



ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

**The protection of human rights in times of public
emergencies: an analysis of Ethiopian Covid-19 response**

**A Thesis Submitted to the School of Law, Addis Ababa University,
in Partial Fulfilment of Master of Laws Degree (LL.M) in Human
Rights**

By

Befekadu Dereba

September 2021

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Advisor: Mizanie Abate (PhD)

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Addis Ababa

Declaration

I, **Befekadu Dereba**, hereby declare that this work is original and has not been presented in any other institution before. To the best of my knowledge and belief, I also declare that any information used here has been duly acknowledged and cited.

Name: **Befekadu Dereba**

Signature _____

Verification

I, **Mizanie Abate**, have read this thesis and approved it for examination.

Advisor: Mizanie Abate (PhD)

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List of Acronyms

ACHPR:	African Charter on Human and Peoples' Rights
ACHR:	American Convention on Human Rights
COVID-19:	Coronavirus disease
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
EHRCO:	Ethiopian Human Rights commission
FDRE:	Federal Democratic Republic of Ethiopia
GC:	General Comment
HPR:	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
IHRL:	International Human Rights Law
SoE :	State of Emergency
UDHR:	Universal Declaration of Human Rights
UK:	United Kingdom
UN:	United Nation

Abstract

Covid-19 pandemic has presented a practical challenge, resulting in human rights violations and affecting society's life around the globe and Ethiopia is not an exception to this. To combat the spread of the COVID-19 pandemic, the Ethiopian government declared a national state of emergency. The measures have both negative and positive impacts on the protection of human rights. In Addis Ababa, there are some positive efforts made by the government to protect the people from the pandemic and fulfil their right to health. It provides the public with protective and sanitary equipment, raises awareness about the pandemic, and provides food, and shelter for the needy particularly in the early stages of the pandemic. However, some of the measures taken are not consistent with human rights principles. As a result, during the implementation of the measures, people were subjected to various forms of harassment by law enforcement agents. People were also denied the right to seek redress in a court of law; their movement and freedom of assembly and expression were severely restricted; and prisoners were denied visitation and detained for long periods of time without being charged or granted bail. Domestic violence and discrimination against women also increased. This paper analysed critical human rights concerns arising from the measures taken by Ethiopia to respond to the Covid -19 pandemic by touching the State of Emergency Proclamation, Regulation, post-state of the emergency directive and the practice. The paper argues that the Ethiopian Government disregards some human rights standards in responding to the pandemic. In contrast, the measures resulted in the violation of different human rights. The state should follow a human rights based approach in dealing with pandemics such as covid-19.

Chapter one

Introduction

1.1 The Research Background and Problem

Over the past century, governments worldwide have declared states of emergency (SoE) in response to a variety of natural and perceived crises like threats of foreign military intervention and insurgency, political and civil unrest, and the spread of infectious diseases, and natural disasters.¹ SoE is critically important from a human rights perspective because the suspension of a legal order or important aspects during emergencies often paves the way for systematic human rights violations.² A SoE is an exceptional situation that "by definition challenges the very foundation of the nation's life."³ It is mainly contemplated as a normative means to strike a balance between international and constitutional human rights obligations of the State and its duty of mitigating and responding to specific imminent and unforeseen national concerns.

Despite their importance, public emergencies pose a heightened threat of grave and systematic human rights abuse. Many of the gravest and systematic human rights misuses occur when states employ extraordinary powers to address threats to public order.⁴ This remains a practical challenge for IHRL. To address this threat, international human rights instruments regulate states' derogation from their human rights commitments through substantive and procedural requirements under their derogation clauses⁵, which allows States to restrict some human rights during emergencies where strictly necessary".⁶ For instance, Article 4 of the ICCPR provides the

¹U.N. Treaty Collection Database: Status Of Treaties, CH. IV (ICCPR), Available at http://Treaties.Un.Org/Pages/Viewdetails.aspx?Src=TREATY&Mtdsg_No=IV-4&Chapter=4&Lang=En, (Last Visited 1 October 2020)

²Evan J. Criddle, Syracuse University & Evan Fox-Decent, McGill University, Human Rights, Emergencies, and the Rule of Law, 5

³ Yehenew T. Walilegn, State Of Emergency and Human Rights Under 1995 Ethiopian Constitution, 21 Journal Of Ethiopian Law (2007) 78,79

⁴ Jaime Oraá, Human Rights in the States of Emergency in International Law (1992) 1; Joan F. Hartman, Working Paper for the Committee of Experts on the Article 4 Derogation Provision, 7 HUM. RTS. Q. (1985). 89,91

⁵ Ibid

⁶ The Convention for the protection of Human rights and Fundamental Freedoms, Art. 15(1), 4 November 1950, 213 U.N.T.S. 221 (From now on ECHR); International Covenant on Civil And Political Rights, 16 December 1966, 999 U.N.T.S. 171 (From now on ICCPR) Art. 41.

possibilities and the circumstances under which States may temporarily repudiate their human rights obligations. Furthermore, the Siracusa Principles', non-binding instrument on the limitation and derogation of rights elaborates the possibility state may take measures during an emergency.⁷ Domestically we have the FDRE Constitution, Article 93 (1) (A) provides that the executive can declare a state of emergency and suspend political and democratic rights when constitutional order endangers or natural disaster or an epidemic occurs.⁸

The world is facing an unprecedented crisis. The COVID-19 virus has affected socio-economic development and political environments around the globe. At its core, a worldwide public health emergency on a magnitude not seen in a century, necessitating a global response with far-reaching economic, social, and political ramifications. In light of the unusual scenario, several states have taken drastic measures to save lives. Extensive lockdowns, designed to slow virus transmission, restrict freedom of movement and the enjoyment of many other human rights. Such measures may have unintended consequences for people's livelihoods and security, access to health care, food, water, and sanitation, employment, and education. Their civil and political rights can also be affected and violated by Law enforcement. Therefore, when a state takes extraordinary measures, it needs to be taken to mitigate any such unintended consequences and in the way to avoid systematic human rights violations.

Ethiopia is not an exception to the COVID 19 crisis. On the contrary, it confirmed the first COVID-19 case on 12 March 2020.⁹ To avert the spread of the pandemic, the country established a National Ministerial Committee on 16 March 2020. In April 2020, the Ethiopian Government declared a national state of emergency to combat the spread of the COVID-19 pandemic.¹⁰ And the Federal House of Peoples' Representatives approved the State of the emergency proclamation on 10 April 2020.¹¹ Some of the emergency measures already in effect

⁷ Siracusa Principles on the limitation and derogation of provisions in the International Covenant on civil and political rights Annex, U.N. Doc E/CN.4/1984/4 (1984)

⁸ Constitution of The Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, F.E.D. Negarit Gasette, 1st Year No.1, (1995) Art 93(1) (a)

⁹ World Health Organization Ethiopia: <https://www.afro.who.int/news/first-case-covid-19-confirmed-ethiopia> (accessed 20 September 2020)

¹⁰The State of Emergency Proclamation Proc. No. 3/2020 (From now on proc No 3/2020)

¹¹ Proclamation No. 1189/2020 to Approve the State of Emergency Proclamation No. 3/2020.

before the declaration of State of emergency included the closure of schools and universities; restrictions on large gatherings including political, religious, and sporting events; restrictions on the mobility of people across regions and international borders, partial shutdown of government institutions and release of some prisoners to reduce the number of the prison population as a precautionary measure.¹² The National Election Board of Ethiopia (NEBE) decided that it would not hold national elections scheduled for August 2020, which served as the basis for the formal cancellation of the elections by the House of Peoples Representatives on 30 April 2020. The State of Tigray was the first to adopt a regional state of emergency proclamation¹³ some emergency measures were implemented even before the formal declaration of the State of emergency.¹⁴

The State of Emergency Proclamation defined Emergency measures as "decisions, prohibitions or obligations that render partially or fully inoperable provisions of the FDRE Constitution."¹⁵ Similarly, the Proclamation defines "suspension of rights" as "a partial or full temporary derogation of rights stipulated under the FDRE Constitution."¹⁶ The Proclamation leaves it to the Council of Ministers to decide on the details of the suspension of rights or emergency measures needed to counter and control the spread of the pandemic.¹⁷ Accordingly, the State of Emergency Regulation issued by the Council of Ministers on 11 April 2020 elaborates the measures applicable during the State of emergency.¹⁸ Since the State of emergency has expired, the new directives issued by the Ethiopian Public Health Institute (EPHI) to control the spread of COVID

¹² CNN: Ethiopian President Sahle-Work Zewde has granted pardon to more than 4,000 prisoners to contain the spread of coronavirus: <https://edition.cnn.com/2020/03/26/africa/ethiopia-pardons-4000-prisoners-over-coronavirus/index.html> (accessed 20 September 2020)

¹³ Addis Standard News Alert: Tigray Region Declares State Of Emergency To Prevent Spread of COVID19: <https://addisstandard.com/news-alert-tigray-region-declares-state-of-emergency-to-prevent-spread-of-covid19/> (accessed 20 September 2020)

¹⁴ Ethiopian Human Rights Commission (EHRC), Legal/Human Rights Analysis of the Declaration of State of Emergency in Ethiopia in the Context of the COVID-19 Pandemic 7 May 2020

¹⁵ Proclamation No. 3/2020 (n11) Art 2(7)

¹⁶ Id Art 2(6)

¹⁷ Id Art4(1)

¹⁸ State Of Emergency Proclamation No. 3/2020 Implementing Regulation No. 466/2020 (From now on Regulation No. 466/2020)

19. After coming into effect on 5 October 2020, the Directive has laid down new requirements that suspend human rights granted under international human rights instruments.

Provisions of the Constitution and international human rights instruments provide appropriate guidelines and standards relevant to the exercise of emergency powers in the context of the State of emergency, including pandemics such as the Covid-19. Adopting proper measures to deal with public health threats should be conceived as a corollary duty emanating from the right to health, the implication being that human rights principles should lead the actions themselves. Therefore the State should analyze the relevant international standards applicable during an emergency to examine whether the State implements its State of emergency declaration in line with international human rights obligations.

In Ethiopia, the notion of a state of emergency and its practical implications is a burgeoning but mostly unexplored topic that has received little intellectual or empirical attention.¹⁹ The problem is more visible when it comes to the public emergency resulted from the pandemic. Thus, issues related to the states of emergency, particularly during pandemics, necessitate profound studies. This research sketches critical human rights concerns arising from the measure taken by Ethiopia to respond to the COVID -19 pandemic by converging the State of Emergency Proclamation and Regulation to implement the Proclamation. It also explores the human rights implication of the post-state of emergency directives²⁰ and its practical implication to ensure its full compliance with the Constitution and international human rights standards.

1.2. Research Objectives

General Objective

The objective of this study is to analyze the human rights implication and impact of the measure that Ethiopia has taken to respond to Covid-19.

¹⁹ Yibeltal Asefa, Upholding International Human Rights Obligations during The State Of Emergency: An Appraisal Of The Ethiopian Experience (Unpublished L.L.M. Thesis, Addis Ababa University, 2019).

²⁰ Directive No 30/2020, a Directive issued for the Prevention and Control of Covid-19 Pandemic (from now on Directive No 30/2020)

Specific Objectives

- ❖ Scrutinize the measure taken by Ethiopians to control the COVID-19 pandemic and its human rights implication.
- ❖ Examine the State of emergency proclamation and regulation enacted by Ethiopia to Counter and Control the Spread of COVID-19 in line with international human rights standards and showing the gap.
- ❖ Exploring human rights Implication of the post-state of emergency Directives to Control the Spread of COVID-19.
- ❖ Scrutinizes the practice of the law enforcement responsive measures to address the emergency and its implication on protecting human rights.

1.3. Research Questions

- ❖ Does Ethiopia take the measure to control the COVID-19 pandemic in conformity with Human Rights standards?
- ❖ Does Ethiopia observe the international substantive and procedural requirements during an emergency declared to Counter and Control the Spread of COVID-19?
- ❖ What is the human rights implication of the post-state of emergency directives to Control the Spread of COVID-19?
- ❖ Do the Law enforcement practice responsive measures to address the emergency observe the human rights standards?

1.4. Research Methodology

The research used a doctrinal research approach to answer the problems formulated and to critically analyse the State of emergency declared by Ethiopia in line with the international human rights standards and the domestic legal and institutional frameworks. To scrutinize the practice of Law enforcement responsive measures the main techniques used to collect primary data included in-depth interviews with selected informants with first-hand experience on the matter, field observation and document analysis have been used. A review of books, magazines, newspapers, reports, and internet links related to the concept have been used as a secondary source.

1.5 Literature Review

Different literature discussed the issue of the State of emergency at the international level. Scholars like Alexander Hamilton have persuasively described its definition as there is no universally accepted definition of State of emergency. He stated that 'it is impossible to foresee or define national exigencies' extent and variety.²¹ Derogations, according to Emilie Hafner-Burton et al., are "a logical response to uncertainty, allowing governments to purchase time and legal breathing space."²² The origins of the State of Emergency were addressed by Giorgio Agamben. He said that the practice of electing a temporary dictator to offer ad hoc leadership in a national emergency dates back to the Roman Empire.²³ A state of emergency, according to Scott P. Sheeran, is a frequent practice in all parts of the world, and it is one of the major obstacles for defending human rights and freedoms.²⁴ According to Jaime Oraá, the most serious and systematic human rights violations occur when states deploy extraordinary powers to combat threats to public order.²⁵ Joan Fitzpatrick also looked into how well international and regional human rights organizations monitor violations of human rights in de facto or de jure emergency situations.²⁶

There is very little domestic literature about the State of emergency in the Ethiopian context. Most of them discussed the legal analysis of the State of the crisis of the FDRE constitution. Yibeltal Asefa, in his master's thesis, critically analyzed Ethiopia's legal and institutional frameworks on the State of emergency in line with international human rights principles by

²¹ Alexander Hamilton, *The Federalist* (Clinton Rossiter Ed., 1961), No. 23: as Cited in Oren Gross, "Once More Unto The Breach" 439.

²² Emilie M. Hafner-Burton et al. "Emergency and Escape: explaining derogations from human rights Treaties", in 65 *International Organization* (2011) 680.

²³ Giorgio Agamben, *The State Of Exception*, (2005) As Cited By Evan J. Criddle et al., *human rights, emergencies, and the Rule of Law*, (Faculty Publications. Paper 1531, 2012), 45. Available At <http://Scholarship.Law.Wm.Edu/Facpubs/1531> date of access not written. The footnotes need careful formatting.

²⁴ Scott P. Sheeran, *reconceptualizing the States of Emergency under International Human Rights Law: Theory, Legal Doctrine, And Politics*, 34 *Mich. J. Int'l L.* 491, 491 (2013).

²⁵ Oraá, (n4) P 45

²⁶ Joan Fitzpatrick, *Human Rights in Crisis: The International System for Protecting Rights During States of Emergency (SoE)*, (1994)

focusing on the State of emergency declared by Ethiopia Between 2016 and 2018.²⁷ To the best of this researcher's knowledge, Yibeltal's thesis is the solitary one that has been studied after Ethiopia announced and carried out a de jure national state of emergency. In his thesis, Yibeltal argued that while exercising its emergency powers, the country failed to consider several basic conditions. In his paper, he argued that the condition of strict necessity, proportionality, and obligation to do an international notification of the emergency was not adequately met by the Ethiopian Government. Yihenew Tsegaye also provides an outline of the legislative and administrative framework in Ethiopia for establishing and enforcing a state of emergency. Yehenew's article, on the other hand, is limited to studying principles rather than making a case study of their applications.²⁸

After Ethiopia was confirmed the first COVID-19 case, it declared the third State of emergency. As the pandemic is new and unacquainted, it has a significant impact on human rights protection while the State tries to control it through the State of emergency. The previous two states of emergency experienced by Ethiopia were not for public health; instead, they were to defend the constitutional order. Thus the nature and the cause of both declarations were different from the third one. Moreover, no research has been done before to test how far the derogation of the rights to control the pandemic and the practice of the law enforcement body is in line with international human rights principles. Therefore this paper goes through testing the legal frameworks and the course of the law enforcement to control the pandemic vis-à-vis the protection of human rights and will contribute knowledge on how to handle a pandemic without affecting human rights by presenting practical examples.

1.6 Scope of the Study

The Geographical scope of this study is delimited to Addis Ababa city Administration and enclosed to the State of emergency declared and the directives issued by Ethiopia to control the spread of COVID -19 vis-à-vis international human rights protection. Therefore this study will not touch upon other laws promulgated during the state of emergency.

²⁷ Yibeltal Asefa, Upholding International Human Rights Obligations during The State Of Emergency: An Appraisal Of The Ethiopian Experience (Unpublished L.L.M. Thesis, Addis Ababa University, 2019).

²⁸ Yehenew T. Walilegn, State Of Emergency And Human Rights Under 1995 Ethiopian Constitution, 21 Journal Of Ethiopian Law, (2007). 78-113.

1.7 Significance of the study

This research has significance to lesson states on how to take measures during the pandemic. It contributes to the knowledge base and scholarly discourse, particularly on the practical implication of the State of emergency on human rights protection during a public crisis. It will have good inputs for academicians, legislators, executives, and other stakeholders in dealing with such pandemic and protecting human rights. The study will be one component to identify the gap between the protections of human rights during the public emergency vis-à-vis international human rights standards.

1.8 Structure of the Study

This thesis covers five main parts. The first chapter is an introduction, and it set a tone about the overall dimension of the research. It has the Research Background and Problem, the study's objective, the question to be answered, literature review, and methodology of the study. The second chapter introduces the State of emergency by defining its historical origins and discussing the principal international and regional human rights instruments. Chapter three is devoted to addressing the gaps between the State of emergency declared by Ethiopia to control the spread of COVID-19 and the post-state-of-emergency legal response. Chapter four examines whether or not the declaration and the practice of Law enforcement is in line with the international substantive and procedural requirements. The last chapter will present the conclusion of the findings and recommendations sought by the thesis.

Chapter Two

Public Emergencies and the Protection of Human Rights

This chapter strived to look at the practice of States and treaty monitoring bodies to ascertain what are substantial and procedural requirements, States should fulfill if they deem it necessary to suspend individual rights while coping with a public emergency. The goal is to ascertain what features a disaster must present to trigger the right to derogate, to what extent the State may suspend human rights, and what authorities must undertake.

2.1 Definition of Public emergency

A public emergency is also known by other names "State of emergency," "states of exception," "states of siege," and "martial law."²⁹ Different scholars discussed the concept of states of emergency; however, it is hardly possible to find a standard scholarly definition for the term. It has yet to be objectively and descriptively described in a way that clearly demonstrates its nature, breadth, and applicability.³⁰ Derogations, according to Emilie Hafner-Burton et al., are "a rational response to uncertainty, allowing governments to buy time and legal breathing space from voters, courts, and interest groups to combat crises by temporarily restricting civil and political liberties."³¹ As Gerald L. Neuman, derogation clauses do not contradict the notion of human rights but on the contrary, contribute to their adequate protection.³² On the other hand, writers such as Jaime Oraá argued that 'public emergencies pose a heightened threat of grave and systematic human rights violation.'³³

²⁹ Oren Gross, *Once More unto the Breach, The Systemic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies*, 23 YALE J. INT'L L 438, (1998) 501.

³⁰ Emanuel Gross, *How to Justify an Emergency Regime and Preserve Civil Liberties in Times of Terrorism*, 'S.C.J.' Int'l L. & Bus 1, at 3 (2008) 4.

³¹ Emilie M. Hafner-Burton et al. (n23) 680.

³² Gerald L. Neuman, *Constrained Derogation in Positive Human Rights Regime*, in Evan J. Criddle, *Human Rights in Emergencies* (C.U.P., 2026), 15–31.

³³ Oraá, (n4) 1.

2.4 The Notion of Public Emergency in International Human Rights Law

When we scrutinize preparatory works of human rights treaties, initially, member states believed that treaties needed to provide States facing severe emergencies with a mechanism that would enable them "to relax their obligations without jeopardizing their membership in the treaty."³⁴ As a result, many human rights instruments recognize the right to derogate in certain exceptional situations. For example, U.K. was the first State to propose including derogation into the ICCPR in June 1947. It contained the provision in article 4 of the UK draft International Bill of Human Rights.³⁵ This implied that States would have been able to derogate from the obligation to avail [effective] remedies for human rights violations, remedies that could "be enforceable by a judiciary whose independence was secured"³⁶ Before the vote, the United Kingdom expressed the view that "if such provisions were not included, in time of war it might pave the way opens for a State to suspend the provisions of the Convention."³⁷

The arguments for and against the derogation provision continued during the subsequent sessions of the Commission on Human Rights. For instance, the United States was against such a provision and favored a general limitation clause, while the Netherlands argued in favor".³⁸ The U.S.S.R., on the other hand, proposed the "least possible limitation" by adding the phrase "directed against the interests of the people" after "in time of war or other [public] emergencies."³⁹ France offered compromises between the two groups by including general restrictions and supervision on invoking derogation clauses. Such as respect for non-derogable rights, requiring notification, ensuring non-discrimination, and the principle of non-

³⁴ N. Questiaux, E/CN. 4/Sub. 2/1982/1527 July 1982 Question of the Human Rights of Persons Subjected to any Form Of Detention or imprisonment 1982, 11, Para 37.

³⁵ Anna-Lena Svensson-McCarthy, *International Law of Human Rights and the States of Exception the Case-Laws of the International Monitoring Organs* (The Hague/Boston/London, Martinus Nijhoff Publishers, International Studies in Human Rights, vol. 54), (1998) 200-217.

³⁶ U.N. doc. E/CN.4/AC.1/4, annex 1, p. 7 (art. 4) and p. 6 (art. 2). Article 4(1) of the proposal.

³⁷ *Ibid* E/CN.4/AC.3/SR.8, P. 11 (Working Group), and E/CN.4/SR.42, 5.

³⁸ *Ibid* E/CN.4/82/Rev.1, p. 22

³⁹ *Ibid*. 6

derogability.⁴⁰ It considered that there could be cases other than war.⁴¹ France considered that there could be "an essential distinction between the restriction of certain rights and the suspension of the Covenant's application"⁴² Finally, the Commission decided to retain article 4 in the draft Covenant and further decided to replace the terms "in the time of war or other public emergency threatening the interests of the people" by "in the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster".⁴³

The Commission's final substantive discussion on the derogation provision took place at its 8th session in 1952. It was decided to alter the terms of the first paragraph, which were now to read "in the time of public emergency threatening the nation's life." At the recommendation of France, it was further decided to add the requirement of an official proclamation to avoid "arbitrary action and abuse." This clause was not present in the United Kingdom amendment.⁴⁴ Chile also pointed out that "it was difficult to give a precise legal definition of the life of the nation, but it was significant that the text did not relate to the life of the government or of the state."⁴⁵ Domestically we have the FDRE Constitution, Article 93 (1) (A) provides that the executive can declare a state of emergency and suspend political and democratic rights when constitutional order endangers or natural disaster or an epidemic occurs.⁴⁶

2.5 The interpretation of the Derogation clause

In its General Comment No. 29 adopted in July 2001, which replaces General Comment No. 5 of 1981, concerning the purpose of derogation, the Committee states that:

The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the

⁴⁰ Joan F. Hartman, Working Paper for the Committee of Experts on the Article 4 of Derogation Provision, 7 Human Rights Quarterly 1, (1985) 96.

⁴¹ U.N. doc. E/CN.4/SR.126, 8.

⁴² Ibid E/CN.4/SR.127, 7.

⁴³ Ibid E/CN.4/SR.195, p. 18, para. 97 compared with U.N. doc. E/CN.4/365, p. 20.

⁴⁴ Ibid E/CN.4/L.211 (French amendment), E/CN.4/SR.330, 7.

⁴⁵ Ibid E/CN.4/SR.330, p. 4.

⁴⁶ Constitution of The Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, F.E.D. Negarit Gasette, 1st Year No.1, (1995) Art 93(1) (a)

*Covenant.*⁴⁷ This means that, whenever the purpose of the derogation is alien to the restoration of a constitutional order respectful of human rights, it is unlawful under Article 4(1) of the Convention, and the actions of the State concerned have to be judged in the light of its ordinary treaty obligations.

As noted by the Committee, a State party must comply with "two fundamental conditions" before invoking article 4(1) of the Covenant. First, "the situation must amount to a public emergency which threatens the life of the nation" and secondly, "the State party must have officially proclaimed a state of emergency."⁴⁸ The Committee monitors the compliance of the rules in question with article 4.⁴⁹

Thus, if a state claims the right to deviate from the Covenant during, say, a natural disaster, which could include the COVID 19 pandemic, it must be able to justify not only that such a situation constitutes a threat to the nation's life, but also that the exigencies strictly require all measures deviating from the Covenant of the situation. In such cases, the Committee believes that the possibility of restricting certain Covenant rights, such as freedom of movement (article 12) or freedom of assembly (article 21), is generally sufficient, and that the difficulties of the case would justify no derogation from the provisions in the Covenant."⁵⁰

2.6 Limitations and derogations in the field of human rights

“Human Rights in Disaster Situations: Ordinary Limitations or Derogation”?

Most of the rights, such as the right to freedom of expression, association, and assembly, may be subject to limitations for specific legitimate purposes.⁵¹ These limitations are frequently referred to as "ordinary" limitations because, unlike derogations, they can be imposed permanently in normal times. The rationale behind this approach is to strike a balance between individual rights

⁴⁷ Ibid GAOR, A/56/40 (vol. I), p. 202, para. 1.

⁴⁸ Ibid., p. 202, para. 2.

⁴⁹ Ibid.

⁵⁰ U.N. Human Rights Committee, General Comment 29, A State of Emergency CCPR/C/21/Rev.1/Add.11, adopted on 31 August 2001 para 1

⁵¹ De Schutter O, International human rights law: cases, materials, commentary (Cambridge University Press, Cambridge) (2010) 288.

and general collective interests, such as national security, public order, health, or morals, as well as other people's rights and freedoms.⁵² The exact scope of the limitations is to be determined in the light of the text of the treaty and the strict interpretation given to it by State parties and by the relevant treaty monitoring bodies. Nevertheless, there are certain formal and substantial conditions that authorities must respect when limiting freedoms and rights.⁵³

AS Henkin L. argued human rights treaties allow significant leeway for States to tackle disaster situations by limiting the exercise of specific rights rather than suspending them entirely.⁵⁴ For instance, the interdiction of access to areas contaminated as a result of a catastrophe would probably constitute a legitimate restriction on the right to freedom of movement, as it is aimed at protecting the population's public health.⁵⁵ Limitations on the property right may be introduced if requisition of private goods is deemed necessary.⁵⁶

2.7 Justifying resort to derogation during the pandemic

Is a pandemic a threat to the life of the nation? Do natural disasters fall under the definition of "public emergency"?

As it is apparent from the letter of the provision of ICCPR, the drafters chose to refrain from providing an exhaustive list of situations in which the right to derogate could be invoked. Instead, they preferred to focus on the magnitude and effects of the emergency, irrespective of its nature or origin.⁵⁷ Whereas in the vast majority of cases, resort to derogation measures has been justified regarding situations of armed conflict, severe disorders, or violent terrorist campaigns,⁵⁸

⁵² Lockwood B, Finn J, Jubinsky G Working paper for the Committee of experts on limitation provisions. Hum Rights Q 7, (1985) 35–88;

⁵³ Siracusa Principles (n7) 1–14.

⁵⁴ Kiss A Permissible limitations on rights, In Henkin L (ed) The international bill of ownership: the Covenant on civil and political rights. Columbia University Press, New York, (1981) 290.

⁵⁵ Novak M U.N. covenant on civil and political rights—C.C.P.R. commentary, 2nd rev ed. N.P. Engel Publisher, Kehl am Rhein (2005), 280.

⁵⁶ Marks S, Principles and norms of human rights applicable in emergency situations: underdevelopment, catastrophes and armed conflicts, (1982) 186.

⁵⁷ International Law Association, Paris Report, (1984), 59, para 1.

⁵⁸ Novak, Notices filed by States Parties under Art 4(3) of ICCPR, (2005) 984–104.

There is no reason to believe that extreme natural or artificial disasters with the potential to disrupt the proper functioning of the State seriously do not qualify as "public emergencies." Many elements support this view. While the preparatory works of the ECHR and ICCPR are of little assistance in clarifying this aspect,⁵⁹ The drafting history of the ACHR derogation clause supports the idea that disasters may justify resort to derogation. The provision explicitly mentions "public danger" as one of the circumstances derogation may invoke the clause.⁶⁰

State practice under the ICCPR and ECHR also advocates the permissibility of derogations due to catastrophic events. At least three States have invoked article 4 ICCPR to justify derogation in cases of natural disasters, including epidemic diseases. On 23 November 1998, Guatemala notified the UN Secretary-General that it intended to suspend several articles of its Constitution establishing human rights guarantees to tackle the "public disaster" generated by the passage of Hurricane Mitch.⁶¹ In October 2005, the same State again resorted to the derogation clause when confronted with the effects of Hurricane Stan.⁶² When dealing with the "swine flu" pandemic in May 2009,⁶³ and when coping with the eruption of the Pacaya volcano and the devastations caused by tropical storm Agatha in May–June 2010.⁶⁴ In March 2010, Chile filed a derogation notice stating its intention to suspend freedom of movement and freedom of assembly to deal with the aftermath of the powerful earthquake that struck some of the country's regions.⁶⁵ The measures were publicly announced through the adoption of a decree declaring a "30-day constitutional state of disaster emergency".⁶⁶ Lastly, in March 2006 it was Georgia's turn to avail itself of Article 4 ICCPR when authorities felt they had to suspend in one of the country's

⁵⁹ Report to the Economic and Social Council on the eighth session of the Commission, New York, 14 April– 14 June 1952, 40, para 278.

⁶⁰ *Ibid.*, 265.

⁶¹ U.N.T.S. No 2045, 262–265.

⁶², United Nations, Multilateral Treaties Deposited with the Secretary-General, Vol. I, 2009, 242.

⁶³, UN, C.N.347.2009.Treaties-8, Cited in <http://treaties.un.org/doc/Publication/CN/2009/CN.347.2009-Eng.pdf>. Accessed 22 February 2021.

⁶⁴ <http://treaties.un.org/doc/Publication/CN/2010/CN.788.2010-Eng.pdf>. Accessed 22 February 2012.

⁶⁵ The text of the note is available at: <http://treaties.un.org/doc/Publication/CN/2010/CN.201.2010-Eng.pdf>. Accessed 23 February 2021.

⁶⁶ *Ibid*

districts constitutional guarantees related to freedom of movement and to the right to property to prevent further spread throughout the country of the Avian Flu virus.⁶⁷

The HRC has not tested the lawfulness of the above derogations under the individual communications procedure. The emergency measures have elicited neither alarm or objection from UN human rights treaty monitoring organizations nor have these been criticized by other State parties to the Covenant. Indeed, far from excluding the possibility of resorting to derogations in the event of disasters, the HRC has explicitly envisaged this eventuality in its latest General Comment on Article 4 of the Covenant, although it specified that situations of this kind could generally be handled through ordinary limitations to relevant rights.⁶⁸

Legal scholars also endorse the view that resort to derogation clauses may be lawful in case of severe natural or artificial disasters. According to Joseph, Schultz, and Castan, "a severe natural disaster, such as a major flood or earthquake" could fall under the definition of public emergency for Article 4 ICCPR.⁶⁹ Fitzpatrick maintains that "certain natural disasters might meet the criteria for derogation."⁷⁰ In commenting on the derogation clause in the ECHR, Boisson de Chazournes expresses the view that "environmental disasters can give rise to the right of derogation if the conditions of Article 15 are met".⁷¹ Even if deviation of certain rights is authorized, suspension of rights should be avoided where the issue may be effectively addressed by imposing appropriate restrictions or limitations on specific requests.⁷²

2.8 Conditions for the Exercise of the Power to Derogate

Having ascertained that natural or artificial disasters may fall under the definition of "public emergency" envisaged by the leading human rights treaties, we must now determine under what circumstances these situations may trigger the right to derogate from conventional obligations.

⁶⁷ Available at: <http://treaties.un.org/doc/Treaties/1976/03/19760323%200617%20AM/Related%20Documents/CN.231.2006-Eng.pdf>. Accessed 23 February 2021.

⁶⁸ Human Rights Committee, General Comment, 29 U.N. Document. ICCPR/C/21/Rev.1/Add.11 (2001), para 5.

⁶⁹ Joseph S, Schultz J, Castan M The international covenant on civil and political rights. Cases, materials and commentary, (Oxford University Press, 2nd edn. Oxford) (2005) 825.

⁷⁰ Joan Fitzpatrick, (n27) 56.

⁷¹ Boisson De Chazournes L, Non-derogable rights and the need to protect the environment. (1996) 465

⁷² United Nation Human Rights Office of High Commissioner, Emergency Measures and Covid-19, 27 April 2020

Generally, from the reading of relevant provisions of the treaty and the jurisprudence of treaty monitoring bodies, it's possible to identify at least five significant requirements that states shall observe whenever they intend to invoke the derogation clause ICCPR. They are discussed below.

2.8.1 The Need for an official Proclamation

The ICCPR requires that a state of emergency must be "officially proclaimed." This act usually takes the form of a decision adopted by the political organs of the State, and recourse to it is usually subordinated to different substantive and procedural conditions. The consequences of such a move may involve the suspension of certain constitutional guarantees and a temporary modification in the allocation of powers and functions among the different State organs. From a human rights law perspective, this act of publicity serves the vital purpose of informing the community about possible extraordinary restrictions on the enjoyment of individual and collective rights and the changes in the institutional settings the emergency has impelled. The rationale behind its inclusion in Article 4 ICCPR appears to have been the desire to reduce de facto emergencies by compelling States that intend to invoke the derogation clause to respect the formalities required by national law.⁷³ Plagiarism

2.8.2 The Requirement of Notification

A State exercising its right of derogation under the Covenant must immediately inform the other State Parties of the emergency measures undertaken and the UN Secretary-General as the intermediary through which it must flow.⁷⁴ The HRC requests that states "complete information on the measures taken and explanations of the rationales thereto, with full documentation attached about their law" in the contents of the notice.⁷⁵ Further notifications are required when the derogation regime is subject to modifications and when the State intends to withdraw the derogation. The ICCPR asks States to point out which treaty provisions they intend to suspend, whereas the ECHR only requires describing the measures adopted. The purpose of this procedural safeguard is twofold: on the one hand, it allows the monitoring bodies to discharge their surveillance function over the nature and scope of the derogation measures put in place; on

⁷³ Oraà, (n4) 35.

⁷⁴ ICCPR, Art 4

⁷⁵ Oraa (n4) 62.

the other hand, it permits other State parties to regulate compliance with the provisions of the treaties and to exercise their rights accordingly.⁷⁶

2.8.3 The Non-Derogable Civil and Political Rights

The derogation clauses of the different treaties contain a catalog of these rights with remarkable differences.⁷⁷ For instance, the ICCPR lists non-derogable rights.⁷⁸ Importantly, HRC noted that some of the provisions of the Covenant have been listed as non-derogable doesn't mean that others may be subjected to derogations arbitrarily.⁷⁹

The list of non-derogable rights mentioned under the main instruments is illustrative. In addition to what is stated in art. 4 of ICCPR, treaty monitoring and other advisory groups are working to broaden the list of non-derogable rights on a global scale.⁸⁰ The Human Rights Commission, for example, has proposed that the rights to a fair trial and the writ of habeas corpus are inalienable.⁸¹ The Paris Minimum Standards also established sixteen non-derogable rights and freedoms.⁸² The Siracusa Principles further stated that the right to a fair trial should be considered non-negotiable.⁸³ The African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa indicate that "no circumstances, whatever they may be, may be claimed to justify derogations from the right to a fair trial".⁸⁴ The purpose for making certain rights non-derogable, according to the HRC, is partially to reflect the peremptory nature of several fundamental rights guaranteed in treaty form in the Covenant.⁸⁵ In line with this, Fitzpatrick proposed two possible reasons for some rights' non-derogability status: first, some of these rights are fundamental and indispensable for human protection; second, derogation from

⁷⁶ GC 29 (n51) para. 17.

⁷⁷ Ibid, para 11; Hartman (n42), 113—114.

⁷⁸ ICCPR, Article 6-8 11, 15, 16, 18

⁷⁹ GC 29 (n51) para 6.

⁸⁰ Yehenew T. Walilegn, State of Emergency and Human Rights under 1995 Ethiopian Constitution, 21 Journal Of Ethiopian Law, (2007) 96.

⁸¹ GC 29 (n51) Para. 8

⁸² Paris Minimum Standards, Sec C, arts 1-16.

⁸³ Siracusa Principles (n7).

⁸⁴ African Commission on Human and Peoples" Rights, Guidelines and Principles

⁸⁵ ICCPR, Articles 6 and 7.

some of these rights during states of emergency would never be justified because they have no direct bearing on the crisis.⁸⁶

2.8.4 Measures be strictly required by the Exigencies of the Situations

For a derogation to be admissible, the situation must constitute a 'public emergency which threatens the nation's life.'⁸⁷ Treaty monitoring bodies have developed several criteria in this regard. The HRC has deemed the principle of strict necessity to be "a fundamental requirement for any measures derogating from the Covenant" and one which relates "to the duration, geographical coverage and material scope of the State of emergency or any measures of derogation resorted to because of the emergency."⁸⁸ While assessing the requirement of strict necessity, treaty monitoring bodies have regularly referred to the availability of sufficient safeguards against the abuse of derogation measures. Accordingly, the need for proper assessment of derogation measures and a periodic review by the legislature and the judiciary has been identified as essential preventive factors in this respect.⁸⁹

2.8.5 The Principle of Exceptional Threat

The main idea behind this requirement is that an unprecedented crisis that "threatens the life of the nation" must occur before a state party declares a state of emergency and waives its international human rights obligations.⁹⁰ Thus every disturbance or catastrophe not qualifies as a public emergency.⁹¹

The ECtHR held in the Lawless Case that the "natural and customary meaning of the words 'other public emergency threatening the normal life of the nation'" was sufficiently clear, and that the expression indicated "[an exceptional] situation of crisis or emergency affecting the entire population and may constitute a threat to the organized life of the society of which the State is

⁸⁶ Joan Fitzpatrick, Protection against Abuse of Concept of "Emergency" in Human Rights: An Agenda for the Next Century (Louis Henkin et al., eds., 1994). 203, 209

⁸⁷ ICCPR Article 4(1)

⁸⁸G.C. 29, (53) Para. 4 and 8

⁸⁹ ECtHR, Lawless Case, para 37.

⁹⁰ ICCPR, art 4(1); GC 29, (n51) para 2; ECHR, Art 15(1)

⁹¹ GC, 29, (n51) Para 3.

composed" (emphasis mine).⁹² In the Greek Case, the ECommHR elaborated upon the above definition, stating that to be a "public emergency," it must be actual or imminent, its effect must involve the whole nation, and the standard measures for the preservation of public safety, health, and order, are laughable.⁹³ This implies that States cannot derogate from the ECHR when the threat is merely "latent" or "perceived."⁹⁴ It also maintains "there must be a link between facts of the emergency and the measures chosen to deal with it."⁹⁵

2.8.6 Measures in conformity with other international obligations

Measures required by the exigencies of a given situation may be impermissible if they conflict with other obligations of the State under international instruments. This requirement would include obligations under the UN Charter,⁹⁶ International Humanitarian Law,⁹⁷ other universal or regional human rights treaties,⁹⁸ UN Security Council Resolutions and any rule of international law that should attain the status of *jus cogens*.⁹⁹ Treaties of the field of international disaster response law such as International Health Regulations, whose purpose is health response to the international spread of disease, are essential in this respect. Sometimes it would be difficult for States to suspended. With this regard raising the case of the African Charter of Human and People's Rights, is essential. The treaty monitoring body of the Charter has ruled that the treaty "does not allow for State parties to derogate from their treaty obligations during emergencies."¹⁰⁰ Therefore State parties to the Charter would have to make sure that the exceptional measures they intend to adopt are consistent with the obligations established therein. Close attention should also

⁹² ECtHR, *Lawless v. Ireland (Lawless Case)*, Judgment of 1 July 1961, para 22.

⁹³ ECommHR, *Denmark, Norway, Sweden, and the Netherlands v. Greece (Greek Case)*, Report of 5 November 1969, 12 *Ireland v. the United Kingdom*, 25 *Eur. Ct.H.R. (ser A)* (1987). 84. Cited on Ybechr, 71–72, paras 152–154;

⁹⁴ Hartman J, *Derogation from Human Rights Treaties in Public Emergencies*. (*Harv Int Law J* 22) (1981) 16.

⁹⁵ *Ireland v. the U.K.*, Report of 25 January (1976) 97.

⁹⁶ Oraà (n4) 194, referring to the Commission's Report in *Cyprus v. Turkey*, Report of 10 July 1976, paras 510, 512.

⁹⁷ Hartman (n92), 17; *Svensson-McCarthy* (n36), 637.

⁹⁸ *Novak* (n56) 99

⁹⁹ *Ibid.*, para 11.

¹⁰⁰ *African Commission on Human and People's Rights, Commission Nationale des Droits de l'Homme et des Libertés v. Chad*, Decision adopted during the 18th Ordinary session, 2–1 October 1995, para 21

be paid to human rights instruments containing provisions designed to be applied explicitly in situations of emergency.¹⁰¹

2.8.7 The Prohibition on Discriminatory Measures

The derogation clauses in the ICCPR, the ACHR, and the Arab Charter stipulate that measures of derogation shall not entail discrimination based "solely on the ground of race, color, sex, language, religion or social origin."¹⁰² As Novak suggests, the word 'solely' was included to show that a State might take measures derogating from the rights recognized in the ICCPR that may be interpreted as discriminatory solely because the persons affected are of certain race, religion, etc. However, the actual reason for the derogation might be otherwise.¹⁰³ Similarly, Higgins argues that including the word "solely" is evidence that "derogations that inadvertently discriminate may, if the other conditions are met, be lawful."¹⁰⁴ The HRC recalls that neither Article 26 of the ICCPR (establishing equality before the law) nor other provisions related to non-discrimination are listed among the non-derogable clauses in Article 4. However, "there are elements or dimensions of the right to non-discrimination that cannot be derogated in any circumstances."¹⁰⁵ According to Grossman, the principle of non-discrimination has already reached the level of jus cogens, which could invalidate a legal suspension of human rights if done in a discriminatory manner based on the aforementioned grounds.¹⁰⁶

¹⁰¹ Convention on the Rights of Persons with Disabilities, Article 11; African Charter on the Rights and Welfare of the Child (1990) Article 23

¹⁰² ICCPR, art 4(1); A.C.H.R., art 27(1).

¹⁰³ Novak (n56) 100.

¹⁰⁴ Higgins R Derogations under human rights treaties, (1976–1977) 87.

¹⁰⁵ GC 29, (n51) Para. 8

¹⁰⁶ Grossman, A Framework for the Examination of State of Emergency, 52.

Chapter Three

The protection of Human Rights during the Covid-19 Pandemic in Ethiopia: Analyses of the Law

Ethiopia proclaimed a countrywide SoE on 8 April 2020 to prevent the spread of the COVID-19 pandemic. Then it was approved by HPR on 10 April 2020.¹⁰⁷ The Council of Ministers then issued the State of Emergency Regulation.¹⁰⁸ The State of Emergency Proclamation defines emergency measures as "decisions, restrictions, or obligations that render partially or completely inoperable portions of the FDRE Constitution."¹⁰⁹ When it comes to "suspension of rights," the same Proclamation is defined as "a partial or full temporary derogation of rights stipulated under the Constitution."¹¹⁰ After the SoE lifted the new directives entitled A Directive for the Prevention and Control of the COVID-19 Pandemic (Directive No 30/2020) issued by the government. As the Human Rights Committee (HRC) clearly stated, "The fact that some of the Covenant's provisions are stated as not being subject to derogation in article 4 does not entail that others are in the Covenant may be subjected."¹¹¹ Therefore the State has a legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation.¹¹² This chapter tries to scrutinize the State of emergency regulation during the Covid-19 in light of the international requirements. Specifically, the chapter attempts to explore the State of an emergency regulation in line with the relevant international standards applicable, including principles of legality, strict necessity, non-discrimination, and parliamentary oversight emergency measures. Furthermore, the post-state of emergency Directives is examined vis-à-vis International human rights provisions.

¹⁰⁷Aljazeera, Ethiopia, declares a state of emergency to fight coronavirus, <<https://www.aljazeera.com/news/2020/4/8/ethiopia-declares-state-of-emergency-to-fight-coronavirus>> Accessed 8 April 2020.

¹⁰⁸ Regulation No. 466/2020 (n21)

¹⁰⁹ State of Emergency Proclamation No. 3/2020 (n13)

¹¹⁰ Ibid

¹¹¹ GC 29 (n51) para 6

¹¹² Ibid

3.1 The State of Emergency Regulation and the protection of Human Rights

In its statement on derogation with COVID-19, the Human Rights Committee reminds States Parties to observe the requirements and conditions outlined in article 4 of the ICCPR and its GC 29.¹¹³ As previously stated, the Ethiopian government proclaimed a state of emergency, which the HPR approved, and as a result, the government came up with regulation in response to COVID-19. The provisions of the rules have had several consequences for human rights, and the implementation of specific measures undermines Ethiopia's compliance with international human rights treaties.¹¹⁴ The regulation's emergency measures are primarily expressed in the form of long lists of prohibitions and prescriptions. In addition, it lists 41 criminal acts and omissions that are punishable.¹¹⁵ The regulation has the same criminal penalties for various offenses, punishable by a simple prison term of up to 3 years. It also has provisions that violate COVID19 patients and vulnerable group's right to privacy, excessive expropriation of private property, and conditions that stifle freedom of expression. Furthermore, the State of emergency regulation has resulted in the full suspension of Procedural Laws and the complete prohibition of prisoners visiting rights, and the imposition of excessive obligations on businesses people. The following sections examine the justification, or lack thereof, of Ethiopia's measures to control and counter the COVID-19 in light of human rights standpoint.

3.3 Principle of legality as a non- derogable right

The principle of legality is one of the non-derogable rights under the ICCPR.¹¹⁶ This principle requires that criminal liability and punishment be based on clear and precise provisions in the law that are in place and applicable when the act or omission took place, except in cases where a later law imposes a lighter penalty.¹¹⁷ Moreover, according to this principle, there should be no penalty without a clear and well-defined law. However, when one looks at the State of emergency regulations, it is against this principle. It listed 27 prohibited acts under Article 3. It imposed a list of 18 duties under Article 4, the failures of which resulted in criminal liability without detailed terms of the elements of every offense. Furthermore, contrasting to the

¹¹³ Human Rights Committee, Statement (n9)

¹¹⁴ State of Emergency Proclamation implementation Regulation No.466/2020

¹¹⁵ Ibid Art 3&4

¹¹⁶ ICCPR Art 15 (1)

¹¹⁷ Ibid

requirement of the principle of legality, the Proclamation unexpectedly imposed the same type of punishment for different type's violations.¹¹⁸ The SoE Proclamation stated as the following:

*"Notwithstanding relevant provisions of the Criminal Code, any person who violates the suspension of rights, measures, an instruction or command issued; shall be punished with simple imprisonment of up to 3 years or a fine from one thousand Birr to two hundred thousand Birr."*¹¹⁹

According to the above provision, a person who violates one of the commission or omission acts listed in the regulation will be punished with simple imprisonment for up to three years or a fine above one thousand birrs, regardless of the type of act committed or omitted. Such measure demonstrates the inconsistency of SoE regulations with the principle of criminal legality, which presupposes stipulated proportional punishment for every specific criminal offense instead of the same type of punishment for different kinds of violations. Furthermore, the focus of legitimacy is a non-derogable right under international human rights instruments. Therefore the State cannot derogate from this principle at any time.¹²⁰ Aside from that, the regulation suspended procedural provisions under the criminal procedure code and other laws.¹²¹ The regulation also does not specify how the Court can apply substantive laws without criminal procedures.

3.4 The principle of Non-Discrimination

"The virus does not discriminate, but its impacts do."

Non-discrimination constitutes a primary and general principle relating to the protection of human rights.¹²² The HRC noted that the term 'discrimination as used in the ICCPR should be understood to imply;

"any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinions, has the effect of nullifying the

¹¹⁸ Reg. No. 466/2020 (n19) Art 6(7)

¹¹⁹ Proclamation No. 3/2020 (n3)Art 6

¹²⁰ ICCPR Art 4(2) cum Art 15

¹²¹Reg. No. 466/2020 (n19) Art 6(1)

¹²² ICCPR Art 2, ICESCR Art 2, ECHR 14, ACHR Art 1 and AfCHPR Art 2

recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."¹²³

The Committee also defines both direct and indirect discrimination. The former involves treating one person less favorably than another on prohibited grounds and incomparable circumstances. In contrast, the concept of 'indirect' discrimination refers to an apparently 'neutral' law, practice, or criterion, which has been applied evenly to everyone but favors one group over other groups.¹²⁴ In the case at hand, it's the responsibility of the State to ensure everyone is protected from the impact of COVID 19. This requires special measures and protection for vulnerable groups, such as persons with disabilities, elders, women, and children. The response to the crisis needs to consider multiple and intersecting forms of discrimination and inequalities.¹²⁵ 'The virus does not discriminate, and discrimination must have no place in our response to the threat it poses.'¹²⁶

Nevertheless, when one critically scrutinizes the SoE regulation, we can find that the restrictive measures imposed by the government indirectly create exacerbated domestic violence. Hence, the higher socio-economic vulnerability of shorthanded people, neglecting and domestic abuse of elders at home, the difficulty of accessing necessities like food and medication of people with disabilities.¹²⁷ As the HRC under its GC 18 stated, in determining the existence of indirect discrimination, it is not relevant whether or not there was intent to discriminate on any of the prohibited grounds.¹²⁸ Instead, it is the consequence or effect of a law or action that matters. Therefore it is possible to argue that even though the SoE was not intended to create discrimination, the consequences of the declaration were discriminatory to the already specific marginalized communities. Furthermore, no measures have been adopted to protect and support

¹²³ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. H.R.I./GEN/1/Rev.1 at 26 (1994).

¹²⁴ Id

¹²⁵ UN, COVID-19, and Human Rights We are all in this together April 2020: available at: <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and> Accessed 13 July 2020

¹²⁶ Ibid

¹²⁷ Ethiopian National Disability Action Network (ENDAN): <https://endanethiopia.org/membership/> Accessed 28 March 2021

¹²⁸GC 18 Para 8, see also Human Rights Committee Communication No. 998/2001 cited on <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-equality-and-non-discrimination/direct-and-indirect-discrimination> Accessed 19 February 2021

vulnerable groups, such as women, children, and persons with disabilities. The Committee on the Elimination of Discrimination against Women, in its guidance note on CEDAW and COVID-19, noted States parties to uphold the Disadvantaged group principle of 'Leave no one behind' promoting inclusive approaches in their legislative, policy, and other measures during the COVID-19 pandemic, and to reinforce efforts to support disadvantaged or marginalized groups of women.¹²⁹ However, such measures are not included in Ethiopia's State of emergency regulation. On the contrary, some provisions of the law, like mandatory reporting of disease for the mere suspects¹³⁰ are prompt discriminatory measures and susceptible to abuse and expose COVID-19 patients and vulnerable persons to discrimination.

3.5 Right to Privacy, liberty, and security of persons vs. the principle of necessity

"The threat is the Covid 19, not the people."

As discussed in previous chapters, the principle of necessity is an established international and national law requirement. The need contemplated in international instruments requires attention to the country's life but not to the power of the incumbent government.¹³¹ However, the doctrine of the margin of appreciation gives governments a considerable margin of appreciation in assessing the existence of a danger warranting a declaration of an emergency and identifying emergency measures required to avert such a threat.¹³² While declaring the State of emergency, the COVID 19 SoE regulation has provisions on mandatory reporting.¹³³ Specifically, the imposition of an obligation to report those suspected people by transport operators and the general public opened room for violation of rights.¹³⁴

¹²⁹ Guidance Note on CEDAW and COVID-19: <<https://www.corteidh.or.cr/tablas/centro-covid/docs/Covid-19/CEDAW-Guidance-note-COVID-19.pdf>> Accessed 11 February

2021

¹³⁰ Reg. No. 466/2020 (n19) Art4 (4) and 4 (5)

¹³¹ GC, 29 (n51)

¹³² Oren Gross. (n31) 465.

¹³³ Reg. No. 466/2020 (n19) Art 5

¹³⁴ Id Art 4 and 5

Considering the privacy and confidentiality rights of COVID19 patients, the regulation is problematic. The need to identify individuals who may have been exposed to COVID19 should not be a reason to disregard their privacy and confidentiality.

Moreover, it is not clear what a person "suspected of COVID 19" means. The law is silent on how to identify people infected with COVID 19. Concerning as the Ethiopian human rights commission (EHRC) stated, "These provisions run the risk of encouraging non-medical professionals to diagnose people remotely, which could lead to unnecessary searches for vulnerable groups exhibiting symptoms similar to COVID19."¹³⁵ As a result, the provision may unnecessarily infringe on COVID-19 patients' right to privacy and confidentiality.

In addition, this clause affects the right to personal freedom and security guaranteed by Article 9 of the ICCPR. Article 14 of the FDRE Constitution also stipulates that everyone has the right to inviolable and inalienable right to life, security, and liberty.¹³⁶ Even though the right to privacy is not a non-derogable right, the extent of the measure should be necessary. However, the standard imposed by the regulation overwhelmingly and unnecessarily affects the right to privacy. Therefore the mandatory reporting measure can affect all of these rights without attaining the intended goal, against the principle of necessity and proportionality.

3.6 Excessive Restrictions on Freedom of Expression Vs. the principle of proportionality

The severity of the threat, the duration of the emergency decree, and the extent of the emergency declaration's application are all factors considered in the proportionality test.¹³⁷ The principle of proportionality is reflected in Art 93(4) of the FDRE Constitution, which states: "The CoM shall have the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avoid the conditions that required the declaration of a state of

¹³⁵ Ethiopian Human Rights Commission, Legal/Human Rights Analysis of the Declaration of State of Emergency in Ethiopia in the Context of the COVID-19 Pandemic 7 May 2020

¹³⁶ FDRE Constitution Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995, from now on FDRE Constitution. Art 14

¹³⁷ GC 29, (n50) para 4.

emergency.”¹³⁸ Any emergency action, according to this principle, must serve a legitimate public interest and be proportional to the threat posed.

The SoE regulation, on the other hand, showed a notable gap in terms of proportionality. For instance, instead of creating an enabling environment for free information and protecting the public from false information, the SoE regulation imposed prohibitions solely out of fear of misinformation. The ban had taken in two directions. The first is concerned with the nature of the information itself. Under Article 3(27), it is prohibited to disseminate any information that causes "terror and undue distress among the public," a violation of which results in criminal liability.¹³⁹

The prohibition here refers to the information that truthfulness is not contested but may cause 'terror and undue distress among the public.' However, a lot of the information related to COVID-19 may be considered unsettling or is bound to cause psychological anxiety or distress. The literal application of Article 3(27) may have the effect of criminalizing ordinary reporting on the spread of the virus or expert predictions on fatality rates from the pandemic.

The second prohibition is related to the ban on the dissemination of false information through the media.¹⁴⁰ It requires that information provided by media outlets about COVID-19 should not be exaggerated or understated and should not be prone to cause panic and terror among the public.¹⁴¹ This prohibition requires the media to take utmost care to provide appropriate information and analysis of the virus. However, drawing a line between proper, exaggerated, or understated information is subjective and open for abuse and interpretation. Moreover, it possibly discourages the media from disseminating information to the public due to fear of liability. Therefore both Articles 3(27) and 4(10) of the Regulation disproportional measures could bear negative consequences on the freedom of expression and media freedom.

With this regard, the recommendations of the UN Special Rapporteur on freedom of speech should serve as a valuable guide to ensure the critical role of media and access to information in

¹³⁸ FDRE Constitution (n30) Art 93(4)

¹³⁹ Reg. No. 466/2020 (n19) Art 3(27)

¹⁴⁰ Id Art 4(10).

¹⁴¹ Id

Ethiopia's COVID-19 response. The rapporteur pointed out in his recent report on freedom of speech and pandemics, "... access to information, independent media and other freedom of speech rights are the basis for responding to the challenge of the pandemic."¹⁴² Henceforth, access to information and freedom of expression in emergencies play an important role in educating the public about prohibitions and restrictions and determining and balancing the government and corresponding operational needs.¹⁴³ Moreover, legitimate concerns related to the spread of false information related to COVID-19 could be addressed through the already existing law such as the recently adopted Hate Speech and Disinformation Prevention and Suppression.¹⁴⁴ Therefore, a balanced approach is needed, rather than a complete restriction.

3.7 Access to justice and Restrictions on Fair Trial Guarantees vs. the principle of necessity

In a democratic society, the judiciary should protect human rights and ensure access to justice for its State's population.¹⁴⁵ It is because besides being an end by themselves, they are a means to control the possible abuses and violations of human rights by the government during states of emergencies. This obligation does not erode in times of crisis but rather becomes even more critical to protecting human rights and ensuring that the executive branch of government does not abuse its additional emergency power.¹⁴⁶ Regional instruments, including the African Charter on

¹⁴² UN Special Rapporteur Report on disease pandemics and freedom of opinion and expression. 23 April 2020 https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Opinion/A_HRC_44_49_AdvanceEditedVersion.docx&action=default&DefaultItemOpen=1, > Accessed 20 June 2020

¹⁴³ EHRC COVID-19 analysis (n141) p 15.

¹⁴⁴ Ibid, Proclamation No. 1185/2020

¹⁴⁵ International Commission of Jurists' (ICJ), Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, Principles 1 and 4 and pp. 1-15, 57-75 of the Commentary (2011) (hereinafter I.C.J., Geneva)

¹⁴⁶ Office of the High Commissioner for Human Rights (OHCHR), Coronavirus Emergency: Challenges for the Justice System, Special Rapporteur on Independence of Judges (2020), available at; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25810&LangID=E> Accessed 19 April 2021

Human and People's Rights, underscore the importance of the protection of fundamental human rights at all times.¹⁴⁷

From the IHRL perspective, the specific procedural guarantees available in criminal cases have been laid down under Article 9 of the ICCPR, providing for protections against arbitrary arrest and detention, and Article 14 of the ICCPR, dealing with the principles of a fair trial.¹⁴⁸ while the former includes the rights of arrested persons to be informed of the reasons for their arrest, brought to trial within a reasonable time, and the like.¹⁴⁹ And the latter includes the right to a fair trial and a fair and public hearing by a competent, independent, and impartial tribunal.¹⁵⁰

The Covid-19 outbreak has challenged long-established legal procedures, the material functioning of the Court, and the rule of law itself,¹⁵¹ and Ethiopia is not an exception to this castration of COVID 19. Unlike the requirements of IHRL, the states of emergency regulation were suspending all procedural laws of the country and civil lawsuits.¹⁵² The wholesale suspension of procedural rules applicable in criminal law unduly impinges on procedural guarantees recognized under the FDRE Constitution and IHRL.

Emergencies may justify an inevitable delay in the institution of criminal proceedings and permit derogations from the right to a speedy trial.¹⁵³ However, an SoE does not justify the blanket suspension of fair trial guarantees.¹⁵⁴ Even though the right to a fair trial is not explicitly included in the list of non-derogable rights of the ICCPR, the same Covenant provides that a fair trial should interpret it in conformity with other international obligations.¹⁵⁵ The international

¹⁴⁷ African Charter on Human and Peoples' Rights, adopted 27 June 1981, art. 62, OAU. Doc. CAB/LEG/67/3/Rev.5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986) (ratified Nov. 17, 1989)

¹⁴⁸ FDRE Constitution, (n30) Art 19 & Art 20

¹⁴⁹ ICCPR Art 9 (1-5)

¹⁵⁰ Id Art 14 (1-7)

¹⁵¹ Pierpaolo Gori1Aniel Pahladsingh Fundamental rights under Covid-19: a European perspective on videoconferencing in court ERA Forum (2021) 21:561–5772, December 2020, <<https://doi.org/10.1007/s12027-020-00643-5>> Accessed 19 April 2021

¹⁵² Reg. No. 466/2020 (n19) Art 6(1)& Art 6(4)

¹⁵³ Stavros, pp. 359.

¹⁵⁴ GC 29 (n 50) Para 16

¹⁵⁵ ICCPR, Art 4(1) & 4(2)

obligation in this context includes recognizing the fundamental principles of a fair trial as a peremptory norm of international law.¹⁵⁶ In this connection, the HRC has stated explicitly that States shall not invoke Article 4 of the Covenant as a justification for violations of peremptory norms of international law, including the fundamental principles of a fair trial.¹⁵⁷ Further, the Committee holds that the protection accorded to non-derogable rights necessitates that procedural guarantees secure such requests. Accordingly, measures of procedural safeguards should not entail derogation from non-derogable rights.¹⁵⁸ In addition, the HRC enjoins States to make sure that restrictions imposed on procedural guarantees stipulated under Article 14 do not exceed those strictly required by the exigencies of the actual situation.”¹⁵⁹ The implication is that the necessity proposed restriction on procedural rights needs to be carefully evaluated in light of the difficulties of the situation. The HRC affirms that states cannot suspend access to justice during a public emergency.¹⁶⁰ Similarly, the Siracusa Principles provides the list of rights "fundamental to human dignity" and the denial of which "can never be strictly necessary for any conceivable emergency."¹⁶¹ In times of emergency, the judiciary should be able to decide whether or not emergency legislation conforms with the Constitution or IHRL and whether or not the exercise of emergency power does with the emergency legislation.¹⁶² Therefore the blanket suspension of procedural guarantees by the SoE is hardly a necessary and proportionate measure and against the international Human Rights standards. Moreover, the possible rest of civil lawsuits may also unduly hinder persistent civil cases, including maintenance allowance, unfair dismissal from work, forced eviction, and human rights issues in the context of the State of emergency.

¹⁵⁶ Judge Patrick Robinson, The Right to a Fair Trial in International Law, with Specific Reference to the work of the ICTY:< https://bjil.typepad.com/Robinson_macro.pdf > Accessed 15 August 2021

¹⁵⁷ GC 29, (n 53) para 11

¹⁵⁸ Ibid Para. 15

¹⁵⁹ GC 13, para. 4

¹⁶⁰ Ibid 175, paras. 14-15.

¹⁶¹ The Siracusa Principles (n7)

¹⁶² Paris Minimum Standards, para. 5

3.9 Parliamentary Oversight and Provision of Blank Check to the Executive

The FDRE Constitution establishes parliamentary oversight of SoE declarations, including determining the emergency, the necessity and proportionality of the measures, the protection of non-derogable rights, and the duration of the emergency declaration.¹⁶³ However, since the formerly Ethiopian People's Revolutionary Democratic Front (EPRDF), now known as the EPP, has taken over the parliament, it's impossible to believe that members of the parliament evaluated the emergency measures put in place the government since it was founded by the same political party that controls the majority of the house's seats.¹⁶⁴ Apart from the absence of legislative oversight, the parliament did not prescribe detailed guidance in its approval proclamations as inferred from the SoE Proclamation.¹⁶⁵ It simply grants the Executive a blank check to take any measure it deems necessary and endorses a decree issued by the Council of Ministers (COMs).¹⁶⁶ In defining the geographical scope of application, the parliament simply endorsed the nationwide application declared by the COMs without inquiring whether the 'exigent circumstances' were happening throughout the country or not.

Concerning the duration of SoE, too, the parliament is simply endorsed the period proposed by the COMs. About the substantive emergency measures, the Ethiopian Parliament, without providing any guidance, supports merely the decrees issued by the COMs as they are. In contrast, the COMs decree of SoE approved by the parliament did not give any list of emergency measures. It instead delegated the power to determine prohibitions and duties imposed to the Executive. Thus, while backing, it just empowered the Executive to decide on specific emergency measures and suspension of rights.¹⁶⁷ The government, in the explanatory note to the SoE Proclamation, justified the approach in terms of the need for flexibility for ever-changing circumstances.¹⁶⁸ Nevertheless, this legislative approach provided the Executive with unchecked

¹⁶³ FDRE constitution (n30) Art 92(2)

¹⁶⁴ Association for Human Rights in Ethiopia (AHRE), Human Rights in Times of State of Emergency in Ethiopia, June 2021 and see also FDRE Constitution (n 7) Art 56, Art 76-77

¹⁶⁵ State of Emergency Proclamation No. 3/2020 (n13)

¹⁶⁶ Ibid Art 5(1)

¹⁶⁷ Proclamation No. 3/2020, Art 4(1)

¹⁶⁸ Office of the Prime Minister – Ethiopia, 'COVID19 Status Briefing by Billene Seyoum' <<https://www.youtube.com/watch?v=4BrReLEaPLI>> Accessed April 9, 2020

power and undermined the legislative oversight of the emergency powers. Although the Constitution empowers the Council of Ministers to exercise emergency powers, including the suspension of political and democratic rights,¹⁶⁹ the approach taken by parliament in this regard raises concerns in light of Article 93 (2) of the Constitution.

3.2 Measures be strictly required by the Exigencies of the Situations

One of the fundamental principles in international human rights and in the Constitution that guides a state's conduct within emergencies is the principle of proportionality and necessity. This means the difficulties must strictly require the measures taken under SoE According to Article 4 of the ICCPR; the State can only take emergency measures that are "strictly needed by the exigencies of the situation." The states review and revise emergency measures from time to time to prevent any abusive exercises of emergency powers.¹⁷⁰ Moreover, the UNHRC in its GC 29 elaborated the requirements of extent strictly required by the exigencies of the situation.¹⁷¹ It stated that the State must "perform a comprehensive study under each article of the Covenant based on an objective evaluation of the actual situation" to limit derogations to those necessitated by the exigencies of the situation.¹⁷²

Even if the difficult situation necessitated the SoE, the derogation must be limited, as much as possible, in respect of their duration, geographical coverage, and material scope, and all measures are taken, must be proportional to make a proper balance between individual rights and public interests.¹⁷³ Their predominant objective must be restoring a state of normalcy, where full respect for the Covenant can again be secured.

When one looks at the SoE Regulation,¹⁷⁴ it more focused on the whole restrictions on delivering of public services, complete prohibition of visitation of prisoners,¹⁷⁵

¹⁶⁹ FDRE Constitution (n30) Art93(4)

¹⁷⁰ The Paris Minimum Standards of Human Rights Norms in a State of Emergency, International Law Association, Report of the First Conference Held at Paris, London (1984), Section B, para. 4, reprinted at 79 Am. J. Int'l L. 1072 (1985).

¹⁷¹ GC 29, (n50) Para 5.

¹⁷² Ibid para. 6.

¹⁷³ GC 29 (n50) para 6

¹⁷⁴ Reg. No. 466/2020 (n 19), Art 3

disproportionately onerous burdens on the right to property and business freedoms.¹⁷⁶ The SoE offers a sure justification for the government to derogate from its obligations while other persons are expected to continue to discharge their obligations with more onerous obligations.¹⁷⁷ Furthermore, the regulation and directives unnecessarily criminalized certain conducts. At the same time, less restrictive alternative measures can tackle the problem effectively; the government may not employ more draconian means to fight off the crisis.¹⁷⁸ However, some regulation adopts a criminal approach to the COVID-19 response¹⁷⁹ on some issues which public health education programs should otherwise handle as opposed to criminal sanctions.¹⁸⁰

On the other hand, Article 4(15) of the regulation prescribes a duty to transfer any type of private property to the government where such property is sought for COVID-19 response operations. However, although this provision establishes a provisional expropriation regime, it lacks specific or detailed guidelines on the issues that arise in applying the right to take over.¹⁸¹ Moreover, it imposed a criminal sanction for minor infractions such as handshake and failure to wear face-covering, which can be attained through public health education, or civil sanctions like community service rather than criminal sanctions. Therefore it is possible to argue that some of the states of emergency provisions were disproportionately affected individual human rights and international standards.

3.8 Highlighting the Post state of emergency Directive

Since the SoE was lifted on 20 September, the Ethiopian government reworked the COVID-19 Directive, Entitled A Directive Issued for the Prevention and Control of the COVID-19 Pandemic (Directive No 30/2020). It was issued to address people and residents' growing apathy regarding COVID-19 prevention efforts after the SoE ended. The Directive is effective as of 5 October 2020. Likewise, its predecessor SoE declaration, the new Directive, imposed

¹⁷⁵ Ibid Art 3(9)

¹⁷⁶ Ibid Art4(12) and 4(13)

¹⁷⁷ EHRCO analysis on the Covid 19 (n149)

¹⁷⁸ Oren Gross, "Once More unto the Breach," (n31) at 450.

¹⁷⁹ Proc. No. 3/2020, (n3)Art 6(1)

¹⁸⁰ Ibid Art 6 (3)

¹⁸¹ EHRC Covid-19 analysis (n149)

restrictions on certain rights to prevent and mitigate the impact of COVID-19. Furthermore, the Directive provides criminal liability for the violation of the restrictive measure.¹⁸² The Directive has laid down a set of new rules, and it also keeps some of the measures in the previous State of emergency regulation. It listed nine prohibited activities and nine duties under Art 4 and 5, respectively. This section provides an overview of human rights protection and concerns posed by the Directives against COVID-19.

3.8.1 The rights limited under the Directive

The Directive has provided a prohibited activity and imposed duties. It has laid down new requirements for international travelers who enter the country through its international airports. Beyond requiring travelers to provide a negative RTPCR test that was conducted up to five days before arrival, it also requires international travelers to quarantine at home for seven days. In addition, it prohibits conducting face-to-face class, and Other measures imposed on individuals include the duty to wear face masks in public places, mandatory quarantine in designated areas, a duty to report, the duty to keep social distancing, etc. Furthermore, the directives also controls the interaction of a private enterprise with customers and employees.

As stated in one of the key components of CESCR, GC 14: a right to health includes the right to control the dissemination of infectious diseases via various control measures, some of which are restrictive.¹⁸³ COVID-19 is a highly contagious pandemic that spreads quickly through the breath.¹⁸⁴ As a result, there could be limitations on non-absolute rights in the interest of others.¹⁸⁵ Such measures may be justified based on the mode of transmission and destructive nature of COVID-19.¹⁸⁶ However, it should be noted that the least restrictive menses should be implemented as present in the Siracusa Principles. However, when one looks at the COVID-19 Directive, it had followed a restrictive 'command-and-control approach which may be adopted in

¹⁸²Directive No.30/2020 Art 30

¹⁸³ GC 14, (n208) para. 16

¹⁸⁴Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE) at John Hopkins,

<<https://www.gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>. >

Accessed 19 May 2020

¹⁸⁵ Directive No.30/2020 (n80)Art 4

¹⁸⁶ Human Rights Committee, Statement (n10) at §2 (c).

case of other public security threats. The Directive has incorporated and prescribed long-listed prohibition and imposed duties the commission or omission of, resulting in criminal liability.¹⁸⁷ Most of the crimes were not clearly and precisely defined, and the establishing elements of the crime opening room for interpretation and abuse. Furthermore, unlike the less restrictive measure under the Siracusa principle, the Directive is more intended for criminal punishments than awareness creation and public health education. On the other hand, although the COVID-19 virus has negatively impacted the business sector itself, the Directive imposed additional obligations on the business sector to make information regarding COVID-19,¹⁸⁸ to provide sanitary materials useful for preventing the spread of the virus.¹⁸⁹ Accordingly, the Directive imposes unreasonable and disproportionately onerous burdens on business owners' right to property and business freedoms. As it is articulated in Paragraph 28 of GC 14, limitations are "...meant to protect the rights of individuals rather than to allow the imposition of limitations by States."¹⁹⁰

Therefore it is not proportional to impose onerous obligations on private individuals and affect their economic rights, to enforce the right to health. Under IHRL, the government is a duty bearer to protect, promote and fulfill the requests and shouldn't shift its duty to individuals through strict domestic laws. Therefore, the directive raised some human rights concerns, such as the principle of proportionality and necessity. This is, perhaps, because of the wrong assumption of the policymakers. Whenever they think of a public emergency, they assume the imposition of an impressive list of prohibitions and bans, the violation of which results in criminal liability. It also gaining of the military and security forces officially sweeping new legal powers.

¹⁸⁷Directive No.30/2020 (80) Art 30

¹⁸⁸ Ibid Art 5(4)

¹⁸⁹ Ibid Art 5(3)

¹⁹⁰ CESCR General Comment No. 14: The right to Highest Attainable Standard of Health (Art. 12), CESCR Document E/C. 12/2000/4 (2000). Available at < <http://www1.umn.edu/humanrts/gencomm/escgencom14.htm>. > Accessed 19 May 2020

3.8.2 Are the limitations imposed on human rights justifiable?

State public health measures should "protect and advance the health of the population as a whole, while at the same time protecting basic human rights and social values."¹⁹¹ Therefore, the protection given to an individual's human rights is subject to limitations, and IHRL authorizes restricting rights to protect public health when necessary and not arbitrary.¹⁹² The specific conditions and interpretations that seek to legitimize the limitations on the grounds of public emergencies as found in articles 12, 19, 21, and 22 of the ICCPR, including public health emergencies, are articulated in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.¹⁹³ This principle holds that measures restricting human rights should be legal, neither arbitrary nor discriminatory. Specifically, for a restriction of a human right to be considered legitimate, a state has to address the principle of legality, legitimate objective of general interest, the strict necessity in a democratic society, there are no less intrusive and restrictive means available to reach the same objective, and based on scientific evidence and not drafted or imposed arbitrarily that is, in an unreasonable or otherwise discriminatory manner.¹⁹⁴ Moreover, any restriction must be limited, respectful of human dignity, and subject to review.¹⁹⁵ Recent studies have shown that healthcare workers involved in providing medical care to COVID-19 patients have themselves been exposed to the virus, and even some have lost their lives.¹⁹⁶ This underlines the destructive nature of COVID-19 and further justifies the drastic measures, including quarantine, being adopted by states to prevent its spread. Therefore, imposing a limitation measure is justifiable, but when the limitations are imposed, it should be due to the international human rights principles.

¹⁹¹ G. Pinet, Good Practice in Legislation and Regulations for TB Control: An Indicator of Political Will (Geneva: WHO, 2000). Available at <http://whqlibdoc.who.int/hq/2001/WHO_CDS_TB_2001.290.pdf> Accessed 23 October 2007.

¹⁹² ICCPR Art 9,18(3), and 19(3)

¹⁹³ The Siracusa Principles (n7)

¹⁹⁴ LO Gostin, "When terrorism threatens health: How far are limitations on human rights justified?" *The Journal of Law, Medicine & Ethics* 31/4 (2003), 524-528.

¹⁹⁵ Ibid

¹⁹⁶ American bar association, <<https://www.apha.org/Search-Results?q=Covid%2019>> Accessed 9 October 2020

3.8.3 The implication of delegated legislative power to limit human rights under the FDRE constitution

The FDRE Constitution does not incorporate a general limitation clause that governs cases where rights may be justifiably limited. There are, however, several internal limitation clauses about most of the rights therein.¹⁹⁷ Some of the rights may be limited by any 'law' without any substantive requirement. Moreover, the Constitutions do not define what 'law' is. It is therefore not clear if law includes only State or federal law; or whether it only includes rules made by national and state legislative bodies, or it also includes regulations and directives made by the State or federal executive bodies; this creates a danger of lack of uniformity in the interpretation of human rights and their limitation. Most importantly, it creates a risk of relegating the Constitution into a subordinate instrument to the lawmakers despite the explicit supremacy provision.¹⁹⁸ Under Article 55 of the Ethiopian Constitution, the parliament is bestowed with the power of legislation in all issues of Federal Jurisdiction. Furthermore, the Council of Ministers has the authority to enact regulations based on powers conferred on it by the House of People's Representatives, and this is the only ground for delegated legislation.¹⁹⁹

The Council of Ministers shall establish rules according to powers bestowed by the House of Peoples Representatives.²⁰⁰ This provision presupposes the empowering act of the Proclamation to clearly and precisely show the intention of the HoPR delegation to the Council of Ministers for the enactment of regulations. Usually, the power to exercise such rule-making by the CoM is derived from the authority given by the parliament itself through Proclamation. However, it is important to consider as the Directive is issued by the Ethiopian Public Health Institute, an organ established by Regulation No 4/1996 and recognized as an autonomous public authority. The question is whether this institution can restrict the human rights guaranteed under the FDRE Constitution and other international human rights instruments. Although the FDRE constitution adopted the special restrictive measures for non-absolute rights, however, it doesn't provide the procedures of restriction. It doesn't give the mandate to restrict these rights for organs.

¹⁹⁷ FDRE constitution (n7) Art 26(3), 27(5), 29(6), 30(2) & 31

¹⁹⁸ Ibid Art 9 (1)

¹⁹⁹ Ibid (n7)Art 77 (13)

²⁰⁰ Ibid

Nevertheless, the EPHI is not under the branch of the government that has got recognition to make a law under the Constitution. As is mentioned above, it is an ordinary agency established by regulation. Therefore possible to argued that there is a loophole within the FDRE constitution and creates the risk of relegating the constitutionally guaranteed rights through directives to take precedence over the Constitution. The Directive authorizes sweeping measures that amount to suspension of right/s that should be based only under SoE laws. For example, the Directive systematically imposed limitations on the right to movement, assembly, religion, and economic rights, that amount to suspension of Rights. For instance under Art 17(2) of the Directive stated that "when a meeting demands the attendance of more than 50 individuals, a meeting can be held after having a permit from the Ministry of Peace and other hierarchical peace and security structures".²⁰¹ This provision is a clear indication of the systematical prohibition of the right to assembly. The Directive gives the discretionary power for the security structures to decide whether a particular meeting is allowed or prohibited without providing the criteria to be taken into account. Similarly, the Directive also goes a long way in regulating how a private business will interact with their employees and their customers, and it burdensome the individual's economic right. The Directive also provided a criminal liability for the violation of prohibited activities and imposed duties. Moreover, the powers given to the government to limit rights must, be exercised only within limits provided under the law; and applied consistently with other constitutional and international obligations.²⁰² However, as it is mentioned above, some of the provisions the Directive goes to limit rights are beyond the limit.

3.8.4 The Principle of Non-discrimination vs. the Directive

UDHR Article 7 reads: "All are equal before the law and are entitled without any discrimination to equal protection of the law." Almost identical language is found in the ICCPR.²⁰³ However, the Directive imposition of a duty to test and an obligation to report those suspected of the disease by the general public opened room for discriminatory and disproportionate measures.²⁰⁴

²⁰¹Directive No. 30/2020 Art 17 (2)

²⁰² Siracusa principle (n55) para 6

²⁰³ ICCPR Article 26

²⁰⁴ Directive No. 30/2020 (n80) Art 5(2)

Furthermore, because the phrase "persons suspected of being infected with COVID-19" is not defined in the Directive, it exposes people to harassment by allowing non-professionals to notify potential suspicions. Apart from these, the Directive has also established strict guidelines for those that wish to organize meetings and conferences in Ethiopia.²⁰⁵ According to Art 5 of the Directive, meetings of up to fifty people can be held without permit so long as the requirement is listed under part 5 of the directives. However, meetings with more than fifty attendees require a special license from the Ministry of Peace and other peace and security structures at the regional, zonal, and woreda levels. This part of the Directive is also discriminatory since it gives the discretionary power for the security bodies; there is a high possibility of denial of meetings that the government does not desire.

²⁰⁵ Ibid Art 17

Chapter Four

The protection of Human Rights during the Covid-19 Pandemic in Addis Ababa: Analysis of the Practice

Ethiopia has had to quickly respond to the public health threat COVID-19 poses to the populations. As we have elaborated in the preceding chapter, these responses have included several measures to limit public gatherings, limit trials, constrain freedom of movement, and require disclosure of private medical information. Unfortunately, though many of the measures taken are necessary to combat the pandemic, the government has exploited the crisis to begin or continue assaults on civil and political rights and to stay in power.²⁰⁶ As we have also seen, the legislative measures are not formulated in a way to establish a foundation to have a community-centered and informed response, one that embraces solidarity and kindness that prioritizes the most vulnerable and empowers people to be able to take action to protect themselves and others from the pandemic. They, in effect, raised human rights concerns.

The first case of the COVID-19 virus was confirmed on 13 March 2020, in Addis Abeba, Ethiopia. However, before declaring a SoE, the government began to take counter- and control measures against the pandemic's spread. The measures were later included in the regulation enacted to implement the SoE declared on 8 April 2020.

In Addis Ababa, the measures included, among other things, the following: total school closure since 16 March 2020 (which later lasted until the end of November) and the federal courts are closed from 18 March 2020 to 2 April 2020 (which was later opened to entertain urgent cases such as the COVID-19 prohibitions and restrictions, issues of maintenance, child custody, bail, and remand, ban of prisoners visiting rights, the imposition of unnecessary obligations on businesses people, curfew and arbitrary arrest and inhuman treatment. Using empirical data, this chapter analyses the human rights impact of state response to control and counter Covid-19 within the period of SoE and post-state of the emergency directive in Addis Ababa, mainly focusing on civil and political rights are under assault as governments respond to COVID-19. Since human rights are interdependent, the analysis also touches on major socio-economic rights that were affected by the measures taken by the government. This analysis is not exhaustive.

²⁰⁶Interview made with human Rights legal experts who want to remain anonymous, April 2021

However, it analyzed the human rights concerns that are prevalently producing human rights concerns.

4.1 Fair trial and access to justice

As discussed in Chapter 3, the 2020 declaration of SoE in Ethiopia exacerbated restrictions on the right to a fair trial and access to justice. One of the measures introduced in the SoE to combat Covid-19 was the total suspension of criminal procedure law, which effectively resulted in the rest of fair trial guarantees and the suspension of civil lawsuits by decision of the federal and state supreme courts.²⁰⁷ It may be reasonable and necessary to suspend some of these procedural guarantees to control and combat the spread of the virus. However, the complete suspension of these procedures guarantees no legitimate reason other than the violation of the human rights of the accused and the detainee. This suspension actually brings practical challenges, involving the arrested person's right to be informed of the reason for the arrest, to bring him to justice within a reasonable time, and the right to a fair and public trial by the competent Court, etc. Similarly, the suspension of civil litigation actually affects some urgent civil issues, such as alimony, unfair dismissal, and expulsion.

As an interview with my informants, Hasen Yusuf and Tedros Gebresilase, lawyers in Addis Ababa, shows, federal courts' closure affected people's access to justice. The courts only dealt with urgent cases and those related to COVID19 restrictions. This situation has not only undermined people's right to access justice, it has also opened a space for denial of justice in the capital. In this context, an interview with Mr. Misganaw Abdi, a lawyer and human rights defender in the city of Addis Ababa, revealed the following:

²⁰⁷ Negash Mohammed, 'ኮሮና ስጋትና ትምህርት በኢትዮጵያ' (Corona Virus threat in ethiopia education system)Deutsche Welle <<https://www.dw.com/am/a-53002686>> accessed 06 November 2020; Mihiret Moges, 'ትምህርት ሚኒስቴርና የክልል ትምህርት ቢሮዎች በቀጣይ

ትምህርት አጀማመር ላይ ውሳኔ ሊያሰጩ ነው' The Reporter 23 Sept. 2020
<https://www.ethiopianreporter.com/article/19904> accessed 5 November 2020

*The Court's suspension allowed some potential defendants to hide property and conceal evidence because the courts refused to accept new allegations, suspended ongoing proceedings, and refused to issue injunctions pending the completion of the case.*²⁰⁸

My interviewee, from Mizan Young's lawyer stated that:

The cessation of courts was a big problem for victims. Especially concerning family matters. Women who are sicking for a divorce were also affected by the situation. Since courts are closed, they were obliged to stay with their partners, which is more harmful.

As an interview made with the head of the registrar of the federal Supreme Court, Mr. Habte Ficahala indicates, although courts were closed during the first days of the regulation, however in the latter times, through a Circular issued by the supreme court president W/ro. Meaza Ashenafi, Courts were allowed to see pressing cases like maintenance, work dismissal, eviction, and the like, and all adjourned cases because the measurements are not lapsed by the limitation period. As Mr. Habte elaborates, the measure taken by the Supreme Court is much better than the state of an emergency regulation in terms of human rights protection since it is friendly with the situation.²⁰⁹ Ms. Mekdes Arega, Case flow and administration Director of the federal Supreme court agrees with this assertion. As Mekdes stated, the Supreme Court has also been entertaining cases through Video conferences and posted the decision on its website.²¹⁰ Therefore, it can be argued that the measure taken by the judiciary is more human rights friendly. Currently, the judiciary is in its day-to-day activity through applying the Covid-19 standards provided by the Directive.

4.3 Freedom of opinion and expression

The unwarranted and restrictive prohibition stipulated in the regulation had been practically used as an instrument to silence human rights defend vocal critics of the government. As interview with a journalist who want to remain anonymous indicates most medias were warned by the Ethiopian broadcasting authority to use proper terms when they report about the Covid-19 and to follow the SoE regulation. Individuals also harassed by mere posts on social medias. For

²⁰⁸ interview made with Misganaw Abdi, lawyer and human rights defender, January 2021

²⁰⁹ Interview with Mr. Habte Ficahala the head of the federal Supreme Court registrar April 2021

²¹⁰ Interview made with Mekdes Arega, Case flow and administration Director, April 2021

instance, Lawyer Elisabeth Kebede was accused of spreading false information related to COVID 19.²¹¹ It was merely for what she wrote and posted on Facebook about Harari Regional State (HRS) officials who had contact with a COVID-19 patient that should have been quarantined. The truthfulness of her post was not caused "terror and undue distress among the public."²¹² However, as the charge was possibly politically driven, she was accused in HRS while permanently residing in Addis Ababa around Genji. She was taken to Harari and detained for two days, and denied bail rights until she was freed. Finally, her case was referred to Addis Ababa. As my informant from Ethiopian Human Rights Defenders Centre (EHRDC), revealed Elisabeth was detained not only because of Covid 19, but the cause was also politically motivated. He elaborated this as:

*Elisabeth persistently criticized the Harari regional state concerning some constitutional issues within the Hareri provincial State, which would be the leading cause of her detention. Currently, Elisabeth flees the country and lives in Uganda.*²¹³

Similarly, Yayesew Shemelis, a journalist in Ethiopia, was detained for what he stated on Facebook with the anticipation of COVID-19 danger, saying: "the Ethiopian government ordered the reading of 200,000 burial places."²¹⁴ Although he apologized and removed it from his Facebook page, as his lawyer, Mr. Kebed, stated, "he has been detained for an extended period without regard to the court order of bail, and his charges were changed for hate speech Proclamation and designated for 20 December 2021."²¹⁵ According to Mr. Kebed what happened to Yayesew does not happen to anyone with similar posts. "This is the indication of the intended goal" When we see these two cases, it is possible to argue that the State of the emergency proclamation can be abused by the law enforcement agencies to use Covid-19 as a weapon to keep silent human rights activists and journalists.

²¹¹ Elisabeth Kebede vs. Harari Regional State General Attorney file no. 19978

²¹² Association for human rights in Ethiopia, The Impact of COVID-19 on Human Rights in Ethiopia Published June (2021) 34.

²¹³ Interview with EHRDC staff, May 2021.

²¹⁴ Mahlet Fasil, 'Police Vague about Journalist Yayesew Shimelis as CPJ Calls for his Release'

<https://addisstandard.com/news-police-vague-about-journalist-yayesew-shimelis-as-cpj-calls-for-his-release/>, Addis Standard, April 2020 cited on Association for human rights.

²¹⁵ Interview with Mr. Kebed, (anonymous name used) Lawyer, (The case is currently active) April 2021

4.4 Arbitrary arrest and inhuman treatment

As we have seen elsewhere, in chapter three the regulation empowers the Executive with more additional power. During the first outbreak of the Covid-19, the attorney general was released around 4000 prisoners to limit the diffusion of the Covid-19. However, later on, as the statement of the Attorney General law enforcement division indicates, more than 200,000 people were arrested for a minor violation of the Covid-19 regulation since the enforcement of the covid-19 regulation.²¹⁶ When we compare these numbers with the number of people released there is a huge gap. As my informants from the attorney general stated, later on, the arrested people were released, and the focus of the law enforcement agency more turned to business organizations, who failed to obey Covid-19 regulation and directives. Furthermore, The Regulation's authorization of the use of force has paved the way for the law enforcement agencies to violate the human rights of individuals. security forces beating people who failed comply. As the researcher observed In different parts of Addis Ababa, security forces beating those who do not wear masks and forcing groups of people to go down on their knees in the street. This caused people to suffer physical and psychological maltreatment in the way it violated their human rights.

Additionally, mass arrests were carried out as part of an operation to enforce the measures. The detained individuals were also not separated and tested for Covid-19. With this regard, the Attorney General, the head of civil and different criminal matters law enforcement division, Mr. Bereket Mamo stated as follows:

*There was lack of uniformity with law enforcement agencies, and there was a misunderstanding of the measure taken by the government in combating Covid-19. Most law enforcement bodies, especially police, misunderstood the purpose of the State of emergency regulation, and later different awareness was given for them, and some changes have been seen.*²¹⁷

²¹⁶ Interview made with Bereket Mamo, Attorney General the head of civil and different criminal matters law enforcement division June 2021

²¹⁷ Ibid

4.5 The impact of discriminatory measures on Gender-Based violence and political participation

As discussed in chapter three, the measures imposed by the SoE regulation were discriminatory, and this also can be seen from the practice. In Addis Ababa, the other core impact of Covid-19 was its contribution to the increased gender-based violence and child abuse. Addis Ababa City Women's, Children's and Youths' Affairs Office noted that violence against children and women was alarming during the emergency period.²¹⁸ Data from a few Addis Abeba hospitals revealed that more than 100 girls were raped between mid-March and May 2020, some by close family members.²¹⁹ Similarly, fifty women were exposed to domestic violence.²²⁰ The situation also forced the Association for Women Sanctuary and Development to provide alternative shelter for victims of women and children vulnerable to domestic violence for the span of the SoE.²²¹ However, the two experts I interviewed in the general attorney do not agree with the assertion that gender-based violence is increased because of the Covid-19. They argued that when we compare the case report before the outbreak of Covid-19 and after the outbreak, it does not show many differences. Despite this, one of my interviewees, from CEHRO stated that gender-based violence is underreported. According to my informant, "many victims hide due to a lack of awareness, an insufficient justice system, fear of social outcast, and a reluctance of the justice system to address gender-based violence."²²²

Based on all these arguments and facts, it can be argued that there is increasing gender-based violence with underreported cases. Furthermore, pandemics caused stigma and increased discrimination as per the observation of the researcher. Initially, it was common to see social

²¹⁸ Walta, በ2 ወር ውስጥ 101 ሕጻናት ተደፍረዋል! ከኮሮና ቫይረስ መከሰት በኋላ በ2 ወራት ውስጥ በርካታ ህፃናት ጥቃት ደርሶባቸዋል'- ወ/ሮ አልማዝ አብርሃም ዩኒቨርሲቲ ሴቶችና ህፃናት ጉዳይ ቢሮ ኃላፊ: (በ51%), <https://www.youtube.com/watch?app=desktop&v=o9qmnHNDzZo> accessed from YouTube May 2021

²¹⁹ Kalkidan Yibeltal, 'Child abuse rises in Ethiopia with COVID-19 restrictions, BBC News, Addis Ababa, June 2020; p. 8, as cited on Association for human rights in Ethiopia (n218)

²²⁰ Ibid

²²¹ Women Kind World Wide, 'COVID-19 and Women's Rights in Ethiopia' July 2020 accessed from, <https://www.womankind.org.uk/covid-19-and-womens-rights-in-ethiopia/> accessed 17 November 2020

²²² Interview with anonymous informants from CEHRO May 2021

stigmatization and discrimination against people infected with the virus, and quarantined their families and those who stayed in quarantine centers.

The other challenge was the discriminatory measures taken against political parties who campaign for the election and who want to held meetings. As I discussed in chapter three, both the SoE regulation and post-state of emergency directives prohibits public gatherings and limit the right to assembly. This prohibition further showed in practice in a more discriminatory way. As the interview with anonymous political party lawyers revealed, the law enforcement agencies were allowed some government-sponsored rallies and, in contrast, barred other political parties from holding rallies and campaigns freely. Mr. Bereket from Attorney General also agrees with the above assertion, and he stated that during the first months of the SoE period different complaints were heard from political parties. On the other hand, in some cases, Covid-19 was used as a cover for unlawful detention. As an interview made with one political party lawyer revealed, Law enforcement agencies were quarantined political parties members to limit their movements just without any symptoms of Covid-19.

4.6 Impact on socio-economic rights

As Koch stated, human rights are interdependent and indivisible. Meaning the violation of one right has a spill over effect on the other rights.²²³ The case of Covid-19, specifically in Addis Ababa, shows this interrelationship between human rights. Both the pandemic and the countering measures have impacted on the human rights of Addis Ababa inhabitants by limiting the public's access to other health services, which further affects the right to health. As it can be observed from most health institutions were mainly mobilized towards responding to Covid-19. There was a temporary suspension of treating patients with other problems and health care institutions have been giving priority to Covid-19 patients. As a result of this, other health services such as family planning were affected.²²⁴ As UNICEF Ethiopia reported, the pandemic outbreak also disrupted

²²³ Ida Elisabeth Koch, 'Economic, Social and Cultural Rights as Components in Civil and Political Rights: A Hermeneutic Perspective' 10(4) The International Journal of Human Rights (2006) 405, 407. Cited on AHRE

²²⁴ Interview made with Dr. Daniel Alemayehu March 2021

and delayed the measles and polio campaigns scheduled for March/April 2020. Children's vaccinations were delayed, exposing them to contagions.²²⁵

The right to Education in Addis Ababa has also been affected by the Covid-19 pandemic and restricting measures.²²⁶ The closure of the schools had also affected the delivery of education as well as access to food and sanitary items. Addis Ababa City Administration Education Bureau had introduced a school feeding program for all primary government schools for students estimated at 564,722.²²⁷ The disruption of school feeding programs not only affected children's access to food but also aggravated the household poverty situation.²²⁸ In the same vein, the closure of schools had caused a significant impact on female students who depended on menstrual hygiene interventions through schools.²²⁹

Furthermore, the pandemic's onset and subsequent response efforts harmed the low-income portion of the population in the capital. People who made a living from such modest businesses were on the verge of starvation because it was illegal to conduct business on the roadway. In this regard, the situation of Workinesh and Banchiyalem is a good example these two women are lives and feed their family based on small business and because of Covid-19 they failed to run their business, and there is no any measure legally taken which consider the situation of these people.²³⁰ UNICEF has also documented the case of Woinshet Fanta who lives in a cramped single room with her four children in the shadow of Addis Ababa's old train station was unable to carry out her roadside work. She faced a shortage of food as a result of loss of income and was supported by her neighbours.²³¹

²²⁵ UNICEF Ethiopia, Socio-economic impacts of COVID-19 Update - 14th May 2020 p. 2

²²⁶ Association for human rights in Ethiopia, The Impact of COVID-19 on Human Rights in Ethiopia Published June (2021) 34.

²²⁷ UNICEF Ethiopia, (n231) 4.

²²⁸ Plan International, 'under siege impact of COVID-19 on girls in Africa' June 2020 p. 15

²²⁹ Alessandra Cancedda et al, 'Mitigating the socio-economic impacts of Covid-19 in Ethiopia, with a focus on vulnerable groups' UNICEF August 2020 p. 10; UNICEF Ethiopia (2017), 'Menstrual Hygiene in Ethiopia – the Importance of Including Boys in the Discussion.'

²³⁰ Interview with program director of Agar Ethiopia, May 2020

²³¹ Unicef Ethiopia, 'in Ethiopia, protecting vulnerable families becomes more urgent as Covid-19 takes its

Chapter five

Conclusion and Findings

Conclusion

Once a state becomes a member of an international human rights treaty, it is obligated to uphold certain obligations, primarily to respect, protect, and promote the fundamental rights and freedoms enshrined in such treaties. However, states parties' unwillingness or inability to effectively discharge their respective international obligations has posed an obstacle to the international human rights system. This problem is exacerbated when those states parties are faced with circumstances that require them to declare SoE and suspend some of their international obligations.

To counter Covid-19's effects, Ethiopia, a country with a dreadful human rights record, declared a national SoE and suspended a large number of human rights and freedoms. The paper examined Ethiopia's SoE decrees and measures in light of internationally recognized principles and requirements. Ethiopia used a command strategy in response to Covid-19. Rather than being based on the realities of people's lives and aimed at removing the barriers that prevent people from protecting themselves and their communities, the response was more restrictive, introducing prohibitions and imposing duties. People were subjected to human rights violations and socio-economic crises as a result of this approach. This is true without undermining the efforts made by governmental institutions and civil societies to provide the public with protective and sanitary equipment, raise awareness about the pandemic, and provide food for the needy in the early stages of the pandemic.

Public emergencies, such as the Covid-19 pandemic present a practical challenge, resulting in human rights violations and affecting society's life. Nonetheless, the situation has changed with the declaration of a SoE for five months. The emergency measures imposed restrictions, prohibitions, and duties, the violation of which resulted in criminal liability. As a result, people were subjected to various forms of harassment by law enforcement agents during the implementation of the measures. People were also denied the right to enforce their rights and claims in a court of law; their movement and freedom of expression were severely restricted;

economic toll' <https://www.unicef.org/ethiopia/stories/ethiopia-protecting-vulnerable-families-becomes-more-urgent-covid-19-takes-its-economic> accessed 14 November 2020

prisoners were denied visitation by family members and detained for an extended period without being charged or granted bail. Most measures taken by the government were not justifiable and proportional. The measures were affected most civil and political rights, the right to privacy, non-discrimination, free trial, visitation of prisoners, freedom of expression, freedom of assembly are among the rights disproportionately affected. The measures were also not considered human rights principles, such as the principle of legality, necessity, proportionality and parliamentary oversight. Furthermore, the Covid-19 outbreak and the restrictive counter-emergency measures implemented had an impact on Ethiopia's health, welfare, and social cohesion. The state understanding of the SoE was similar to that of the past two states of emergency proclamations. However, the State should take into account the impact of the pandemic on society, and all measures should follow a human rights approach.

Findings

As it has been mentioned elsewhere, the understanding of the State of emergency during public health crises and some other constitutional disorder shall be seen differently. The State of emergency declared in Ethiopia to combat the Covid-19 pandemic showed major legal, institutional, and practical gaps, and the following are findings of the research:

First, the State used the State of emergency legislation to derogate from derogable rights in a manner that is contrary to derogation criteria.

Second, the State didn't make sure that emergency measures are situation-specific. Certain exigencies, such as Covid-19, can be better controlled and countered using a Human Rights-Based approach rather than a command approach. The crises could be more solved through providing socio-economic rights rather than an excessive limitation to civil and political rights.

Thirdly, the State didn't observe the basic principles of proportionality, necessity, non-discrimination, legislative oversight, legality, and non-retroactivity in the application and implementation of State of emergency laws.

Fourthly, the State didn't strengthen its regular law enforcement mechanisms, and all government institutions should take their responsibility in combating such pandemics rather than relying on law enforcement bodies such as the police.

Fifth, the government didn't adopt the principle of reciprocity as a necessary condition of legitimizing justified public health restrictions of individuals, since the state obligations to protect its populations is extended to Covid-19 quarantined individuals.

The regular government institutions didn't strengthen in a way to deal with such pandemic and the power given to security forces is unlimited. The solution is no use of force but increasing the provision of socio-economic rights.

In general, rather than relying solely on restrictive and punitive measures in response to pandemics like Covid-19, the State should adopt a human rights-based approach in the future. It should ensure that human rights such as the right to health, equality, and non-discrimination are respected, as well as refrain from restricting freedom of speech and the free flow of information, both of which are necessary for providing timely and accurate information and guidance. Rather than relying solely on security forces, it should promote kindness, solidarity, and a caring ethic. Because the pandemic violates socio-economic rights, the government should establish an emergency funding system to assist those who have lost their livelihood as a result of the pandemic, as well as provide special treatment and attention to marginalized groups, rather than prohibiting only civil and political rights. In addition, the government should create a special response system for gender-based violence and child abuse, which are linked to the pandemic and the measure.

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Interview with Mr. Habte Ficahala the head of the federal Supreme Court registrar April 2021

Interview with Tesfaye Dhaba April 2021

Annexes

Key Informant Interview Guide Questions

Dear/ Sir/ Madam; Respondent,

My name is Befekadu Dereba, I am a student of international human rights law at Addis Ababa University (AAU) post Graduate program.

First of all, I would like to say thank you, for your kind cooperation to give your honest and accurate response. Currently, I am working on my master's degree thesis in International human rights law. This interview questionnaire is prepared for my research entitled "The Protection of human rights in times of public emergencies: a case analysis of Covid-19 in Addis Ababa" used for partial fulfillment of the requirement of the degree of master of Law. This research aims to investigate and analyze the human rights implication and impact of the measure that Ethiopia has taken to respond to Covid-19.

Voluntary Participation: Taking part in the interview is voluntary. You do not have to participate in the survey if you do not want to. If you do not want to participate, you will not be negatively affected in any way. It is purely academic research.

Confidentiality: I would like to assure you that, this questionnaire will be used only for academic purposes and the information you provide will be kept confidential. I will not share any information about you or anything you tell me with anyone.

Interview Timeframe and Procedure: The interview will take about half an hour.

Contact Information: If you have any questions about this research study in the future, please contact me using the following contact information:

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Thank you!

Questions for government officials and policymakers

1. What is your perception of the state of emergency Declared by Ethiopia to counter and control Covid-19? How do you see it from a Human rights perspective?
2. How do you see the rights affected by the measures? (the right to access to justice, freedom of expression, detainee rights, socio economic rights....etc.)
3. Is the measure taken by Ethiopia to control the COVID-19 pandemic in conformity with Human Rights standards? If no why?
4. Does Ethiopia observed the international substantive and procedural requirements during a state of emergency declared to Counter and Control the Spread of COVID-19?
5. Does the practice of the Law enforcement responsive measures to address the emergency observe the Human Rights standards?
6. What is the human rights implication of the post-state of emergency directives to Control the Spread of COVID-19?
7. How do you evaluate the overall measures taken by the government from human rights prospective? How many people are criminalized or punished for the violation of the measures? do you think that will achieve the goal?
8. How do you see the Figures of the prisoner's and detainees pre during and post-state of emergency? what the condition of prisoners and detainees looks likes?

9. How many peoples are affected by the measures? If there is any specific case related to individual rights (which are violated) because of COVID-19 measures? (housing, education, food, etc)
10. What new jurisprudences is emerged in relation to the pandemic? Please kindly share your perception
11. The backloads in court (how cases were entertained during the recitation of covid and how it is solved?)
12. How many prisoners are released either on pardon or on bail as appropriate to further reduce the prison population?
13. What are effect of the pandemic on human rights and the positive measures taken?
14. Is there any case reports of domestic violence because of COVID 19?
15. What is the Impacts of the measures on access to information and freedom of expression?
16. How do you evaluate the power granted to law enforcement agencies? Do you think that they are exercising as per the law and international human rights standards? What is the reason behind their measure (the SoE proclamation, Regulation directives, or other motives?)