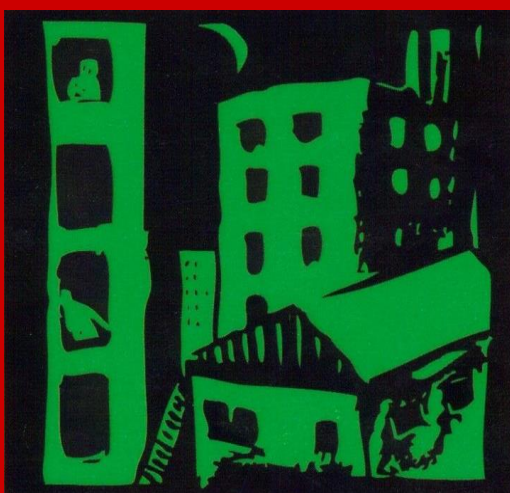
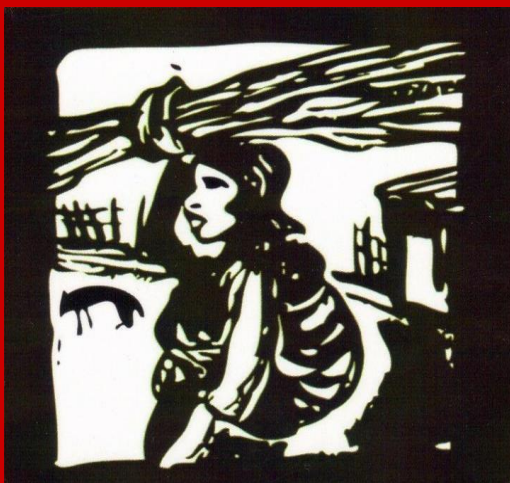


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**“Public health  
emergency  
declarations” in the  
Ethiopian federal  
system:  
understanding the  
scope of state and  
federal emergency  
declarations and  
authorities**

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**ABSTRACT**

*Infectious agents posing a human security threat have been recorded throughout history. Today, COVID-19 poses a serious human security threat in the world, forcing governments to take extraordinary measures. Extraordinary measures, such as declarations of a state of emergency, basically determine the legal and operational resources available to respond to an emergency. Hence, it has implications for governments, the private*

*sector and the general public. The legal authority of the state of emergency declarations during public health crises in federal countries basically relies on the emergency powers vested in the levels of government. Understanding the scope of state and federal emergency declarations and authorities and how they interact is, therefore, an important part of preparing for, and responding to, “public health emergencies”. This article, through a detailed examination of relevant laws and other countries’ experiences, attempts to shed light on the “public health emergency declaration” in Ethiopia with a particular focus on understanding the scope of state and federal emergency declarations and authorities.*

**Keywords:** Public health crisis; public health emergency declaration; public health emergency authorities; constitutional freedoms; human security.

## 1 INTRODUCTION

Emergencies, such as a public health crisis, remain one of the challenges to humankind worldwide. These emergencies lead to loss of lives and disrupt economic, political, and social structures, causing public health problems of national and international concern. The recent outbreak of the novel coronavirus (COVID-19) pandemic can be taken as an important illustration of the case in point. With the huge fatality and death toll it produced, apart from its highly communicable nature, COVID-19 is testing countries’ ability to effectively deal with public health crises.<sup>1</sup> Even at the date of writing this article, COVID-19 stands on the prime list of governments’ agendas, forcing them to mobilise relevant government institutions and to allocate the necessary funds to take prevention and suppression measures. The measures by governments to prevent and suppress such a public health crisis could range from a public health emergency response to the declaration of a state of emergency - in this case a “public health emergency declaration”. When governments declare a state of emergency, the decision basically assumes the nature of determining the legal and operational resources available to respond to an emergency and has implications for everyone within, if not also outside, the jurisdiction of the State.

Although public health emergencies, like the COVID-19 outbreak, provide opportunities for federal and state governments to deploy their public health emergency powers, little has been investigated about how the federal government and regional states have used their authority to declare a public health emergency. On another note, understanding the scope of state and federal emergency authorities and

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<sup>1</sup> Since it first appeared in December 2019 in Wuhan, China, COVID-19 has spread to different countries (to be specific, 213 countries). Ethiopia is one of the 213 countries that registered positive COVID-19 cases since 13 March 2020. At the time of writing this article, the worldwide death toll from the virus has surpassed 2 million and the number of positive cases has surpassed 100 million. See John Hopkins University and Medicine, Corona Virus Resource Center (January 2021) available at <https://coronavirus.jhu.edu/> (accessed 25 January 2021). See also Srivastava N, Baxi P, Ratho RK & Saxena SK “Global trends in epidemiology of corona virus disease 2019 (COVID-19)” in Saxena S (ed) *Coronavirus disease 2019 (COVID-19)* Singapore: Springer Nature (2020) at 9-23.

declarations and how they interact is an important part of preparing for, and responding to, public health emergencies. Such understanding will help the public to scrutinise the responsibilities of the government in the way it handles public health crises with regard to constitutionally protected rights, among other things. Moreover, ensuring that all tiers of government are duly prepared for such events both legally and operationally should be an important task of any government assessment.

As of 13 March 2020, Ethiopia became one of the countries that registered COVID-19 cases.<sup>2</sup> Since then the country has recorded several cases and deaths. Currently, Ethiopia has reported more than 345 000 cases and more than 5 000 deaths, putting the country among the five most affected in Africa.<sup>3</sup> At the time of writing this article, all regions of the country were affected by COVID19 at different magnitudes.<sup>4</sup> Since the news of Ethiopia’s first case of COVID-19 on March 13, the country has implemented a variety of public health and social measures to control the pandemic. Among the measures was the declaration of a national state of emergency on April 8 when the country banned public gatherings and other social activities for five months of the state of emergency.<sup>5</sup>

This article, therefore, presents a systematic examination of the Ethiopian federal and state public health emergency authorities and declarations in the light of pertinent laws of the country. With that, an attempt was made to make sense of the scope of Ethiopia’s federal and state public health emergency authorities and declarations in the light of some other federal countries’ experience.

## **2 CONCEPTUAL CLARIFICATIONS**

A state of emergency declaration, in general, is a strategic announcement that permits a government to take extraordinary legal action, to the extent necessary to avert the conditions that required the extraordinary legal action, for the safety and protection of citizens.<sup>6</sup> Though the procedure for, and legality of, doing so vary from country to

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<sup>2</sup> See Zikargaa MH *COVID-19 in Ethiopia: Assessment of How the Ethiopian Government has Executed Administrative Actions and Managed Risk Communications and Community Engagement* (August 2020) available at <https://doi.org/10.2147/RMHP.S278234> (accessed 17 November 2021).

<sup>3</sup> As at 14 August 2021, more than 183 thousand deaths and more 7.3 million confirmed COVID-19 cases have been reported from Africa, with the majority of cases in South Africa, Morocco, Tunisia, Ethiopia and Egypt. For a further reference and discussion see, Worldometer (October 2021) available at <https://www.worldometers.info/coronavirus/country/ethiopia> (accessed 01 October 2021).

<sup>4</sup> See generally Zikargaa (2020).

<sup>5</sup> See Fana Broadcasting Corporate (FBC) “Ethiopia Declares 5-Month State Of Emergency Over COVID19” (2020) available at <https://www.fanabc.com/english/ethiopia-declares-state-of-emergency-over-covid19/> (accessed 01 October 2021).

<sup>6</sup> While the focus of this article is about a state of emergency declaration during a public health crisis, such as, a consequence of a natural disaster or an epidemic, a state of emergency may also be triggered as a consequence of political turmoil in order to protect the country’s peace and sovereignty. See the

country, emergency powers largely stand outside of the ordinary structures of checks and balances in a government system. That is the case because emergency powers usually suspend the normal due process on the grounds that the situation is exigent, the anticipated or potential harm would be calamitous, and the harm cannot be avoided through ordinary procedures.<sup>7</sup> In other words, it usually suspends a few normal functions of the three branches of government, requires citizens to change their normal behaviour, and/or order government agencies to implement emergency preparedness plans. Therefore, when a state of emergency is declared due to a public health crisis, for instance, the presumption is that, in such circumstances, the concern for public health has outweighed substantial trade-offs of values citizens ordinarily hold, including individual freedoms, property rights, due process, and so on.<sup>8</sup>

The power to “declare a public health emergency” and to exercise authority thereunder is in most federal countries vested in different tiers of government.<sup>9</sup> Such declaration generally allows governments a sort of flexibility in responding to emergency situations, when adherence to ordinary legal standards and processes could cost lives.<sup>10</sup> It may also be a preventative step by governments to ensure that all government resources are ready to respond and deploy at a moment’s notice. It also can

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International Covenant on Civil and Political Rights (ICCPR), Article 4 United Nations General Assembly Resolution 2200A (XXI) (16 December 1966).

<sup>7</sup> See Bjornskov C & Voigt S “The architecture of emergency constitutions” (2016) 16(1) *International Journal of Constitutional Law* at 101-127.

<sup>8</sup> However, given the vast discretion emergency powers grant to government officials (namely, a power to enact legislation that could suspend basic constitutional rights ; the indefinite period for which emergency declarations could be extended; as well as a lack of clear triggering thresholds for terminating emergency powers) some application of emergency power can be seen raising heightened concerns among scholars: an instrumental concern about the overuse of emergency powers. In the attempt to minimise this concern, Special Rapporteurs to the United Nations have recommended to the international community to adopt important principles to be observed during a state of emergency or de facto emergency: such as, Principles of Legality, Proclamation, Notification, Time Limitation, Exceptional Threat, Proportionality, Non-Discrimination, Compatibility, Concordance and Complementarity of the Various Norms of International Law. Within the framework of the ICCPR a state of emergency must be publicly declared and the Secretary-General of the United Nations must be contacted immediately to notify the reason for the emergency, the date on which the emergency is to start, the derogations that may take place, the timeframe of the emergency, and the date on which the emergency is expected to end. See “Question of Human Rights and State of Emergency” E/CN.4/Sub.2/1997/19 available at [http://www.gutenberg.cc/articles/eng/State\\_of\\_emergency](http://www.gutenberg.cc/articles/eng/State_of_emergency) (accessed 20 December 2020); see also Art 4(3) of the ICCPR.

<sup>9</sup> In most states of the United States of America (USA), the power to declare an emergency at state level lies with the governor, while in some states, both governors and local officials, like mayors, have the authority to make such a declaration at state level. See also Emergency Authority & Immunity Toolkit (2018) available at <https://astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Emergency-Declarations-and-Authorities-Fact-Sheet/> (accessed 22 December 2020).

<sup>10</sup> See Stafford Act, as Amended, and Related Authorities, FEMA P-592 (2019) available at [https://www.fema.gov/sites/default/files/2020-03/stafford-act\\_2019.pdf](https://www.fema.gov/sites/default/files/2020-03/stafford-act_2019.pdf) (accessed 20 December 2020).

help governments get reimbursed for money they spend on preparedness from the state and federal government, and it authorises leaders to use funds to deploy additional personnel, buy equipment, and prepare stockpiles.<sup>11</sup> In general, such declaration allows governments to further mobilise all available resources or harness resources in response to the threat to public health.

In addition to the above, states in a federal context “declare a public health emergency” in order to give them a chance to receive emergency federal funding to battle the outbreak.<sup>12</sup> States could also declare a state of emergency because sometimes states need to lead the national response.<sup>13</sup> The declaration will give a chance to state governments to free up funds to use to handle the outbreak. In such cases, legislation is also usually designed in such a way that it includes provisions meant to protect consumers from price gouging and allows for out-of-state healthcare workers to assist facilities at the frontlines of the outbreak.<sup>14</sup> In certain contexts, emergency power laws may also serve to send a signal to legislatures that a problem urgently requires attention. In general, a “public health emergency declaration” allows states to make sure that they have the authority and resources necessary to mitigate and ultimately contain an outbreak. In other words, by declaring a state of emergency, governments will get a chance to mobilise all available resources in order to effectively prevent a public health crisis.

### **3 METHODOLOGY**

The study employed a doctrinal research methodology. Descriptive and detailed analyses of legal rules found in primary sources were formulated in the attempt to make sense of the scope of the Ethiopian federal and state “public health emergency declarations” and authorities.

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<sup>11</sup> See Stafford Act (May 2019) .

<sup>12</sup> See art 402 of the Robert T Stafford Disaster Relief and Emergency Assistance Act, PL 100-707 of 1988, 42 USC 5170a. See also Federal Emergency Management Agency /FEMA disaster declarations summary -open government dataset/ (2021) available online at <https://www.fema.gov/media-library/assets/documents/28318> (accessed 22 December 2020).

<sup>13</sup> See art 402 of the Robert T Stafford Disaster Relief and Emergency Assistance Act, PL 100-707 of 1988, 42 USC 5170a. See also Federal Emergency Management Agency /FEMA disaster declarations summary -open government dataset/ (2021) available at <https://www.fema.gov/media-library/assets/documents/28318> (accessed 22 December 2020).

<sup>14</sup> For a further reference see State of emergency declarations in USA (2020) available at <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (accessed 26 December 2020).

## 4 “PUBLIC HEALTH EMERGENCY DECLARATIONS” AND AUTHORITIES IN ETHIOPIA

### 4.1 Situating the context: “public health emergency declaration” due to COVID-19

On 8 April 2020, the Ethiopian government declared a nationwide “public health state of emergency” by invoking Article 93 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) to help deal with the novel coronavirus (COVID-19)<sup>15</sup> pandemic in the country. The state of emergency was recorded as the latest national state of emergency announced in the country since 2018 and was the first of its nature since the coming into force of the 1995 FDRE Constitution.<sup>16</sup> Measures that were taken to stem the virus, among others, included closing schools, banning public gatherings, freeing thousands of prisoners to ease overcrowding, and requiring most employees to work from home.<sup>17</sup> The Ethiopian government, however, has refrained from imposing a total lockdown similar to those in effect elsewhere in some parts of the world and in the region.<sup>18</sup>

It was, however, before the declaration of the national state of emergency that regions like Tigray, Oromia, Amhara, and the Southern Nations, Nationalities, and Peoples imposed some restrictions on citizens’ rights, including a ban on public transportation.<sup>19</sup> On top of that, the Tigray National Regional State had declared a state

<sup>15</sup> Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, State of Emergency Proclamation No 3/2020: 26<sup>th</sup> Year No 35 Addis Ababa, 8 April 2020.

<sup>16</sup> While there were numerous national state of emergency declarations in contemporary Ethiopia (after the coming into force of the 1995 FDRE Constitution), none of them, however, have been declared due to a “public health emergency” in the country, except for the April 2020 state of emergency declaration.

<sup>17</sup> See Federal Negarit Gazette, State of Emergency Proclamation No 3/2020 Implementation Regulation, No 466/2020, 26<sup>th</sup> Year, No 35; see also Ethiopia to release thousands of prisoners to limit coronavirus spread, Business Standard (25 March 2020) available at [https://www.business-standard.com/article/pti-stories/ethiopia-to-release-thousands-of-prisoners-to-limit-coronavirus-spread-120032501203\\_1.html](https://www.business-standard.com/article/pti-stories/ethiopia-to-release-thousands-of-prisoners-to-limit-coronavirus-spread-120032501203_1.html) (accessed 26 December 2020).

<sup>18</sup> In addressing the nation about the state of emergency in a televised speech, Prime Minister Abiy Ahmed had said that a harsher lockdown would be unrealistic given that there are “many citizens who don’t have homes” and “even those who have homes have to make ends meet daily.” See Ethiopia declares state of emergency to fight coronavirus. (8 April 2020) at <https://www.aljazeera.com/news/2020/4/8/ethiopia-declares-state-of-emergency-to-fight-coronavirus> (accessed 26 December 2020).

<sup>19</sup> The FDRE Constitution provides for the establishment of two orders of government structured at federal and state levels. Further, as per the federal constitutional arrangement, each regional state (the constituent unit of the Federation) has the power to enact and execute the State Constitution and other laws, but without contradicting the supreme law of the land (the Federal Constitution). Accordingly, each of the regional states can use its constitution, among others, to design and adopt legislation fitting to its circumstances. Regional governments imposing some restrictions on citizens’ rights is, therefore, something to be viewed within this context. See further about power division in the Federal Democratic Republic of Ethiopia, Ayele Z A “The politics of sub-national constitutions and local government in Ethiopia” (2014) 6 (2)

of emergency on 25 March 2020, banning all travel within the region and closing its border.<sup>20</sup> The statewide state of emergency declaration in Tigray had also banned social activities, such as, weddings and festivities with large gatherings, among others.<sup>21</sup>

That said, in Ethiopia, just like many other federal countries, both the federal government and state governments are empowered to declare a state of emergency on public health emergency related matters.<sup>22</sup> However, the power to establish and implement national standards and basic policy criteria for public health is exclusively vested in the federal government.<sup>23</sup> The Part to follow is, therefore, devoted to a discussion of “public health emergency declarations” and authorities in the two tiers of governments in the Ethiopian federal system.

## **4.2 Understanding “public health emergency declarations” and authorities in the Ethiopian federal system**

### *4.2.1 Federal “public health emergency declarations” and authorities*

#### a) Authorities without an emergency declaration

Federal officials have designated powers that allow them to respond to public health emergencies even without a formal federal emergency declaration. This power is designated by virtue of statutory authorities from the country’s law making body.<sup>24</sup> In this regard, in the Ethiopian federal system, the Public Health Proclamation (Proclamation No 200/2000) appears as the main legislative framework at the federal level for the prevention and stopping the spread of dangerous infectious diseases in Ethiopia. The Proclamation empowers the Ministry of Health to take public health emergency measures in times of public health crises which includes the power to “restrict movements to certain countries, or to the areas where there is an epidemic, or to close schools or recreational areas, or to remove workers with communicable diseases from their working places, and to take other similar measures whenever an

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*Perspectives on Federalism* 89. See also Ethiopia coronavirus: Key updates between 16 March and 16 May 2020 *African News* (March 2020) available at <https://www.africanews.com/2020/05/19/ethiopia-s-coronavirus-rules-crowd-ban-free-transport-regulate-essentials-etc/> (accessed 25 December 2020).

<sup>20</sup> GardaWorld “Ethiopia: State of emergency declared in Tigray region” 26 March (March 2020) available at <https://www.garda.com/crisis24/news-alerts/326976/ethiopia-state-of-emergency-declared-in-tigray-region-march-26-update-5> (accessed 26 December 2020).

<sup>21</sup> See generally GardaWorld (2020).

<sup>22</sup> See art 93 of the 1995 FDRE Constitution.

<sup>23</sup> See art 51(3) of the 1995 FDRE Constitution.

<sup>24</sup> In the USA, for instance, there are many other laws that permit the executive branch to take extraordinary action under specified conditions regardless of whether a national emergency has been declared. See The Atlantic “The Alarming Scope of the President’s Emergency Powers” (January/February 2019 issue) available at <https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418/> (accessed 27 December 2020).

epidemic occurs”.<sup>25</sup> The Proclamation further provides that the prevention and control of communicable disease shall be regulated by regulations to be issued in accordance with the Proclamation. Thus, the Health Ministry together with other bodies to be established thereunder has broad authority to respond to a public health crisis; an authority which is short of a formal “federal public health emergency declaration”.

b) Authority to “declare public health emergencies”

The legal authority of the Ethiopian federal government to take extraordinary measures – a “public health emergency declaration” - during public health crises is based on the emergency powers of the Council of Ministers and the legislature under the 1995 Constitution. According to the FDRE Constitution, the Ethiopian government is empowered to declare a state of emergency, “should an external invasion, a breakdown of law and order which endangers the Constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur”.<sup>26</sup> Thus, as per article 93 of the Constitution of the FDRE, the federal government is empowered to respond to public health emergencies (should a natural disaster or an epidemic occur) with a federal emergency declaration. This implies that when conditions warrant, there are mechanisms that allow the federal government to “declare a public health state of emergency”, thereby activating authorities and resources that are unavailable in non-emergencies.

An important question to pose here is : what constitutes a public health emergency in Ethiopia? This question appears essential because in most federal countries the federal government’s power to issue a declaration of a public welfare emergency can only be triggered after a relatively high threshold is met.<sup>27</sup> The meeting of the threshold could be examined, among other things, through a provision with a clear definition in that regard. A clear understanding of what constitutes a public health emergency in Ethiopia, however, is not an easy task due to the lack of comprehensive legislation regulating the matter in its totality. But an inference with regard to the subject was made by the Ethiopian Public Health Institute on its website. According to the website of the Ethiopian Public Health Institute, public health emergencies refer to

“events or disasters that threaten the health of communities or groups of people. Some examples are disease outbreaks (emerging & reemerging) and pandemics, natural

<sup>25</sup> Article 17(3) of the 1995 FDRE Constitution.

<sup>26</sup> See art 93(1)(a) of the 1995 FDRE Constitution.

<sup>27</sup> In the Canada Emergencies Act, for instance, “national emergency” is defined as “an urgent and critical situation of a temporary nature” that: “(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”. See art 5 of the Canada Emergencies Act of 1985.



## “PUBLIC HEALTH EMERGENCY DECLARATIONS” IN ETHIOPIA

disasters such as earthquakes, floods, droughts, volcanoes; biological terrorist attacks such as an anthrax release, and chemical spills”.<sup>28</sup>

How far this definition serves as a standard in determining a public health emergency at the federal level, however, is not clear given the non-official nature of the definition. Such lack of clarity in definition would widen the subjectivity involved in determining the issue, risking the strict observance of the “high threshold” requirement. However, save for the subjectivity involved thereunder, one thing is clear - that the federal government, among other responsibilities, is tasked with responding to public health emergencies as per the Constitution of the FDRE. Accordingly, the Constitution empowers the federal government to invoke exceptional, yet incident specific, powers (as in an epidemic) to deal with emergencies. While an emergency declaration is in effect, the federal government (the Council of Ministers) is vested with the power to issue orders and regulations on matters which are necessary to protect the country’s peace and sovereignty, which may include suspension of some political and democratic rights.<sup>29</sup> The details of the powers thereunder, however, are neither predetermined nor indicated; it rather seems to leave it to the orders and regulations to be issued thereunder to specify the details.<sup>30</sup> The Constitution also says that legislators need to

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<sup>28</sup> Ethiopian Public Health Institute “Public Health Emergency” available at <https://www.ephi.gov.et/index.php/public-health-emergency> (accessed 2 January 2021). Similarly, the USA National Disaster Medical System defines a public health emergency as “an emergency need for health care services to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event”. Available at <https://www.jcs.mil/Portals/36/Documents/Doctrine/Interorganizational Documents/dhs moa diaster med system2005.pdf> (accessed 27 December 2020). According to the Model State Health Emergency Powers Act, as drafted by the Centers for Disease Control and Prevention (CDC), a public health emergency is “an occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or a novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents or permanent or long-term disability”. In other words, public health emergencies pose a larger risk of harm to the health of a population, most times because the nature of the incident itself has the ability to overwhelm existing healthcare and emergency response resources. See Draft Model State Emergency Health Powers Act. Released for Consideration by States (2001) available at <https://www.law.uh.edu/healthlaw/perspectives/PublicHealth/011128Draft.html> (accessed 27 December 2020).

<sup>29</sup> See art 93(4)(a)(b) of the FDRE Constitution.

<sup>30</sup> In this regard, some federal countries enact specific emergency Acts at both tiers of government thereby specifically enumerating the list of activities to be accomplished by the levels of government in those emergency situations. The Quarantine Act in Canada, for instance, “authorizes the Minister of Health to establish quarantine stations and quarantine facilities anywhere in Canada, and to designate various officers, including quarantine officers, environmental health officers, and screening officers”. The Act also “authorizes measures that can be taken in respect of international travellers, or other persons at an entry or departure point, who have or might have a communicable disease (one that poses a risk of significant harm to public health)”. The Emergency Act, on the other hand, empowers the federal government to issue orders and regulations on matters like (a) the regulation or prohibition of travel to, from or within any specified

approve a state of emergency, which can last for six months and be extended every four months after that.<sup>31</sup> Here again, the FDRE Constitution neither has a clear triggering threshold for terminating emergency powers nor has a limitation on the number of times the “public health state of emergency” could be extended, making the argument of an “overuse of emergency powers” a conceivable one.

### c) Actions and authorities triggered by federal emergency declarations

In many federal countries, it is a common practice to clearly provide what actions and authorities would be triggered as a result of “federal public health emergency declarations”. Such actions and authorities usually happen to be extraordinary measures that may not be invoked in the normal course of things. It is, however, important to take note that, by declaring a national or statewide public health emergency; neither tier of governments can grant themselves any new power which is not vested in them by the Constitution.<sup>32</sup> The emergency declaration rather allows governments to unlock those powers that normally lie inactive under normal conditions. Accordingly, in the United States of America, for instance, a national “public health emergency declaration” enables the federal government to release resources that are meant to handle an actual or potential public health crisis (thus, can offer financial assistance to both states and individuals).<sup>33</sup> Congress can also enact laws regulating persons entering the country or traveling across states.<sup>34</sup>

When it comes to the Ethiopian context, as is known the power of the federal government is of “enumerated powers”.<sup>35</sup> An inference from this principle of

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area, where necessary for the protection of the health or safety of individuals; (b) the evacuation of persons and the removal of personal property from any specified area and the making of arrangements for the adequate care and protection of the persons and property; (c) the requisition, use or disposition of property, and so on. Similar Acts also can be found in other countries, including, Nigeria, India, and the USA, among others. Such specific Acts are not put in place in the Ethiopian context. However, as implied in the discussion, the Public Health Proclamation (Proclamation No 200/2000) has a part that indicates measures that could be taken by the Ministry of Health in times of a public health crisis, like the occurrence of an epidemic. See List of Acts and Regulations, the Public Health Agency of Canada (PHAC) (2021) available at <http://www.phac-aspc.gc.ca/aboutapropos/act-reg-lois/list-liste-eng.php> (accessed 2 January 2020). Also see generally the Public Health Proclamation.

<sup>31</sup> See art 93(2) of the FDRE Constitution.

<sup>32</sup> In line with that, the US Supreme Court in the case of *Wilson v New* 243 US 332, 348 (1917) has been quoted as stating: “an emergency may not call into life a power which has never lived”, but “an emergency may afford a reason for the exertion of a living power already enjoyed”. See Akin Gump “COVID-19: emergency powers and constitutional limits” 23 March 2020 available at <https://www.akingump.com/a/web/pJrEkNCsxgYkf36Wjh8h1r/bvvdS/supreme-court-and-appellate-alert-covid-19-emergency-powers-and-constitutional-limits.pdf> (accessed 2 January 2021).

<sup>33</sup> See Akin Gump (2020).

<sup>34</sup> See Akin Gump (2020).

<sup>35</sup> See arts 51 & 55 of the FDRE Constitution.

“enumerated powers” is that its powers are those specifically enumerated in the Constitution and what federal legislation permits. According to this reading, the federal government, upon “declaring [a] public health emergency” can enact laws that are necessary to avert the conditions that required the declaration of a state of emergency.<sup>36</sup> While it is hardly possible to specifically determine what actions and authorities would be triggered as a result of “federal emergency declarations in Ethiopia”, a general inference can be made that such specificities shall be determined by the necessity required to avert the “declaration of the public health emergency”. Thus, an implied reading can be made, for instance, that as a result of “federal public health emergency declarations”, legal and programmatic responses from federal agencies will be activated.

Among other things, for instance, a public health state of emergency declaration” does give the federal government the authority to enact legislation that would suspend the application of some laws over issues covered under the emergency proclamation and/or regulation.<sup>37</sup> It also gives the government more authority and ability to work in coordination with regional governments, as well as for collaboration between the public and private sectors.<sup>38</sup> It also activates responses like federal assistance to states in the form of financial, personnel, services, logistical, and technical assistance. It also gives a green light to the federal government to activate powers related to border management that can be utilised where there is an epidemic or threat of an epidemic.<sup>39</sup> It is, however, important to note that the collaboration between the federal and regional governments can be facilitated or impeded by-laws at all levels of government. That, it appears, is also

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<sup>36</sup> See art 93(4) of the FDRE Constitution.

<sup>37</sup> In line with that, following the declaration of a state of emergency in April 2020 in the country, for instance, the application of the Criminal Procedure Code and criminal procedural provisions in other laws were suspended. See art 6 (1) State of Emergency Proclamation Implementation Regulation.

<sup>38</sup> See arts 4 & 5 State of Emergency Proclamation Implementation Regulation; see also art 6 of the Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, National Disaster Risk Management Commission Establishment Council of Ministers Regulation, Regulation No 363/2015.

<sup>39</sup> For instance, following the outbreak of COVID-19 in Ethiopia, the Ministry of Health and the Ethiopian Public Health Institute had issued various protocols which were necessary to avert the situation that demanded the emergency. These protocols include: Ministry of Health (MoH) and Ethiopian Public Health Institute (EPHI). Quarantine and Border Control Implementation Guide, COVID-19 Prevention and Control, Addis Ababa, Ethiopia: MoH & EPHI; 2020; MoH & EPHI. Home-Based Isolation and Care, National Implementation Guide for COVID-19: Home-Based Isolation and Care. Addis Ababa, Ethiopia: MoH & EPHI; 2020; MoH & EPHI. Infection Prevention & Control Interim Protocols in Health Caring Centers. COVID-19 Prevention and Control, Addis Ababa, Ethiopia: MoH & EPHI; 2020; MoH & EPHI. Screening and Quarantine of Cross Country Truck Drivers and Other Crews. COVID-19 Prevention and Control, Addis Ababa, Ethiopia: MoH & EPHI; 2020; MoH & EPHI. Protocol for Transporting COVID-19 Patients, COVID-19 Prevention and Control, Addis Ababa, Ethiopia: MoH & EPHI; 2020. See also <https://www.ephi.gov.et/index.php/public-health-emergency/novel-corona-virus-update/guidelines> (accessed 5 January 2021).

why countries, in such cases, usually set up a national coordination centre that oversees the synchronisation of tasks in the attempt to prevent and suppress the outbreak.<sup>40</sup>

#### 4.2.2 State “public health emergency declarations” and authorities

##### a) Authorities without an emergency declaration

Just like federal authorities, state governments have existing powers that help them to address public health emergency situations without formally declaring a state of emergency. These powers emerge by virtue of the statutory authorities granted to their positions by the state law making bodies. Regional Bureaux of Health, depending on the circumstances of an event, are normally empowered to respond to public health crises through some measures until an emergency is declared. Such a necessity arises in cases where a public health problem occurs but which does not meet the statutory definition required to trigger an emergency declaration in the regional state. As such, it appears essential that legal authorities emanating from the respective statutes respond to emergencies without a formal declaration.<sup>41</sup>

##### b) Authority to declare public health emergencies

Protecting the public under their jurisdiction through “public health emergency declarations” is among the power granted to states under the FDRE Constitution. As per article 93(1)(b) of the FDRE Constitution, state governments have been vested with the power to declare a statewide state of emergency “should a natural disaster or an epidemic occur”. The article further stipulates that particulars shall be determined in State Constitutions to be promulgated in conformity with the FDRE Constitution. It follows, therefore, that public health emergency activity at the state level in Ethiopia is governed by the respective State Constitutions. Accordingly, all regional State Constitutions contain provisions that provide an explicit authority to “declare a public

<sup>40</sup> Following the outbreak of Covid-19, the federal government had set up a national preparedness and response coordination mechanism through an Emergency Operation Centre. The set-up of the Centre was meant to strengthen the government’s preparedness and response efforts to combat the public health crisis, COVID-19, through a synergized approach with national and regional task forces. See Risk Management and Health Policy (2020) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7721303/table/t0001/> (accessed 5 January 2021).

<sup>41</sup> The ban on public transportation following the outbreak of COVID-19 by regions like Oromia, Amhara and Southern Nations, Nationalities and Peoples could be taken as an important illustration for the case in point. By closing their borders and prohibiting all non-essential inbound and outbound traffic and travel in their region, the states exercised their authority to respond to a public health crisis but short of formal declaration of a “public health emergency”. The determination of whether circumstances justify or require the declaration of an emergency or can be dealt with by other measures short of formal declaration of a state of emergency depends on conditions set out in state law. This article, therefore, challenges the assertion that such measures should have been employed only under the framework of an emergency declaration. See Ethiopia: Regional authorities ban public transportation as of March 30 /update 6 (March 2020) available at <https://www.garda.com/crisis24/news-alerts/327836/ethiopia-regional-authorities-ban-public-transportation-as-of-march-30-update-6> (accessed 7 January 2021).

health emergency” within their jurisdiction.<sup>42</sup> The reasons for “declaration of [a] public health emergency” shall be supposed to be in resonance with the reasons provided in the FDRE Constitution, namely, an outbreak of an epidemic or on the occurrence of a natural disaster. In a copy of the FDRE Constitution, states stipulated in their respective constitutions that “public health emergency declarations” may last for six months once they are declared, with an option for the declaration to be renewed every four months by the State Council with a two-thirds majority vote.<sup>43</sup>

In general, given the very nature of health related emergencies, responsibility on the matter is, therefore, given to the states. This means that, when conditions warrant it, all states have mechanisms that allow their government to declare a “public health state of emergency” within its jurisdiction.<sup>44</sup> However, what actually constitutes a public health emergency, or the threshold for a “public health emergency declaration”, yet remains a challenge. The lack of statutory provisions to define what amounts to a public

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<sup>42</sup> As per art 49(3)(p) of the Oromia National Regional State Revised Constitution, for instance, the power to declare a state of emergency/“public health emergency declaration” is vested in the state council. A power to declare and enforce a public health emergency is also conferred on the council of the regional government as per art 55(7) of the Oromia National Regional State Revised Constitution but only when the state council is not in session. The same readings can also be made from art 49 (3) (3.15) and art 58 (9) of the Amhara National Regional State Constitution and the Tigray National Regional State Constitution. Furthermore, art 51(3) (3.16) and art 61(9) of the Gambella Peoples’ National Regional State Constitution as well as art 49(3) (3.15) and art 59(9) of the Benishangul Gumuz National Regional State Constitution provide similar stipulations on the matter. Likewise, art 51(2)(n) and art 62(11) of the Revised Constitution of the State of Harari and art 47 (3)(p) and art 56 (7) of the Afar National Regional State Constitution can be read as conferring the power on the state council and in its absence on the regional government council . Somehow a similar approach was adopted under the Somali and SNNP National Regional State Constitutions by art 47 (2) (p) and art 49 (n), respectively. See the Revised Constitution of Oromia National Regional State, Proclamation No 46/2001; the Revised Constitution of the Amhara National Regional State, Proclamation No 59/2001; A Proclamation to Provide for the Approval of the 2001 Revised Constitution of the Tigray Regional State, Proclamation No 45/2001; The Revised Constitution of the Gambella Peoples’ Regional State Proclamation N. 27/2002; The Revised Constitution of Benishangu-Gumuz State, 2002; The Revised Constitution of Harari national Regional State, 2004; A Proclamation to Provide for the Approval of the 2001 Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State, Proclamation No 35/2001; The Revised Constitution of Somali National Regional State of 2002.

<sup>43</sup> See state constitutions.

<sup>44</sup> Another noteworthy issue here is : what will happen if there is a “declaration of public health emergency” by both levels of government, particularly when a contradiction emerges on the measures they adopted to contain the crisis that necessitated the declaration? The FDRE Constitution does not give us clear answers to such question. Hence, it mandates interpretation of the issue (an interpretation that balances two competing interests: protecting fundamental freedoms vs containing the epidemic seems more plausible than just ruling saying that the federal government declaration always prevails over the state declarations). For a further reference see Ayele ZA. Analysis: Covid19 and Federalism in Ethiopia: On Constitutional and Political Implications. (28 March 2020) available at <https://addisstandard.com/analysis-covid19-and-federalism-in-ethiopia-on-constitutional-and-political-implications/> (accessed 07 January 2021).

health emergency has contributed to the challenge.<sup>45</sup> However, it can be said that, at a time when a state government is satisfied that the state or any part of it is threatened with the outbreak of a dangerous disease or the occurrence of a natural disaster, and that ordinary provisions of the law in force at the time are insufficient for the purpose of addressing the outbreak or occurrence, it may declare a statewide “public health emergency declaration”. As such, states can prescribe such temporary decrees as may be necessary to be observed by the public or by any person or class of persons for the prevention of the outbreak or spread of such disease.<sup>46</sup>

With that, it can be said that State Constitutions empower the respective regional governments to deal with a public health crisis through the declaration of an emergency should the situation demand it. In other words, regional governments have powers in their respective jurisdictions that provide the legal basis for establishing public health emergencies and creating provincial/territorial-level emergency management plans to help coordinate a provincial response to an emergency.<sup>47</sup>

c) Actions and authorities triggered by state “public health emergency declarations”

Just as a declaration by the federal government triggers actions and authorities thereunder, a “declaration of a public health emergency” by regional governments also triggers an array of authorities and actions by the regional governments. So, what are the array of authorities and actions that a state “public health emergency declaration” could trigger? An answer for this needs to be sought in accordance with the constitutional power division as envisaged under the FDRE Constitution. As stated in article 52 of the FDRE Constitution, “all powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States”. Further, as stated in article 51(3) of the FDRE Constitution, the federal government’s power with respect to health issues is limited to “establishing and implementing national standards and basic policy criteria for public health”. This means that states generally retain the power to make by-laws for the purpose of protecting the

<sup>45</sup> Such impression would leave room for measures to be taken during public health crises potentially in conflict with the constitutional and legal rights of groups and individuals, such as, those concerning the inviolability of person and home, freedom of movement, the use of property, peaceful assembly, and the ability to conduct business, among others. For that matter, this is a problem that holds true in the federal context also.

<sup>46</sup> Although every regional state has codified its government’s power to “declare a public health emergency” in its constitution, the power has rarely been used. The only notable use of the power was the “public health emergency declaration” by the Tigray National Regional State on 26 March 2020 following the outbreak of COVID-19 in the country. A ban on transport to their regions taken in the following days by three other regional governments (Oromia, Amhara and Southern Nations, Nationalities and Peoples) were just short of formal emergency declarations.

<sup>47</sup> It is worth noting here that a state’s authority to declare an emergency is limited only to events of a natural disaster or an epidemic. In other words, unlike the federal government, regional states lack the power to declare a state-wide emergency due to an external invasion or a breakdown of law and order that endangers the constitutional order. See art 93(1)(b) of the FDRE Constitution.

health, safety, and welfare of their people. That is also the reason why they are empowered by the FDRE Constitution to “declare a statewide public health emergency” should an epidemic or natural disaster occur. In other words, it can be said that the power of state government with respect to a health issue is an inherent power of the state, and can be limited only by the Federal Constitution as provided under article 51(3).

Given that understanding, one can safely deduce that a state government’s “declaration of public health emergency” would empower the state to activate statutes that enable it with flexibility and guidance about response parameters. As such, the state government, for instance, may activate regulatory legislation with the effect of suspending certain constitutional rights as provided under the respective State Constitution.<sup>48</sup> The action of the state legislature is going to be valid in that respect unless it comes into conflict with some provision of either the State Constitution or the Federal Constitution.

The problem, however, relates to the absence of national model legislation that guides states with respect to laws to prepare for, and to respond to, public health emergencies.<sup>49</sup> This will leave room for subjective interpretation that might jeopardise the constitutionally protected rights of individuals/groups. As such, though the Federal Constitution explicitly empowers state governments with the power to “declare [a] statewide public health emergency”, it appears hazy how states have actually used their authority to “declare a public health emergency” and what actions the declaration triggered. A “declaration of public health emergency” by the state could also entail changes to programmatic activities. This authority normally emanates from the very nature of the disaster<sup>50</sup> in a sense that it is presumed to be an extraordinary situation that cannot be controlled by the regular agencies and personnel. Thus, such declarations naturally empower states to take actions, such as, making additional resources

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<sup>48</sup> Lists of non-derogable rights under state constitutions more or less are in resonance with those lists provided under art 93(4)(c) of the FDRE Constitution except that some states provide a wider list of non-derogable rights. See, for instance, The Revised Constitution of the Amhara National Regional State, art 114(4); The Revised Constitution of Oromia National Regional State, art 108 (4); The Revised Constitution of Harari National Regional State, art 76(4).

<sup>49</sup> In the USA, for example, there is an Act which is known as “The Model State Emergency Health Powers Act”. The Model Act was developed in an effort to familiarise states regarding laws to prepare for, and to respond to, public health emergencies. In the following years states’ awareness of the issue increased, leading some states to include a declaration of a “public health emergency” with accompanying public health emergency powers in their laws. See also Gostin LO, Sapsin JW & Teret SP “The Model State Emergency Health Powers Act: planning for and response to bioterrorism and naturally occurring infectious diseases” (2002) 288(5) *JAMA* at 622–628 and Gable L “Evading emergency: strengthening emergency responses through integrated pluralistic governance” (2012) 91(2) *Oregon Law Rev* at 375–456.

<sup>50</sup> The National Disaster Risk Management Commission Establishment Regulation defines “disaster” as “a serious disruption of the functioning of a community causing a wide range of human, material, economic or environmental loss and impact, which is beyond the capacity of the affected community to cope with using its own resources”. See National Disaster Risk Management Commission Establishment Regulation, art 2(1).

available, expanding funds, and deploying personnel, equipment, supplies, and stockpiles, in the attempt to prevent and suppress the outbreak.<sup>51</sup> It also gives them a chance to receive emergency federal funding to battle the outbreak because emergencies are one of the cases where states could receive federal grants from the federal government.<sup>52</sup>

A noteworthy point here is what happens in cases where state of emergency measures announced by the regions contradicts the federal measures? As claimed throughout the article, the mere presence of more than one “public health emergency declaration” does not necessarily raise constitutional issues. It can be read from the FDRE Constitution that both can exist side by side. The issue becomes concerning when there are declarations of “public health emergency” by both governments, but that result in contradictions thereunder. In the context of the COVID-19 pandemic, for instance, the Federal Government declared a state of emergency almost two weeks after the declaration by the Regional Government of Tigray.<sup>53</sup> So the issue would be : what could happen had the state of emergency measure announced by the Federal Government contradicted the measure by the Regional Government of Tigray? In other words, what would happen if one provides stricter measures than the other?

<sup>51</sup> Though a general inference can be made on the issue from the general jurisprudence on the concept of “public health emergency declaration”, absence of a comprehensive law, however, makes difficult an objective determination/assessment of the authorities and actions by a given regional government in the Ethiopian federal system. It is important to note here that, unlike the experience in Ethiopia, many federal countries do have laws/statutes that provide the scope of authority granted to the state official making the emergency declaration (depending on the type of emergency to be declared). See Law Library of Congress (US) Global Research Directorate *Legal responses to health emergencies* Washington DC : Law Library of Congress, Global Legal Research Center (2015).

<sup>52</sup> See art 94(2) of the FDRE Constitution.

<sup>53</sup> Here, as per The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, a State Party derogating from its obligations under the ICCPR shall immediately notify the other States Parties to the ICCPR, through the Secretary-General of the United Nations. To the frustration of many, State of Emergency Declarations in the country at different times seem to be contrary to this established human rights norm. Specifically, it is not that difficult to identify a State of Emergency Declaration in the country where the Ethiopian Government failed to notify the UN Secretary- General of the fact that Ethiopia has declared a state of emergency, the exigencies that required the state of emergency, and the measures and restrictions imposed under the state of emergency declaration. The State of Emergency Declaration following the outbreak of COVID-19 in Ethiopia is, however, an exception to this general assertion. In other words, a very clear reading can be made from the letter of the representative of the FDRE to the Secretary-General of the United Nations notifying the latter about the declaration of a nationwide state of emergency by the Government of the FDRE, effective from 8 April 2020 for a period of five months, with the objective of reinforcing the fight against the COVID-19 pandemic in the country. As such, the April 2020 Declaration of a State of Emergency in the country can be said to have complied with the notification protocol of the ICCPR, Art 4(3). For a further reference see Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR. United Nations Commission on Human Rights, 1984. See also UN, Reference: C.N.243.2020.TREATIES-IV.4, Ethiopia: Notification under Article 4 (3), 05 May 2020 available at <https://treaties.un.org/doc/Publication/CN/2020/CN.243.2020-Eng.pdf> (accessed 10 November 2021).



Unfortunately, the FDRE Constitution does not give us clear answers to these questions. However, two or even more opposing arguments can be suggested with respect to the issue.

One argument can be that an interpretation should favour the state of emergency declaration that better protects fundamental freedoms. This is based on the general constitutional interpretation principle that a law that better protects fundamental freedoms shall prevail over a law that protects them less. According to this argument, if the Federal Government decree, for instance, restricts freedoms granted under the Constitution more strictly than the Regional Constitution due to the pandemic, the Regional Government decree should be made applicable in the region considered. Another application of the argument would be that in such pandemic cases of emergency declarations a general interpretation should be sought based on the general purpose of the state of emergency. This is to mean that a declaration of a “public health emergency” in a given area has a general purpose of containing the pandemic as effectively as possible. With that reading, when a given level of government declares more restrictive measures in relation to the constitutional freedoms, especially in relation to public health emergencies, it should be interpreted in the light of the general efforts which are meant to contain the pandemic. Hence, preference should be given to the measure that imposed more restrictive measures than the other.

Therefore, in the above case, for instance, if the Regional Government’s “public health emergency declaration” imposes a stricter restriction than the Federal Government’s declaration, the Regional Government declaration should prevail over the Federal one. In the contexts and arguments given above, the latter argument sounds more plausible than the former. An interpretation that clouds the general context that necessitated the particular situation should be considered as ill-advised. This interpretation appears especially important in contexts like the COVID-19 pandemic where human security is at great risk.<sup>54</sup>

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<sup>54</sup> For that matter, in an explanatory statement by the Prime Minister’s Office following the declaration of the state of emergency regarding the COVID-19 pandemic, somehow a similar idea has been reflected. It has been highlighted that “in the event of any contradictions between the [state of emergencies declared by the federal government and regions], the federal state of emergency supersedes regional state of emergencies, unless the regulations decreed by regions reflect much stricter measures in mitigating the virus”. Similarly, art 3 of the federal state of emergency decree provides that “any federal or state law, decision or practice which contravenes the emergency declaration shall be of no effect”. It appears that “any state law” here includes regional state of emergency decrees but to the extent that the Regional Government state of emergency declaration does not establish a stricter measure than the Federal Government state of emergency declaration. For a further reference see Tefera Degu Addis “COVID-19 state of emergency and the federal balance of power” *Ethiopia Insight* 13 April 2020 available at <https://www.ethiopia-insight.com/2020/04/13/covid-19-state-of-emergency-and-the-federal-balance-of-power/> (accessed 01 October 2021). See also art 3 State of Emergency Proclamation.

## 5 IMPLICATIONS OF STATE AND FEDERAL EMERGENCY DECLARATIONS AND AUTHORITIES

Article 17 (1) of the FDRE Constitution provides that “no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law”.<sup>55</sup> One of such grounds that justify the deprivation of a person’s liberty is “public health emergency declarations”. The consequence of “declaring a state of public health emergency” is that it allows the executive to take certain actions that restrict certain constitutional rights. For that matter, the Constitution appears to suspend certain political and democratic rights contained in the FDRE Constitution “to the extent necessary to avert the conditions that required the declaration of a state of emergency”.<sup>56</sup> While the Constitution seems to confer a broad power on the executive over the matter, however from the reading of the phrase “... to the extent necessary to avert the conditions that required the declaration of a state of emergency” it is conceivable that this authority should be used so as to ensure protection to the health of the general public or to make sure that all necessary steps are taken to suppress the outbreak. A state of emergency declaration due to a public crisis, however, does not give the governments free rein to violate constitutional rights.

Anyhow, given the nature of the emergency, such restrictions may be imposed on the right to privacy; the right to religion; the right to freedom of expression; the right to freedom of movement; and the right to peaceful assembly and association, among others.<sup>57</sup> For example, a public health emergency declaration, for instance, would authorise public health authorities to isolate or quarantine individuals or groups, and the failure to follow isolation or quarantine orders could constitute a violation of the law.<sup>58</sup>

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<sup>55</sup> In that respect, unlike the FDRE Constitution, some countries can be seen to be specifically enumerating in their constitutional document the grounds whereon a person’s liberty could be restricted. See art 35 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>56</sup> See art 93 (4)(b) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>57</sup> One can note here the ban on different activities after the declaration of the April 2020 state of emergency in Ethiopia where restrictions were imposed on all religious, governmental, non-governmental, commercial, political, and social gatherings. The regulation also banned greetings by handshake, land borders movement, passenger loads for all national and local journeys, reducing workforces, students and teachers meetings, and measures on social distancing, closure of sporting activities, night clubs and children’s playgrounds. See State of Emergency Proclamation and State of Emergency Proclamation Implementation Regulation.

<sup>58</sup> Here a question may be raised whether the government, for instance, can take private property for public use “without compensation” (due to the pandemic). With respect to the private property right, art 40 (8) of the FDRE Constitution states that “without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property”. A follow-up question may be then be : what if the government forces a business to close due to a pandemic? Would that amount to “taking” private property without compensation? Would that fall within the ambit of art 40 (8) of the FDRE Constitution? For that matter, somehow a similar reading can be made of the Fifth Amendment of the USA Constitution which prohibits the

Apart from that, restriction of the exercise of certain civil and political rights could also take effect even in the absence of a formal state of “public health emergency declarations”. As implied above, for instance, the Health Ministry restricting movement to countries, or to the areas where there is an epidemic; or closing schools or recreational areas; and taking other similar measures whenever an epidemic occurs, as empowered by the Public Health Proclamation (Proclamation no 200/2000), are measures that adversely affect the fundamental right to move freely throughout the territory of the country.<sup>59</sup> However, this right is not absolute, in the sense that it has to be enjoyed subject to reasonable restrictions that the state may impose in the interest, among others, of the general public. A similar explanation can be put forward also with regard to other rights, including the right to privacy where a person may be forced to undergo some tests to protect public health.<sup>60</sup> The overall message is that the existence of a “public health emergency declaration” may justify placing restrictions on the scope of certain constitutional rights, at least on a temporary basis.<sup>61</sup> The problem with most

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government from taking private property for public use “without just compensation”. In rendering a judgment as to what amounts to “taking” of private property without compensation, the Supreme Court in *Lucas v South Carolina Coastal Council* stated that a temporary closure of a business by the government may not amount to “taking” private property without compensation. However, if the government forces a business to close indefinitely due to a pandemic, it could be considered a “taking” and, therefore, in violation of the Fifth Amendment. See Benson BL “The evolution of eminent domain” (2008) XII(3) *The Independent Review* at 423; see *Lucas v South Carolina Coast Council* 505 US 1003 (1992) available at <https://www.oyez.org/cases/1991/91-453> (accessed 5 January 2021).

<sup>59</sup> See art 32 of the FDRE Constitution.

<sup>60</sup> In that respect, the Public Health Proclamation stipulates: “Any suspected person of any communicable disease shall cooperate for medical examination or vaccination.” See art 17(2) of the Public Health Proclamation.

<sup>61</sup> Such restrictions, however, are expected to respect the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (ICCPR) and the Human Rights Committee General Comment (Human Rights Committee. International Covenant on Civil and Political Rights, General Comment No 27. UN Doc No CCPR/C/21/Rev1/Add 9. 1999) on the criteria for justifiable limitations on fundamental freedoms, including for public health reasons. It shall also supposed to be in accordance with the FDRE constitutional provision on the matter. The Siracusa Principles state that restrictions on human rights under the ICCPR must meet standards of legality, evidence-based necessity, proportionality, and gradualism; whereas, the Human Rights Committee in its General Comment in 1999 stresses the need for restrictions to be provided for by law, demonstrably necessary, consistent with other rights in the ICCPR, and non-discriminatory. The FDRE Constitution, for its part, provides under art 93 (4) (b) that the Council of Ministers shall have the power to suspend such political and democratic rights contained in the Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency. It also provides that the Council of Ministers, in the exercise of its emergency powers, cannot suspend or limit the rights provided in art 93(4) (c) of the Constitution. Thus, though it can generally be said that the existence of a “public health emergency declaration” may justify placing restriction on the scope of certain constitutional rights, at least, on a temporary basis, art 93 (4) (b) of the FDRE Constitution has to be read together with the Siracusa Principles and the 1999 General Comment by the Human Rights Committee. For that matter, it has been provided under art 4(2) of Proclamation No 3/2020 that “the Regulations to be enacted and measures

state of emergency declarations, however, is that they could serve as a good opportunity for arbitrary decision-making by law enforcement agents. Moreover, restrictions and obligations in many of the state of emergency declarations in the country arguably happen to be overly restrictive of rights and freedoms. Proclamation No 3/2020 and Regulation No 466/2020 hardly stand beyond this criticism. Reading through these prescripts, one can spot provisions which may be regarded as overly restrictive. Furthermore, there is also a good chance that some of the restrictions and obligations may be abused by certain officials.<sup>62</sup> Hence, specific attention to, and guidance regarding, such restrictive measures, especially in the case of a public health threat, are always in demand.

## 6 CONCLUDING REMARKS

Throughout history the world has endured numerous threats to life and security, a threat to public health from a variety of infectious agents being one of them. Taking cognizance thereof, countries leave space in their laws on how to deal with such extraordinary events. A declaration of a state of emergency in general and a “declaration of public health emergency” fall within the measures countries would adopt to prevent and suppress the event that necessitated the state of emergency. Such laws basically incorporate provisions that permit governments to intrude into constitutionally guaranteed fundamental rights to the extent that the intrusion measures are specifically authorised in the respective laws and are in the public interest, such as, for the protection of public health. The Ethiopian case is no exception. Under Ethiopia’s federal system both the federal government and regional governments have responsibility for matters related to public health care and emergency management.

The federal government carries this obligation in the context of a national response to the emergency. As such, it has both the authority and means to respond to public health emergencies either through a formal state of emergency declaration or without a

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to be taken by the Council of Ministers shall not in any way infringe on Provisions specially protected by the FDRE Constitution Article 93(4)(c)”. This provision adds nothing except that it kind of places emphasis on the obligation to respect the non-derogable rights as provided under the FDRE Constitution. For a further reference on the issue see Siracusa Principles (1984), note 53 above; Human Rights Committee. International Covenant on Civil and Political Rights, General Comment No 27. UN Doc No CCPR/C/21/Rev1/Add 9. 1999. New York, NY, USA: ICCPR. (1999) available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6c76e1b8ee1710e380256824005a10a9](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6c76e1b8ee1710e380256824005a10a9) (accessed 5 October 2021). See also FDRE Constitution art 93.

<sup>62</sup> A point to mention here could be the obligation imposed under the regulation to submit one’s property for use in the efforts to contain the virus (Regulation No 466/2020, note 17 above, art 4 (15)). Given that the provision is not only broad but also unclear in terms of its practicability, there is a good chance of it being abused by some law enforcing officials in the absence of maximum accountability and transparency. Furthermore, the Proclamation imposes up to three years imprisonment or up to ETB 200 000 on anyone violating instructions that are given in relation to the State of Emergency (Proclamation No 3/2020, note 15 above, art 6(1)). This provision seems to overlook the governing general proportionality principle in the declaration of a state of emergency.

formal “public health emergency declaration”. The regional governments, on the other hand, assume this obligation in the context of a territorial response to a public health emergency. Thus, just like the federal government, regional governments have both the authority and means to respond to public health emergencies either through a formal state of emergency declaration or without a formal emergency declaration. This article has scrutinised the legislative competence of the two levels of government, the actions to be triggered in consequence of “public health emergency declarations”, as well as the implications of federal and state-level “public health emergency declarations” - all with the purpose of understanding the legality and scope of the federal and state emergency responses and authorities.

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