIGHTS; STATE OF EMERGENCY AND ADMINISTRATION OF JUSTICE UNDER ETHIOPIAN LEGAL SYSTEM

#### 4.1 HUMAN RIGHTS IN ETHIOPIA

##### 4.1.1 Human rights under the Ethiopian Constitutions pre- 1995

Ethiopia had three written constitutions (in 1931, 1955, and 1987) before the 1995 FDRE Constitution. The 1931 Constitution<sup>124</sup> does not have significant relevance for the human rights discourse as it was primarily designed to reaffirm and fortify the absolute power of Emperor Haile Selassie first<sup>125</sup>. The 1931 Constitution being an imperial grant, it did not recognize human rights as such<sup>126</sup>. Rather, it stressed duties while the notion of their being “entitled” to special privileges and benefits depending on the whims and conjectures of the Emperors from whom all benefits and privileges, and all justice and power, flows was maintained<sup>127</sup>. The state is considered to owe no duty to the people. There was hardly any constitutional limit to the power<sup>128</sup>.

The 1955 Constitution<sup>129</sup> was adopted in response to the inadequacy of the 1931 Constitution to accommodate the more complex legal and political scenario at domestic and international levels. Although this constitution recognized a handful of rights, their relevance was vastly compromised due to the absolute power of the Emperor, and the absence of an organ empowered to interpret and apply the constitution<sup>130</sup>. Besides, most of the rights were entangled with claw-back clauses marked by the phrase such as “in accordance with the law”, or “as shall be determined by law”<sup>131</sup>.

The military junta (which called itself the Dergue, which literally means committee) took power after dethroning Emperor Haile Selassie first in 1974, and it adopted a constitution in 1987 after

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124 . Constitution of Ethiopia, (adopted in 1931).

125 . Adam Kassie Abebe, Human Rights Under the Ethiopian Constitution: A descriptive overview, Mizan Law Review, vol.5 No.1p.1

126 . Tsegaye, supra note 27.

127 . Ibid

128 . Ibid

129 . Revised Constitution of the Empire of Ethiopia, Proclamation No.149 of 1955.

130 . Adam Kassie, supra note 125, See also Gkrzecznowicz (1984), Hierarchy of laws’ (1) Journal of Ethiopian law, 11.

131 . Tsegaye, supra note 27.

13 years of constitutional lacuna<sup>132</sup>. The 1987 Constitution<sup>133</sup> highly accentuates economic, social and cultural rights due mainly to the socialist tendency of the regime. The redistribution of land and urban houses emboldened some aspects of socio-economic rights. The secularization of the state led to the declaration of equality and non-discrimination on the basis of religion albeit much less to freedom of religion. Recognition of linguistic and cultural equality led to the denunciation of discrimination on linguistic and cultural grounds<sup>134</sup>. It was nonetheless a regime beset by fear and there was no fertile ground to foster the recognition and exercise of human rights<sup>135</sup>.

Regarding state of emergency, there is no provision under the above constitutions which allowing state to resort to derogatory measures in response to an extraordinary situation posing a fundamental threat to the country. Hence, the status of declaration of state of emergency and the role of courts were not mentioned under the above constitutions.

#### **4.1.2. Legal Framework of Human Rights under FDRE Constitution**

The Constitution of Federal Democratic Republic of Ethiopia (FDRE) was adopted in in 1994 to come into force in 1995. The FDRE constitution is a compact document with an admirable degree of clarity and conciseness<sup>136</sup>. It has 106 articles packed in 11 chapters.

In its preambles, it embodies the principles of self-determination of collectivities, rule of law, democracy, development, fundamental rights and freedoms, equality and non-discrimination, peace, affirmative action and etc.

Chapter three of the FDRE constitution includes a detailed and comprehensive list of enumerated fundamental rights and freedoms, including human rights and democratic rights<sup>137</sup>. The recognition ranges from traditional civil and political rights to socio-economic and group or solidarity rights.

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132 . Adam Kassie, supra note 125.

133 . Constitution of the People's Democratic Republic of Ethiopia, adopted 22 February 1987.

134. Tsegaye, supra note 27.

135 Adam Kassie, supra note 125.

136Tsegaye, supra note 27.

137 . Articles 13-44 are devoted to "Fundamental Rights and Freedoms" in general, Articles 14-28 are dubbed "Democratic Rights" while articles 29-44 are dubbed "Democratic Rights".

#### **4.1.2.1 Civil and Political rights**

The constitution embodies several civil and political rights most of which are adopted from the provisions of the UDHR<sup>138</sup>. The list includes the right to life, to security of person, to liberty (which prohibits arbitrary arrest and deprivation of liberty), protection against cruel, inhuman, or degrading treatment or punishment including the banning of slavery and trafficking in human being for whatever reason, and forced or compulsory labor<sup>139</sup>. The constitution further guarantees the rights of arrested(art.19), accused(20), detained(21) persons, rights against retroactive laws(art. 22), double jeopardy(art.23), rights to honor and reputation(art.24), equality(art.25), privacy(art.26), religion, belief, and opinion(art.27), and rights to thought, opinion, and expression(art.29), assembly, demonstration, and petition(art.30), association(art.31), movement(art.32), nationality(art.33), marital, personal, and family rights(art.34), access to justice (art.37), vote and be voted for(art.38). Moreover, the right of women (art.35) and the right of children (art.36) also guaranteed.

#### **4.1.2.2 Economic, Social and Cultural rights**

The Ethiopian constitution incorporates various Economic, Social and Cultural rights. However, all socio-economic rights are categorized under one heading ‘economic, social, and cultural rights’ separately from the civil and political rights. This does not only give the impression that the interdependence, interrelatedness and indivisibility of human rights is given due emphasis, but are not also well elaborated<sup>140</sup>. However, the rights to property (art.40) and of labor (art.42) are given one article each separately.

Moreover, the term in which the socio-economic rights are described are more general and in some instances, lack clarity<sup>141</sup>. Nevertheless, the constitution has formulated among others, the right to engage freely in economic activity, the right to choose his or her means of livelihood, occupation and profession, right to equal access to publicly funded social services in clear terms.

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138 . Adam Kassie, supra note 125.

139 . Arts 14-18 of the FDRE Constitution.

140 . RakebMalese, supra note 48.

141 . Ibid

In addition to incorporating socio-economic rights, the constitution has incorporated various social, economic and cultural objectives and principles that the state has to observe for formulation of national policies under chapter ten. The constitution stipulates that the government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them (art.89 (2)). The constitution further stipulates that policies shall aim at providing all citizens access to health, education, clean water, housing, food, and social security(art.90(1).

The constitution also guarantees several labor rights. These rights include the right to association including the right to form trade unions for collective bargaining purposes, the right to strike, equal pay for equal work, paid leaves, reasonable limits to working hours; and a health and safe work environment<sup>142</sup>.

#### **4.1.2.3. Group or Solidarity rights**

One essential feature of the FDRE constitution is the recognition of what are called third generation or group rights. The right to self-determination up to secession, the right to development and the right to a clean and healthy environment are clearly enshrined<sup>143</sup>.

The right of “nations, nationalities and peoples” to self-determination up to secession includes the right to speak, write, develop their language, to express, promote and develop their culture, preserve their history, and to self-government and equitable representation in the regional state and federal governments.

In conclusion, the FDRE constitution embodies a progressive list of rights compared to its predecessors<sup>144</sup>. The special features of the constitution include the recognition given to the ethnic diversity and willingness to accommodate it through the right to self-determination. However, the provisions concerning economic, social, and cultural rights are insufficient and there is a need to re-formulate them in tune with the ICESCR and other relevant instruments ratified by Ethiopia.

#### **4.2 Declaration of the State of Emergency under the FDRE Constitution**

There are two major models for declaring the state of emergency: the parliamentary and the executive models. As the name indicates, in the parliamentary model, the prerogative to declare the state of emergency is vested in the parliament, whereas in the executive models prerogative

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142. Art. 41 of the FDRE Constitution.

143 . Articles 39, 43 and 44 of the Constitution.

144 . Adam Kassie supra note 125 p.56.

to declare a state of emergency is vested in the Chief executive, the president or the prime minister<sup>145</sup>.

In Ethiopia, though the power to declare the state of emergency is rested in the Council of Ministers<sup>146</sup>, the power to declare the same is not that of the Council of Ministers in all stages. The power shifts from the Council of Ministers to that of the parliament after the time the constitution requires to be submitted to the latter<sup>147</sup>. In such case, the constitution adopts both the parliamentary and the executive models of declaring state of emergency. We will see how the models are adopted in the FDRE constitution in the next subsection.

#### **4.2.1 The executive model of declaring state of emergency in the FDRE Constitution**

As per article 93(1) of the FDRE Constitution, power to declare decree a state of emergency at federal level entrusted to Council of Ministers, and at state level given to state executive. The grounds to declare such emergency at the federal level are external invasion, 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. Statewide state of emergency declared only when the latter two events occurred<sup>148</sup>.

In addition to its expression as to the Council's power to declare state of emergency which is in light with the executive model, the constitution's adoption of the executive model is clearer when it sets a time limit where by the decree declared by the Council of Ministers will have a force of law<sup>149</sup>.

Concerning its procedure, the state has a constitutional autonomy to determine the process to be followed to declare state-wide emergency due to it's not addressed in the FDRE Constitution. However, when the decree is at the federal level the constitution sets some certain standards. Accordingly, the state of emergency decreed by the Council of Ministers in accordance with article 93(1)(a) shall be submitted to the House of People's Representative(HoPR) with in forty-eight hours of its declaration provided that it is declared when the house is in session<sup>150</sup>. The

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145 . VenelinGanev, 'Emergency power the New East European Constitution', American Journal of Comparative law, vol.45 No.585, 1997, p.588.

146 . Arts 77(10) and article 93(1) of the FDRE Constitution.

147 . Gebreabzgi W/Slase, The Extent of Reason of state in the Ethiopian Constitutional order: The Quest for Restraining and Legitimizing. LLM thesis, AAU (Un published), 2011 p.18.

148 . Art 93(1) (A and B) of the constitution.

149 . Gebreabzgi W/Slase, supra note 148.

150 . Art 93(2)(a) of the Constitution.

HoPR may approve or reject the decree submitted to it. If the house does not approve it by a two-thirds majority vote of its members, it shall be repealed forthwith<sup>151</sup>.

Besides, the Council of Ministers is constitutionally empowered to issue regulations necessary to the implementation of a state of emergency decree there by to maintain the constitutional order<sup>152</sup>. This power to issue regulations, as it is related with implementation of the decree, applies no matter at what stage the decree is found. Therefore, it can be concluded that the FDRE Constitution has adopted an executive model of declaring state of emergency due to the power to decree the state of emergency is entrusted to the Council of Ministers.

#### **4.2.2 The parliamentary model of declaring state of emergency in the FDRE Constitution**

The constitution follows the parliamentary model of declaring state of emergency when it requires the approval and renewal of the House of People's Representative so that the emergency decree will continue with the force of law. The House has a power either to approve or reject the decree submitted to it. It is if approved by the HoPR by two thirds majorities that the state of emergency declared by the Council of Ministers can remain in effect; and it is the power of the House either to deny or allow renewal of the states of emergency proclamation at every four months after the lapse of six months period<sup>153</sup>.

The FDRE constitution does not put an upper limit on the number of renewals of an emergency decree and it could pave the way for entrenched emergencies<sup>154</sup>.

In seeking the House's approval, it can be said that the power shifts from the executive to the parliament; and as well, the name of the decree is changed to a proclamation after the approval is done by the House<sup>155</sup>. In such away, the constitution adopts a parliamentary model of declaring state of emergency.

#### **4.3 Non-Derogable Rights under FDRE Constitution**

The principle of non-derogability prohibits states from suspending the rights that are specially mentioned as non-derogable even under the gravest state of alarm. Accordingly, the Ethiopian constitution puts certain rights and freedoms beyond the reach of the emergency powers of the government even when there is an actual and imminent danger against the life of the nation

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151 . Ibid

152 . Art 93(4) (a) of the Constitution.

153 . Art 93(3) of the Constitution.

154 . YibeltalAssefa Supra note 91

155 . Ibid

exists. The FDRE Constitution under article 93(4) lists the following rights as non-derogable: the right to protection against cruel, inhuman and degrading treatment or punishment; the right to be protected against slavery, servitude and the trafficking of human beings; the right to equality; the right to self-determination up secession, the right to speak, to write and to develop their own language as well as to express, to develop and promote their culture and to preserve their history<sup>156</sup>.

The right to self-determination of “nations, nationalities and peoples”<sup>157</sup> extends up to creating regional states within the federal states and can even extend up to secession under the conditions stated in the constitution.

A relevant question worth asking here is how nations, nationalities and peoples can exercise the right of secession which need stable political situation, during state of emergency? Practically, it is difficult to exercise to self-determination up to secession during state of emergency.

The nomenclature of the state is also non-derogable under the constitution even though it is not a human right<sup>158</sup>.

However, when we compare such lists with article 4(2) of the ICCPR non-derogable rights most rights of ICCPR provisions are not included in the FDRE Constitution. The lists of non-derogable rights recognized in the ICCPR and omitted in the FDRE Constitution are: Article 6(the right to life), article 11(prohibition of imprisonment for the inability to discharge contractual obligation), article 15(prohibition against ex-post facto criminal law), article 16(the right to be recognized as a person before the law) and article 18(freedom of thought, conscience and religion). These rights are argued as derogable in the FDRE Constitution based on the contrary reading of article 93(4) (c).

Moreover, the right to life which is the most vital and the basis for other human rights is derogable under the constitution. This implies that, the FDRE Constitution has lesser protection than that of ICCPR standard.

In connection to this issue, some authors argue that, non-derogable provision of article 93(4)(c) should be read with article 13(2) of the constitution, in case of inconsistency or gap exist, which mandates interpretation human right provision in the FDRE Constitution in conform to International Human Rights Instruments adopted by Ethiopia including ICCPR. Hence, those

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156 . Art 93(4) of the Constitution.

157 Art 39 of the Constitution

158 . Ibid

non-derogable rights in the ICCPR should be incorporated into FDRE Constitution through interpretation.

On the other hand, the issue of who shall interpret the constitution and whether the power of interpreting the constitution shall be assigned to the judiciary or the House of Federation has been the subject to debate<sup>159</sup>. The issue of how and who will be the responsible body to decide on the constitutional interpretation of human right provisions briefly discussed in chapter five specifically under sub-topic ‘The confusion on judicial review’.

While other scholars argue that, firstly, the application of article 13 (2) limited to provisions of chapter three (articles 13-44) of the constitution and not extended to article 93(4) (c) or other chapters. Secondly, what the constitution clearly provides is not subject to interpretation<sup>160</sup>.

On the other hand, states of Ethiopian federation have better protection by incorporating more non-derogable rights provisions in their own constitution including the right to life as non-derogable right<sup>161</sup>. However, Somali State Constitution does not include the prohibition of inhuman treatment and the right to equality, and also Afar constitution does not includes the right to self-determination including secession as non-derogable right<sup>162</sup>. Such exclusion of the most fundamental rights from list of non-derogable rights emphasizes both regional constitutions contradicts with the Ethiopian Federal Constitution in which its applicability can be easily be botched as per article 9(1) of the constitution, which is a supremacy clause<sup>163</sup>.

#### **4.4 The Judiciary and Its Role in Protecting Human Rights**

##### **4.4.1. Structure of the Judiciary**

Following the federal structure of the Ethiopian state, the constitution establishes independent judiciaries both at the federal and state levels. The constitution recognizes the establishment of a three-tiered independent judiciary which is vested with all judicial power<sup>164</sup>. Accordingly, the constitution establishes two parallel judicial structures: one at the Federal level, which hierarchically consists of the First Instance Court, High Court and the Federal Supreme Court,

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159. GetahunKassa, Mechanisms of Constitutional: a preliminary observation of the Ethiopian System, Africa Focus, vol.20, No.2 p.79

160 . Muluken, supra note 83.

161 . Guyo, supra note 66.

162 . Ibid

163Article 9(1) of the FDRE constitution states that any laws, customary practice or decision of an organ of state which contradict this constitution shall be of no effect.

164 . Articles 78-81 of the Constitution.

and one at the state (regional) level consisting of the First Instance (Woreda) Court, High (Zonal) Court and the Regional Supreme Court<sup>165</sup>.

The constitution also allows the establishment of customary and religious courts to adjudicate disputes relating to personal and family laws in accordance with customary or religious laws up on the consent of all parties to the disputes<sup>166</sup>. Moreover, in most states, there are also Social Courts that are increasingly granted a constitutional recognition although they have a dubious position in the judicial hierarchy.

The Federal Supreme Court has a cassation division whose decisions have an authority and precedential value over lower courts in the hierarchy. The state supreme courts, too, have their own cassation divisions. It should be noted that the cassation divisions, do not have power to quash unconstitutional laws. They only have the power to provide a final and binding interpretation of ordinary laws.

#### **4.4.2. The Role of Judiciary in protecting Human Rights during State of Emergency**

The role of judiciary organ during state of emergency is not provided in the FDRE Constitution. However, the judiciary even if not clearly empowered in the constitution, article 93(6)(D) of the constitution implies courts have a role in entertaining the prosecution of perpetrators of the inhumane act.

On the other hand, ensuring the protection of non-derogable rights demands the availability, at all times, of effective domestic remedies to victims of human right violations. The *Paris Minimum Standards* recommends the right to get remedy is considered as non-derogable rights during state of emergency<sup>167</sup>. The *Syracuse Principles* also recommend that “the ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated”<sup>168</sup>. Moreover, UN HRC General Comment on State of Emergency of art.4 of ICCPR states on para.14: -

“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 offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a

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165 . Ibid

166 . Arts 34(5) and 78(5) of the constitution.

167 . P Minimum Standards, Sec C, art.16aris

168. Siracusa Principles, para.60.

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".

This general comment binds Ethiopia as pursuant to article 9(4) and 13(2) of the constitution<sup>169</sup>. Therefore, the courts in Ethiopia can and should play an indispensable role in safeguarding non-derogable rights during state of emergency and prescribing remedies in cases of violations.

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169 . As pursuant to article 9(4), All International agreements ratified by Ethiopia are an integral part of the law of the land including ICCPR. Also article 13(2) says, "The fundamental rights and freedoms specified in this chapter shall be interpreted in the manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International Instruments adopted by Ethiopia". Thus, Ethiopia as a member of ICCPR, these general comment serve as a guidance of interpretation as pursuant to article 13(2) of the constitution.

## CHAPTER FIVE

### PRACTICAL IMPLICATIONS OF THE ROLE OF COURTS IN PROTECTING HUMAN RIGHTS IN A STATE OF EMERGENCY

Courts are the principal institutions whereby individuals and those whose rights have been violated get remedies. The existence of the judiciary protects individuals from being victims of unlawful acts of officials including during a state of emergency. This chapter discusses the practical implication of the role of Ethiopian courts in protecting human rights during a state of emergency. For this purpose, it is devoted to provide a critical analysis of the role of Ethiopia's courts in light of the principles governing a state of emergency. In so doing, the major gaps of laws and practices are pointed out.

#### 5.1 History of State of Emergency in Ethiopia

Over the last 25 years (after the 1994 FDRE Constitution adopted), an emergency on account of the security of the nation being threatened has been proclaimed on three occasions. Most of these emergencies were declared because of internal disturbances.

The first a state of emergency was proclaimed in 2005 in Ethiopia. Following the May 2005 parliamentary election, in which major opposition parties participated, the late Prime Minister Meles Zenawi issued a decree<sup>170</sup> that freedom of assembly including public demonstration was banned in Addis Ababa and its vicinity, but protests occurred nonetheless.<sup>171</sup> However, the question remaining is: does the Prime Minister's decree amount to a declaration of a state of emergency? Of course, it is the power of the Council of Ministers to declare a state of emergency subject to approval by the House of Peoples' Representatives. The Council of Ministers speaks through its chair person, the Prime Minister. Thus, the decree of the Prime Minister is presumed to be the declaration of the Council of Ministers in the absence of contrary proof<sup>172</sup>. Moreover, the declarations of the Prime Minister were closer to an emergency decree than a subsidiary legislation<sup>173</sup>.

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170 The Prime Minister's declarations were published in Addis Zemen, a government owned newspaper published in Amharic, see Addis Zemen, 64<sup>th</sup> year No.248, My 2005(8Ginbot 1997 ECO at 1 and 6.

171. Chimbako, supra note 10.

172 Abdi Jibril Ali, Distinguishing Limitation on Constitutional Rights from their suspension: A comment on the CUD Case, Haramaya Law Review, vol.1, No.2, winter 2013.

173 Ibid

Immediately after the declaration, the opposition parties accused the EPRDF of tampering with the election results<sup>174</sup>. In June 2005, 9000 supporters of an opposition party, the coalition for Unity and Democracy (CUD), many of whom were students, were arrested<sup>175</sup>. Human rights advocates, lawyers, academics, and journalist were also imprisoned<sup>176</sup>. Ethiopian security forces shot and killed forty-two people and wounded 200 during demonstration in Addis Ababa in November 2005.<sup>177</sup>

Moreover, on 8 October 2016, the Ethiopian government officially declared a nationwide state of emergency<sup>178</sup> in response to a year-long protest by members of Ethiopia's two largest ethnic groups, the Oromo and the Amhara.<sup>179</sup> Security forces responded to protests with the use of excessive force against protesters despite the largely peaceful nature of the protests<sup>180</sup>. By the time at least 800 protesters had been killed by the security forces and hundreds including prominent politicians, human rights defenders and activists arrested and charged under the Anti-Terrorism Proclamation (ATP)<sup>181</sup>. However, after 10 months stay the government lifted the state of emergency in August 2017.

Six months after the end of the State of Emergency Proclamation (2016) that had been in force for 10 months, the Council of Ministers of Federal Democratic Republic of Ethiopia declared another state of emergency on 16 February 2018<sup>182</sup>.

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174. Chingbako, supra note 10.

175. Ibid

176. Ibid

177 . Ibid

178. State of Emergency Proclamation for the Maintenance of Public Peace and Security Council of Ministers Proclamation No. 1/2016

179AwolAllo, Supra note5.

180. Human Rights League of Horn of Africa: Oromo Nation Peaceful Protest 12November2015- February20, 2016.

181 . Amnesty International, Ethiopia: AFR25/5669/2017/p.2

182 . BBC News, Ethiopia Declares National State of Emergency:  
<http://www.bbc.com/news/world.africa.43091248>.

## 5.2 A Critical Analysis of the Role of Courts during State of Emergency

This section is devoted to explore the practice of Ethiopian courts during a state of emergency. Accordingly, the researcher has made intensive and an in-depth interview with purposively selected well experienced 3(three) judges from each of the selected courts. The total sampled judges were 24(3 judges from Federal supreme court cassation division, 3 judges from Federal high court and 3 judges from Federal first instance court) and from Oromia towns surrounding Addis Ababa (3 judges from Oromia supreme court, 3 judges from Oromia Special Zone Surrounding Finfinnee high court, 3 judges from West Shewa Zone high court, 3 judges from Sululta town court and 3 judges from Ambo town court).

Moreover, 3 (three) public prosecutors from Federal Attorney General and 3 public prosecutors from Oromia Attorney General were interviewed. Similarly, 3 investigative Police Officers from Federal Criminal Investigation Bureau and 3 investigative police Officers from Oromia Police Administration Office were interviewed.

Besides, the researcher has made intensive in-depth interview with 3(three) lawyers and 15 (fifteen) victims of emergency i.e. 5 who live in Addis Ababa City, 5 who live in Oromia Special Zone surrounding Finfinnee and 5 who live in West Shoa Zone. Generally, the data was collected from 54 (fifty-four) sample respondents. The responses of the interviewed judges, public prosecutors, investigative Police Officers, lawyers and victims of emergency regarding the practical application of fundamental human rights during state of emergency before court of law are different.

Regarding real cases, notice has to be made that only few real cases appear before courts for adjudication during state of emergency. For this reason, the researcher tried to analyses cases appeared before courts both during **dejure** and **defacto** emergencies.

### **5.2.1. The Role of Courts in protecting non-derogable rights**

It has been discussed in the previous section that the FDRE constitution allows derogation from the fundamental rights and freedoms listed under chapter three of the constitution while at the same time recognizing certain absolute rights. The constitution thus puts certain rights and freedoms beyond the reach of the emergency powers of the government even when there is an actual and imminent danger against the life of the nation. Article 93(4)(C) of the constitution states: - in the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Article 1, 18, 25, and sub-articles 1 and 2 of the article 39 of the constitution.

The list of fundamental rights and freedoms that are non-derogable under the FDRE Constitution includes:- the right to protection against cruel, inhuman and degrading treatment or punishment(article 18(1); the right to be protected against slavery, servitude and the trafficking of human beings(article 18(2); the right to equality(25); the right to self-determination up secession(article 39(1), the right to speak, to write and to develop their own language as well as to express, to develop and promote their culture and to preserve their history(article 39(2).

However, to ensure full and effective protection of non-derogable rights in emergency situations, it is not sufficient to make them non-derogable rather these rights must in addition, be accompanied by the availability at all times of effective domestic remedies to alleged victims of violations of these rights<sup>183</sup>.

In practice, these non-derogable rights seems to be breached by the government in time of emergencies<sup>184</sup>. A report from Ethiopian Human Rights Project (EHRP) show that arrested individuals had been victims of both psychological and physical torture from the moment to they were arrested till their release<sup>185</sup>. They were detained without charge at Tolay, Bersheleko, Awash 7 Kilo, and Alage military camps, which served as a “Reformation” or “Tehadeso”

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183 . General Comment No. 29 on article 4 of the International covenant.

184 . Out of the 39 interviewed legal experts i.e. Judges, Public prosecutors, Police Officers and Lawyers, the responses of 34 shows that non-derogable rights would be breached during state of emergencies.

185 . Report prepared by Ethiopian Human Rights Project (EHRP), The State of Emergency (2016-2017): Its cause and Impact, January 2018.

training centers. Detainees faced various acts of tortures such as such as flogging, sterilization, rape, heavy sporting punishments and starvation<sup>186</sup>.

Amnesty International has also confirmed that the police tortured and ill-treated detainees at Awash Arba and Awash Sebat military training centers<sup>187</sup>. The detainees had no recourse in the absence of judicial oversight of condition as per the state of emergency declaration<sup>188</sup>.

Interviews made with the sampled respondents reveal that despite the constitution guaranteed non-derogable rights like the right to protection against cruel, inhuman or degrading treatment or punishment, the victims of the violation of non-derogable rights were not allowed to appear before the court to ask remedy during a state of emergencies. Interviews made with some detainees indicated that though many of them had been victims of both psychological and physical torture, there were no access to justice to claim remedy for violation rights<sup>189</sup>. Some of the detainees described that even our families and lawyers didn't know our whereabouts<sup>190</sup>.

Therefore, the practice shows that judicial remedies to alleged victims of violations of non-derogable rights are not protected in Ethiopia during a state of emergencies.

### **5.2.2. The Role of Courts in protecting derogable rights**

It is known that a state of emergency is a situation where the judiciary is somehow expected to restrain itself so as to give a legal breath to the executive where the latter can take extraordinary measures to avert a danger which triggered the emergency<sup>191</sup>. Nonetheless, ensuring the protection of human rights including derogable rights demands the availability of effective domestic remedies to victims of human rights violations.

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186 Ibid

187 . Amnesty International Public Statement, Ethiopia: Draconian State of Emergency Measures, AFR25/5669/2017/p.2

188 . Ibid

189 . Out of the 15 interviewed victims of emergencies, the responses of 13 shows that there were restrictions on the right of access of justice during state of emergencies.

190 Ibid

191 . Emilie M. Hafner.Burton et al, Emergency and Escape: Explaining Derogations from Human Rights Treaties, 65 IN INTERNATIONAL ORGANIZATION 4, AT 673(2011)

In Ethiopia, judicial power both at federal and state level is vested in the courts<sup>192</sup>. However, the role of judicial organ during a state of emergency is not clearly provided in the FDRE constitution. The constitution entrusts the duty to administer a state of emergency to the Emergency Inquiry Board constituted by the HOPR<sup>193</sup>. But, the State of Emergency Inquiry Board does not have judicial power to except recommending possible corrective measure to the executive. Hence, it can't replace the role of courts during a state of emergency.

In practice, the responses' of interviewed judges showed that during the state of emergency periods, the regular courts have been handling cases that are related to the emergency decree by setting up special benches to give expeditious decisions<sup>194</sup>.

The role of courts during emergency to protect derogable rights is even more indispensable in Ethiopia because there is no another independent and competent body with judicial power to safeguard human rights by countering abuse power by the executive. Moreover, the emergency proclamations did not suspend the regular courts during the emergency period and courts have been applying the regular laws and procedures even though their independence remains questionable.

Nevertheless, some interviewees argue that the courts in Ethiopia cannot question whether the substantive and procedural requirements to declare state of emergency are fulfilled because doing so may require interpreting the constitution which is not the power of the judiciary<sup>195</sup>. On the other hand, many interviewees argue that all of the issue of whether the substantive and procedural requirements to declare a state of emergency are fulfilled may not necessarily need constitutional interpretation, so we have to see case by case whether the case need constitutional interpretation or not<sup>196</sup>. Tefari argue that the courts can adjudicate the cases regarding whether the principles of proportionality or non-discrimination to declare or during state of emergency<sup>197</sup>.

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192. Art.79 (10 of the constitution.

193 Art. 93(5) of the constitution.

194 . An Interview with Ato Ermias Tadese and Ato Girma Bayesian who are currently judges at Oromia Supreme Court, June 20, 2018.

195 . Out of the 39 interviewees (includes judges, public prosecutors, investigative police officers and lawyers) 7 of them responses show that courts cannot adjudicate cases regarding state of emergency because doing so may require interpreting the constitution which is not the power of the judiciary, December ,2019.

196 Out of the 36 interviewees (includes judges, public prosecutors, investigative police officers and lawyers) 26 of them responses show that all cases may not need constitutional interpretation, so we have to see case by case whether the case need constitutional interpretation, December ,2019

Leaving aside the debate on the role of the judiciary with regard to constitutional interpretation, the courts in Ethiopia can and should play an indispensable role in safeguarding human rights including derogable rights during a state of emergency and prescribing remedies in cases of violations.

Even though the Ethiopian courts have role in protecting derogable human rights, the judiciary is not ideal in carrying out its constitutional mandate and is not in a firm position to exercise its powers and responsibilities clearly stated in the FDRE constitution during state of emergency in Ethiopia. So, these theoretical and practical challenges of courts in protecting human rights during state of emergencies are separately discussed in the sections following this sub-topic.

### **5.2.3 Challenges of Courts in protecting Human Rights**

#### **5.2.3.1. The Confusion on Judicial Review**

Different principles adopted as guidelines for derogation as well as the human rights instruments and the work of human rights bodies, make it clear that ordinary courts should be empowered not only to rule on the constitutionality of the state of emergency but also the way in which the executive exercise its emergency powers<sup>198</sup>. Courts should be able to declare that emergency measures that go beyond the demands of the situation and the powers conferred on the executive as null and void. Constitutional and judicial guarantees, including due process of law and habeas corpus, should be accessible to individuals to challenge government acts<sup>199</sup>.

The **Paris Minimum Standard** suggests that during emergency the judiciary should be able “to ensure that there is no encroachment up on the non-derogable rights and that derogatory measures derogating from other rights are in compliance with the rule of

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197 Interview with Dr. Tefari Gebru who is currently a judge at Federal Supreme Court, Cassation Division, December 20, 2019.

198 . In its General comment 29, the Human Rights Committee notes that “a state party may not depart from the requirement of effective judicial of detention. The *Siracusa Principles* also states that during public emergency,” where persons are detained without charge the need of their continued detention shall be considered periodically by an independent review tribunal.”

199. Yehenew Tsegaye walilegne, ‘State of emergency and human rights under the 1995 Ethiopian constitution’, Journal of the Ethiopian Law published at least once a year by the Faculty of Law Addis Ababa University, vol. 21, 2007, p.110.

proportionality<sup>200</sup>. Similarly, the **Siracusa Principles** and other major human rights instruments emphasize that every derogation should be subject to the possibility of a challenge to and a remedy against its abusive application or imposition. They also stress that the ordinary courts shall maintain their jurisdiction to adjudicate any complaint that a non-derogable rights has been violated<sup>201</sup>.

The institutional process of testing the constitutionality of legislative enactments and executive action is conducted through different mechanisms in different countries<sup>202</sup>. Some have interested their ordinary courts with that, while other opted for especial constitutional courts to undertake the task of constitutional interpretation. The overarching purpose behind all such exercise is to avoid subsidiary laws and administrative decisions that run against the constitution and thereby ensure the supremacy of the latter.<sup>203</sup>

The FDRE Constitution, in a rather unique way, empowers the second house of parliament the HOF, to interpret the constitution<sup>204</sup>. The Council of Constitutional Inquiry (CCI) has the mandate to investigate constitutional dispute and to submit its recommendations to the HOF if it finds that there is a need for constitutional interpretation. The HOF then must decide on the dispute within 30 days of receipt<sup>205</sup>.

Though there are consensus on the ultimate power of the HOF to interpret the constitution, a question worth considering at this juncture is: -where does this leave Ethiopian courts as far as the interpretation of the constitution is concerned?

There has been debate on the issue of the scope of the power of the HOF to interpret the constitution and the role of ordinary courts in the interpretation of the constitution. According to articles 83 and 84 of the constitution, all constitutional disputes shall be decided by the House of Federation upon the recommendation of the Council of Constitutional Inquiry that it is necessary to interpret the constitution. Depending on these provisions, Adam Kassie argues that the power to pass final decision over all constitutional disputes lies with the House of Federation and the

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200 . Section (B) Art. 5 of the **Paris Minimum Standards** which appear in Lillich: *The Paris Minimum Standards*, at 1075.

201 . **Siracusa Principles**<sup>1</sup> supra note 165, see also Yeheneu, supra note 179.

202 . Yeheneu, supra note 199.

203 . Ibid

204 . Articles 61(1) and 83(1) of the constitution.

205 . Art. 84(2) of the constitution.

role of courts is utterly limited to referring cases to the Council of Constitutional Inquiry whenever a case may not be resolved without first determined the constitutionality of the law based on which it is to be decided<sup>206</sup>. He argues that the Ethiopian constitution has kept courts arm's length from constitutional interpretation. This has diminished the role of Ethiopian courts as the ultimate custodians of human rights protected under the ultimate custodians of human rights protected under the constitution<sup>207</sup>.

Some of the interviewees also share the view that ordinary courts have no power to interpret the constitution. According to Ato Tuli Shiferra<sup>208</sup> and few others<sup>209</sup>, the fact that the constitution clearly vested the power to judicial review to political body, the judicial review does not work in Ethiopia. Moreover, since the proclamation No. 250/2001 and proclamation No. 251/2001 authorizes the HOF to review the constitutionality of legislations, regulation, directives and decisions of administrative bodies, there is no room left to regular courts to review the constitutionality of acts of executive organs<sup>210</sup>.

On the other hand, scholars like Assefa Fiseha argue that courts have the residual power to consider constitutionality of cases that involves violation of rights by the executive. He argues that it is only the constitutionality of legislative enactments that is exclusively reserved to the House of Federation and the Council as implied in article 84(2) which only refers to any federal or state law<sup>211</sup>. The Amharic version particularly makes it even clearer as it refers to laws made by legislative organs. He adds that proclamations enacted to define the powers of the CCI and HOF<sup>212</sup> are, themselves 'unconstitutional' on the ground that they defined the term 'law' in a broader sense than what the constitution put in general<sup>213</sup>. The proclamations define law as follows: "Law" shall mean proclamations issued by the Federal and State legislative organs, and

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206 Adam Kassie, Human Rights under the Ethiopian Constitution: A Descriptive Overview; Mizan Law Review; Vol.5 No.1 (2011).

207 . Ibid

208. Interview with Ato Tuli Shiferra who is a judge at Oromia Supreme Court, Interviewed on June 24, 2018.

209 . Out of the 39 interviewees (includes judges, public prosecutors, investigative police officers and lawyers) 7 of them responses show that since the constitution clearly vested the power to judicial review to political body i.e. HOF, the judicial review does not work in Ethiopia.

210 . Interview with anonymous Federal First Instance Court Judge, December 21, 2019.

211 A. Fiseha, Constitutional Interpretation: The Respective Role of the courts and the House of Federation, in proceeding of the symposium on the Role of Courts in the Enforcement of the Constitution (Addis Ababa) pp.6-26.

212 . Proclamation No. 250/2001, Council of Constitutional Inquiry Proclamation, Federal Negarit Gazeta, 7<sup>th</sup> Year, No. 40, Addis Ababa, 6July2001 and Proclamation No.251/2001.

213 . Assefa Fiseha, Constitutional Adjudication in Ethiopia: Exploring the Experience of the HOF, Mizan Law Review, vol.1, No.1, 2007, p.3.

regulations and directives issued by the Federal and States government institutions and it shall also include international agreements that have been ratified by Ethiopia<sup>214</sup>. It can be observed from this that the proclamations have ‘stripped the jurisdiction’ of the regular judiciary, a judiciary which has already been weakened because it lacks the competence to review the constitutionality of laws<sup>215</sup>.

Therefore, what lies at the heart of Assefa’s view is the argument that the constitution never intended to include regulations, directives and decisions of administrative bodies in the way the laws attempted to include which should be left to regular courts.

Similarly, Ibrahim Idris notes that any petition on the constitutionality of an administrative act or a decision or a custom is within the judicial jurisdiction of an ordinary court<sup>216</sup>. Tsegaye Regasa moreover, states that judicial review is a normal inherent business of courts as is implied, in the Ethiopian case, in the vesting of all judicial power in the courts.<sup>217</sup> He further argues that for courts to enforce human rights, they must interpret provisions of the constitution which may come to the scene in order to determine the scope of a certain right, to ascertain whether there are limitations attached to the exercise of the right and to decide whether the limitations are legitimate<sup>218</sup>.

In practice, most of the judges<sup>219</sup> interviewed believe that courts are not totally excluded from interpreting constitutional provisions. As to them, courts usually interpret the constitution. As a matter of practical necessity, courts cannot be excluded from interpreting the constitution in which they are expected to enforce.

According to Dr. Tafari<sup>220</sup> the constitution does not have a provision that deals with remedies that may come out of constitutional dispute resolution. However, from cumulative readings of articles 9, 13 and 37 of the constitution we can conclude that the orders and remedies will have

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214 . Article 2(2) of Proclamation No. 250/2001 and article 2(5) Proclamation No.251/2001.

215 . Assefa, Constitutional Adjudication in Ethiopia, *supra* note 193 p.15.

216 Ibrahim Idris, Constitutional Adjudication under the 1994 FDRE Constitution, *Ethiopia law Review*, vol. 1, No. 1, 2002, pp.66-69.

217Tsegaye Regasa, Courts and the Human Rights norms in Ethiopia in proceedings of the symposium on the role of the courts in the enforcement of the constitution, May 19-20, 2000, Addis Ababa, p.110-114.

218 *Ibid*

219 . Out of the 39 interviewees (includes judges, public prosecutors, investigative police officers and lawyers) 32 of them responses show that that courts are not totally excluded from interpreting constitutional provisions. As to them courts can interpret the constitution in their day, today activity of dispute settlement.

220 . Interview with Dr. Tefari Gebru who is currently a judge at Federal Supreme Court, Cassation Division, December 20, 2019.

to be determined by the ordinary courts<sup>221</sup>. Similarly, Ato Teshome rightly argued that a close reading of the section of the constitution dealing with judicial power reveals that the power to interpret the constitution is shared between ordinary courts and the HOF<sup>222</sup>. Article 78 of the constitution endows courts, both at the federal and state levels. It goes without saying that the exercise of judicial power naturally implies interpretation and application of constitution as well as other laws in their day, today activity of dispute settlement. It is said that to the extent that the courts enforce the rights and freedoms enshrined in the constitution, they can exercise the power of interpreting the constitution.

Generally, we can conclude that the mandate of the Council of Constitutional Inquiry and the House of Federation ‘to interpret’ the constitution, as the title of article 83 shows, does not exclude courts from enforcing constitutional provisions on fundamental rights and freedoms. The court will submit a legal issue to the Council of Constitutional Inquiry only if it believes that there is a need for constitutional interpretation in deciding the case.<sup>223</sup> If the court believes that the constitutional provision in question is clear, it can apply it without referring to the Constitutional Inquiry Council<sup>224</sup>.

However, the judiciary is not ideal in carrying out its constitutional mandate and is not in a firm position to exercise its powers and responsibilities clearly stated in the FDRE constitution including during state of emergency.

In practice, instead of adjudicating cases constitutional provisions, Ethiopian courts, most of the time, tend to refer it to the CCI<sup>225</sup>. On this regard, the famous case which worth of consideration is the CUD(Coalition for Unity and Democracy) Vs. Meles Zenawi Asres<sup>226</sup>, the plaintiff (CUD) has bases its case on the provisions of Article 30(1), and Article 9(1) of the constitution as

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221 Ibid

222 . Interview with Ato Teshome Shiferra who is currently a judge at Federal Supreme Court, Cassation Division, December 20, 2019.

223 . Sisay Alemahu Supra note 19.

224 . An interview with Ato Robera Hachalu who is currently a public prosecutor at Federal Attorney General, December 25, 2019

225 . Ibid

226 . *CUD (Coalition for Unity and Democracy) Vs. Meles Zenawi Asres*, Federal First Instance Court, File No.54024, 3 June 2005

alternative to the provisions of article 3(1) and article 11 of proclamation No. 3/1991,<sup>227</sup> alleging that the Prime Minister's declaration of emergency, in the post elected, prohibiting assembly and demonstration is in violation of the constitution and the Prime Minister has no power to do so. The CUD requested the court to quash the directive on the ground that it is unconstitutional.

The judge believed that the case involved constitutional interpretation based on articles 17 and 21 of proclamation No. 250/2001 and referred the case to the CCI. He did not refer to any provisions relied up on by the plaintiff. His referral order did not show the case involved issues of constitutional interpretation. He did not frame issue requiring constitutional interpretation either. In this case, instead of considering the clarity or otherwise of the relevant constitutional provisions for ascertaining whether there is a need for constitutional interpretation, the court in the case at hand has relinquished such power to the CCI by allowing the latter to determine it<sup>228</sup>. Many academic scholars reflected that the court should entertain the case. Takele argued that the regular courts have used the procedure of referral as a handy tool to avoid adjudication of constitutionally sensitive cases<sup>229</sup>.

### **5.2.3.2. Challenges on the Independence of Judiciary**

It has been discussed in the previous chapter that under international human rights law, independent and impartial courts must be allowed to continue functioning freely during emergency situation for the purpose of ensuring the effective protection of rights that ensures the effective protection of rights that can never in any circumstances be derogable from. The judiciary's independence, both institutionally and individually, should be guarded in the paper as well as throughout in practice.

In Ethiopia, there are clear and convincing practical challenges on the independence and impartiality of judiciary, which are adversely affecting its role of protecting human rights during state of emergency<sup>230</sup>.

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227 . Proclamation No.3/1991, Proclamation to Establish the Procedure for peaceful Demonstration and Public Political Meeting, Federal Negarit Gazeta, 7<sup>th</sup> Year, No. 40, Addis Ababa, 6July2001

228 .SisayAlemahu, supra note 19 p.8-9.

229. Tekele Soboka, Judicial Referral of Constitutional Disputes in Ethiopia: Practice to Theory; African Journal of International and Comparative Law 19.1(2011); Edinburgh University press.

230 .Abdurrahman, supra note 24 p.13.

Almost the responses of all of the interviewed judges show that judges were not allowed to pursue their professional responsibilities impartially and independently, free from government pressure or interference during state of emergency<sup>231</sup>. The experience shows the prevalence of lack of fair trial, particularly, on high profile and sensitive cases, judges put themselves in to influence and fails to uphold human rights of accused persons<sup>232</sup>.

Sometimes the executive organs are not allowed to perform the orders of courts and the courts do not take measures on such organs. Many detainees whose bail rights respected by courts were not released rather they forced to take the so called “Tehadiso” or “Reformation” training in training centers<sup>233</sup>.

For instance, in the case of *Milkessa Bedane et al vs. Public prosecutor*<sup>234</sup>, the Public prosecutor filed a charge to the Ambo town court alleging the defendants were defendants five year capital punishments. The applicants (defendants) appealed to West Shoa zone high court. Since at the time the applicants had been under detention, the court ordered West shoa zone prison administration office to bring the applicants to court on appointed day. But the prison administration office was not allowed to bring the applicants to the court until the court rendered an order repeatedly up to 7(seven) times without acceptable reason. Lastly, the prison administration brought the applicants to the court on the seventh day. However, the court did not take any measure on the prison administration officers for non-performance of court’s order. This shows that the courts were toothless and not independent during a state of emergency. Regarding the independence of judges, interviewed judges indicated that judges had been under pressure and extreme interference from the executive organs during a state of emergency. Surprisingly, there were judges who intimidated, bitted and tortured in their office while they were on their regular jobs<sup>235</sup>. Moreover, there were a time when court’s compound occupied by command post militaries<sup>236</sup>.

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231. All of the interviewees responded that independence of judiciary is not respected during state of emergency.

232 Interview with AtoDajane Ayana who is currently a judge at Federal Supreme Court, Cassation Division, December 20, 2019.

233. Interview with anonymous victim of state of emergency, June 20, 2018.

234 . *Milkessa Bedane et al vs. Public prosecutor*, West shoa zone high Court, File No.08888, 29 June 2016

235. Interview with anonymous victim of state of emergency, June 20, 2018. See also Interview with AtoDajane Ayana who is currently a judge at Federal Supreme Court, Cassation Division, December 20, 2019.

Hence, the practices of the executive organs during state of emergency demonstrated a clear disregard of independence of the judiciary.

Thus it is significant for Ethiopian Government, to maintain the principle of judicial independence in order to protect non-derogable human rights of its peoples and preserve a balance of power in the government. It is also indispensable that Ethiopian government should take for granted international legal duties derived from the various sources of international law.

Generally, all the above analysis shows that Ethiopian courts have failed to effectively safeguarding human rights during the state of emergencies.

### **5.2.3.3. Challenges emanating from the non-publication of International Human Rights Instruments**

Article 9(4) of the 1995 FDRE Constitution states that all international agreements ratified by Ethiopia are an integral part of the land. The current debate regarding incorporation of international human rights instruments into Ethiopian law is whether ratification alone suffices for domestication or whether publication in Federal Negarit Gazeta is required<sup>237</sup>. This in one way or another, poses on domestic application of international instruments ratified by Ethiopia. This has created confusion and has become a setback to the implementation of these instruments by courts.

Those who argue in favor of publication is a requirement for incorporation argue that the constitution provides the president of the country shall proclaim international agreements approved by the House of Peoples' Representative in the Federal Negarit Gazeta<sup>238</sup>. They strengthen their arguments by point to article 2 of Proclamation No. 3/1995 which reads, "all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta"<sup>239</sup>. Yet, there is

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236. Interview with AtoOliyadSiyoume who is a president of Special high court of Finfinnee surrounding Zone, Interviewed on June 25, 2018

237 .Chimgbako, supra note 10

238. Article 71(1) of the constitution.

239 . Proclamation No. 3/1995, A proclamation to provide for the Establishment of the Federal Negarit Gazeta.

nothing in the proclamation or the article of the constitution which indicates that publication is a requirement for incorporation<sup>240</sup>.

Some interviewed judges argue that publication of international human rights instruments in the Federal Negarit Gazette would improve access to these instruments and solve the problem of the language capacity of judges, if it translated to Amharic. However, though Ethiopia has ratified most of the major international human rights instruments, except the Convention on the Rights of the Child (CRC), has not published in the Federal Negarit Gazette<sup>241</sup>. The fact that the documents are not translated into the working language of the federal government and regional states is another problem to enforce international human rights instruments in domestic courts.

#### **5.2.3.4. Ambiguity on Status of International Human Rights Instruments with Respect to the FDRE Constitution**

Another subject of debate is the status of international human rights instruments with respect to the constitution. Article 9(1) of the FDRE constitution states that the constitution is the supreme law of the land. It continues by stating that any law which contravenes the constitution is null and void<sup>242</sup>. Article 9(4) describes ratified international treaties as an integral part of the law of the land. On the other hand, article 13(2) reads: “The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia”.

One could argue that a constitutional requirement to interpret in conformity with the aforementioned international human rights instruments places these instruments on par with the constitution<sup>243</sup>. Yet some scholars argue that providing guidelines for interpreting the constitution is far removed from establishing international human rights instruments as the supreme law of the land<sup>244</sup>.

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240 .Chimgbako, supra note 10 p.270

241 Ibid

242 . Article 9(1) of the constitution. See also Chimgbako, supra note 10 p.271

243See also Chimgbako, supra note 10 p.272

244 Ibid

Article 93 of the constitution illustrates the problem which arises if international human rights instruments are not considered on par with the constitution. Article 93 proves the list of fundamental rights and freedoms that are non-derogable during state of emergency. The list shockingly does not include the right to life which is non-derogable right under ICCPR. This fact alone seems to demand that certain international human rights instruments are on par with the constitution; otherwise, the federal government would have a constitutional basis for violating a citizen's right to life during state of emergency<sup>245</sup>.

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245 . Ibid

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATION

#### 6.1 Conclusion

The protection of human right is a concern of all world communities; this is apparently because of the paramount importance of human rights. Different international human right instruments like UN Charter and the International Bill of Human Rights as well as different domestic human right instruments like European Convention on Human Rights, American Convention on Human Rights and the African Charter on Human and People's Rights provide for the protection of human rights in a very large milieu. A profound universal protection of human right is reflected in UN Charter up on which member states pledged to take action to secure peace and human rights for all. Immediately after its establishment, the United Nations established a Commission on Human Rights charged with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter. In the first stage of this program, the Commission drafted and recommended to the Generally Assembly the Universal Declaration of Human Rights, which though not binding has achieved the status of customary international law.

Regarding Ethiopia, the 1995 constitution of the Federal Democratic Republic of Ethiopia (FDRE) provides broad human rights protections in conformity with international human rights laws and principles<sup>246</sup>. The constitution vigorously enshrines human and democratic rights and socio-economic and solidarity rights, most of which are word for word copies of the provisions of the Universal Declaration of Human Rights. Accordingly, the FDRE constitution devotes more than one third of its part to provisions of fundamental human and people's rights.<sup>247</sup> Moreover, Ethiopia has adopted the major international and Regional human rights instruments and has been acting upon them as integral part of the law of the land<sup>248</sup>.

In spite of the claim to Universality and in alienability, human rights are not exercised in an absolute manner. Suspension of and limitation on fundamental rights and freedoms are justified

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246. Chingbako, Supra note 10.

247 . FEDERAL NEGARIT GAZETA, Proclamation no.1-1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia.

248 . Sisay Alemahu Supra note 19.

violations of constitutional rights. Temporary suspension or derogation of some fundamental rights and freedoms can be made on the ground of state of emergency. Since most constitutional rights are not absolute, they can be derogated on the basis of national security, public safety, public moral, public order, public health and similar ground.

Derogation of human right during a state of emergency is mentioned in different human right instruments. All the major international and regional human rights instruments, with the notable exception of the African Charter on Human and People's Rights, recognize the rights of states to suspend human rights norms contained therein in cases of exigencies that threaten the life of the nation. Likewise, these instruments lay down conditions and requirements for a valid derogation, and as well enumerate certain rights that may not be suspended or derogated even during the gravest crisis.

However, the main problem in exercise of emergency powers is abuse of such powers. Experience suggests that many of the most grave and systematic human rights abuses occur during public emergencies, when states employ extraordinary powers to address threats to public order.

In responding to this challenge, each of the leading international and regional covenants on civil and political rights have provides remedies to those citizens whose fundamental rights have been violated.

One of the mechanisms of controlling abuse of emergency powers is existence of independent judiciary. The means used to limit governmental authority, such as separation of powers, checks and balance, and promulgation of human rights cannot be enforced without an independent body that can determine whether the government has exceeded the limits of its constitutional authority. Judicial review of an administrative action is one of the mechanisms of human rights protection during state of emergency.

In countries like South Africa and Kenya, judiciary is empowered to review measures of state during state of emergency<sup>249</sup>. But, in our country the role of judicial organ during State of Emergency is not clearly provided in the FDRE Constitution. In the constitution, reviewing measures of state during state of emergency is given to State Emergency Inquiry Board. If so, what is the role of the judiciary is questionable.

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249 . Muluken, supra note 83.

Regarding the appropriate role of courts on adjudication of fundamental human rights and freedoms before Ethiopian courts during state of emergency, there are many theoretical and practical challenges. What is more problematic according to the interviewed judges is legal competence that basically emanated from the FRDE Constitution. The fact that interpretation of constitutional dispute is vested upon HOF creates confusion on judges themselves where they have power of interpretation of human rights provisions under chapter three of the FDRE Constitution. There are different views some of which make the HOF as the sole interpreter of the constitution while others argue for the powers of the courts to ascertain the constitutionality of regulations, directives and executive decisions. Moreover, when the provisions are clear, courts can directly apply them and order appropriate remedy for the victims of violations during state of emergency. Still close look at the constitution, the out let is to opt for international instruments which are ratified by Ethiopia for they form part and parcel of domestic laws like proclamations the application of which is directly vested on courts. Interestingly, these international instruments provide more detailed enumerations and further elaborations through the assistance of established bodies (such as Human Right Committee by its recommendations).

Therefore, in the presence of legal impediments, reference to these sets of instruments is the best viable option if we need the proper enforcement of fundamental human rights and freedoms before Ethiopian courts.

The other practical challenge regarding judicial protection of human rights during a state of emergency is the challenges on the independence and impartiality of judiciary, which are adversely affecting its role on protecting human rights. According to the interviewed judges and victims of the emergencies, most of the time independent courts had not been available to ensure effective remedies of violation of fundamental rights and freedoms during state of emergency. Moreover, for the fact that there had been executive organs interventions, judges were not allowed to pursue their professional responsibilities impartially and independently.

Ambiguity on the status of international instruments in respect to the Ethiopian constitution and the confusion emanating from non-publication of international instruments are the others impediments for the enforcement of fundamental human rights and freedoms before courts of law including during state of emergency.

## 6.2 Recommendations

Based on the findings of the research, the author forwards the following recommendations, with no order of priority.

- In the current constitutional arrangement, the HOF, a political body, has been mandated to interpret the constitution including during a state of emergency and the role of ordinary courts in the interpretation of the constitution is not clearly provided in the constitution. This has diminished the role of Ethiopian courts as the ultimate custodians of human rights protected under the constitution including during state of emergency. Therefore, it is recommended that a constitutional amendment for the incorporation of the power of courts to interpret the constitution. The judiciary shall be constitutionally empowered to have a jurisdiction to entertain the constitutionality of legislative enactments and executive actions; alternatively, a Special Constitutional Court shall be established as a custodian of the constitutional order.
- Moreover, there is the need to constitutional amendment on the list of absolute rights. The catalogue of non-derogable rights in the emergency clause need to interpret its list guarantying the right to access to court, the independence and power of the judiciary in addition to the need to constitutionalize the non-derogable substantive rights in the ICCPR( The right to life, freedom from slavery or involuntary servitude, the right not to be imprisoned for contractual debt, prohibition of retro-action penal laws, the right to recognition as a person before the law, freedom of thought, conscience, religion and belief) which are fundamental human rights which should not be suspended at any time.
- Judges need to be aware that their role in the constitutional interpretation is vital and necessary and confusions ought to be made clear.
- The judiciary need to be strengthened in its capacity through different mechanisms like trainings, human resource and capacity development to make it independent and keep its separate existence including during a state of emergency.
- The Ethiopian courts need to develop the habits of applying international instruments ratified by Ethiopia.

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## APPENDIX-A

### INTERVIEW GUIDE FOR JUDGES, PUBLIC PROSECUTORS, POLICE OFFICERS AND LAWYERS

I am Getachew Jima, Master degree (MA) student at Federalism and Good Governance Center, Addis Ababa University. I am doing my MA thesis on a topic entitled: “**The Role of Courts in Protecting Human Rights during State of Emergency in Ethiopia**”. The purpose of the interview is to get deep insight on whether the Ethiopian courts have roles to protect fundamental human rights during a state of emergency. Thus, your contribution has a paramount importance for the quality of the thesis.

#### **Thank you in Advance.**

1. Would you introduce yourself, occupation, position?
2. What are the concepts of a state of emergency and its practical implication on human rights?
3. Do you think the Ethiopian courts have the legitimacy on the adjudication of fundamental human rights and freedoms which has been enshrined in chapter three of the constitution in general and specifically during state of emergency? If yes, please explain and if no, why not?
4. Do you think there are enough legal frameworks regarding the roles of judiciary in protecting human rights during state of emergency?
  - Do you think the Ethiopian Courts have the power of judicial review regarding whether an emergency legislation or particular exercise of emergency power is in conformity with international substantive and procedural requirements that regulates derogation of human rights during state of emergency?
5. What are the practical challenges that Ethiopian courts face in adjudicating fundamental human rights in general and specifically during a state of emergency? What solution do you propose?

## **APPENDIX-B**

### **INTERVIEW GUIDE FOR THE VICTIMS OF HUMAN RIGHTS DURING STATE OF EMERGENCY.**

I am Getachew Jima, Master degree (MA) student at Federalism and Good Governance Center, Addis Ababa University. I am doing my MA thesis on a topic entitled: “**The Role of Courts in Protecting Human Rights during State of Emergency in Ethiopia**”. The purpose of the interview is to get deep insight on whether the Ethiopian courts have roles to protect fundamental human rights during a state of emergency. Thus, your contribution has a paramount importance for the quality of the thesis.

**Thank you in Advance**

1. Would you introduce yourself, occupation, position?
2. In your view, what is the purpose of the declaration of a state of emergency and the derogation from human rights obligation?
3. Are you familiar with non-derogable rights during state of emergency? If yes, please enumerates those non-derogable rights.
4. If state of emergency is declared, what remedies are available to examine the full enjoyment of non-derogable rights?
5. Did you face with an arrest or detention during state of emergency? If yes, what seems the situation of human rights (especially non-derogable rights) protection in the prisons and correctional camps?
6. Do you think the Ethiopian courts are allowed to pursue their professional responsibilities, impartially, independently and free from executives’ pressure during state of emergency?
7. What is your view on the role of courts in protecting human rights during state of emergency?