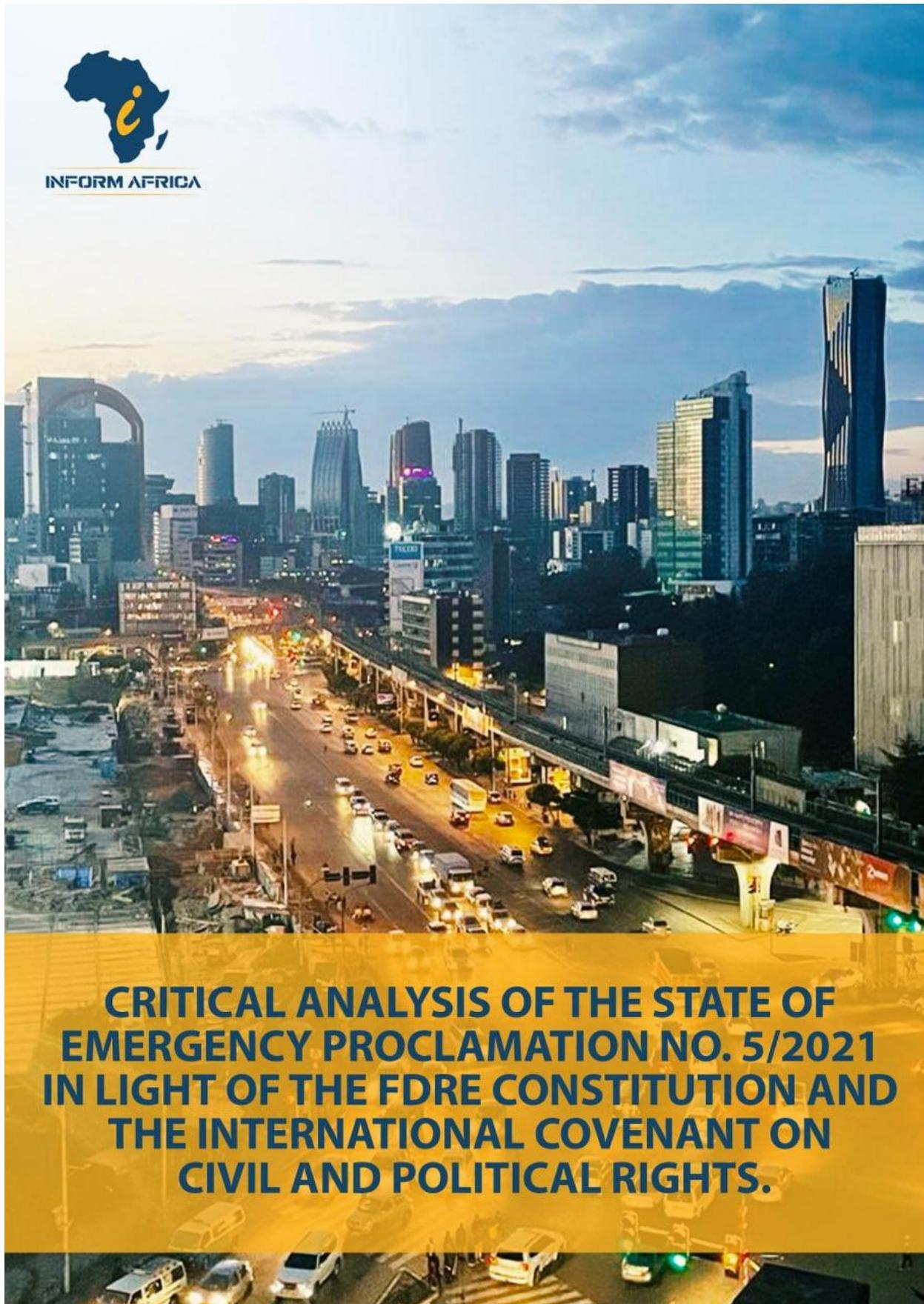




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**CRITICAL ANALYSIS OF THE STATE OF
EMERGENCY PROCLAMATION NO. 5/2021
IN LIGHT OF THE FDRE CONSTITUTION AND
THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS.**

**Critical Analysis of the State of Emergency Proclamation No. 5/2021
in light of the FDRE Constitution and the International Covenant
on Civil and Political Rights.**

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Abbreviations

ACHPR: -	African Charter on Human and Peoples' Right
CARD: -	Center for Advancement of Rights and Democracy
EHRC: -	Ethiopian Human Rights Commission
EDF: -	Eritrean Defense Force
ENDF: -	Ethiopian National Defense Force
FDRE: -	Federal Democratic Republic of Ethiopia
ICCPR: -	International Covenant on Civil and Political Rights
HPR: -	House of People Representatives
NIAC: -	Non- International Armed Conflict
TPLF: -	Tigray People's Liberation Front
UN: -	United Nation

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Abstract

This short research scrutinizes the compatibility of a state of emergency proclamation No.5/2021 which was proclaimed in an intricate political situation in light of the FDRE Constitution and the International Covenant on Civil and Political Rights (ICCPR). And also, it evaluates the impacts of the proclamation on the activities of different institutions tasked with upholding human rights. Needless to say, recent Ethiopian history is marked by continuous proclamation of states of emergency. For instance, from 2016 to date the Ethiopian government has declared a state of emergency four times. The state of emergency proclamation No.5/2021 is one of the most vexing, chilling and disputable points for Ethiopians. There exists no controversy that conflict and a state of emergency are major threats to human rights. However, it should also be underscored that a state of emergency is sometimes important for the protection of human rights when it is proclaimed and implemented in a legal and proper manner. This research follows combination of doctrinal and non-doctrinal methodology. Hence, both secondary and primary sources including interviews were consulted. This research reveals that the declaration of the state of emergency proclamation No.5/2021 was constitutionally and legally justifiable while most of the contents of the proclamation has departed from the constitutional and international substantive principles governing state of emergency.

Keywords: a state of emergency, International Covenant on Civil and Political Rights, Non-derogable rights.

Introduction

Nowadays, the exercise of emergency powers is a phenomenon common to both democratic and undemocratic governments, the only difference between the two being the presence or absence of check and balances to prevent the abuse and arbitrary use of the emergency power by the government.¹ There is hardly a single modern constitution which does not recognize the right of the executive to suspend the normal rule of government including the rights and freedoms of citizens, during periods of crisis.² This implies the essence of a state of emergency under specific qualified circumstances. Hence, it can be concluded that a state of emergency is an internationally acceptable customary practice. Despite its essence under limited situations, study reveals that states of emergency are not uncommon occurrences, particularly in dictatorial regimes where the state of emergency may endure as long as the regime lasts.³ Moreover, practices indicate that in dictatorial regimes, a state of emergency usually served as a justification to compromise human rights.

Needless to say, recent Ethiopian history is marked by continuous proclamation of states of emergency. For instance, from 2016 to date the Ethiopian government has declared a state of emergency four times. There is no question that conflict and state of emergency are major threats to human rights. However, it should also be underlined that a state of emergency is sometimes important for the protection of human rights. It is undeniable that since the outbreak of non-international armed conflict (NIAC) between the federal government and the Tigray People's Liberation Front (TPLF) back in November of 2020, Ethiopia has been encountering an unprecedented myriad of crises that got national, regional and global attention. Following continuous conflict, and other security concerns in some parts of the country, Ethiopia's Council of Ministers proclaimed a state of emergency on 2 November 2021, throughout the country. The

¹ Gerard Emmanuel Kamdem Kamga, *State of emergency, state of exception: A critical investigation*, university of Pretoria, p.3. (2010)

² Venkat Iyer, *State of Emergency: Indian Experience*, p.3

³ Backgrounder Security Sector Governance and Reform, backgrounder

proclamation got the approval of the House of People Representatives (HPR) on 3 November 2021. Subsequently, the international community including the United Nations (UN) expressed their concerns that the declaration of state of emergency could further exacerbate the already dire political, humanitarian and security situation of the country.

Ethiopia is party to different international and regional human rights treaties including, but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Right (ACHPR). The FDRE Constitution and ICCPR have set, directly and indirectly, various principles and standards. Therefore, the core purpose of this research is to critically analyze the state of emergency proclamation No.5/2021 which was proclaimed in a complicated political situation against both the substantive and procedural standards set in the FDRE Constitution and international bills of rights. It will assess the impact of the proclamation on activities of different institutions tasked with upholding human rights.

Both primary and secondary sources were consulted while preparing this research. Secondary sources such as laws, books, reports and journal articles were analyzed as secondary sources. Interviews with key informants were conducted as primary sources. The key informants were purposely selected based on their expertise and relevance to human rights issues. Accordingly, three human rights lawyers who are also academicians, two key informants from the Ethiopian Human Rights Commission (EHRC) and Center for Advancement of Rights and Democracy (CARD) were consulted.

The paper provides a general background, the notion of state of emergency and a detailed analysis of the controversial provisions of the proclamation in light of the international principles governing state of emergency and the FDRE Constitution.

Notion of State of Emergency

A state of emergency derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to the country.⁴ The term emergency connotes a sudden, urgent, usually unforeseen event or situation, which requires an immediate action, often,

⁴ Ibid

without having time for prior reflection and consideration.⁵ In common parlance, the “state of emergency” denotes a legal regime in which public institutions are vested with extraordinary powers to address existential threats to public order.⁶ States of emergency have two components:

- A legal framework consisting of the constitutional and legislative bases for the state of emergency, and
- An operational framework involving the organizational structure and strategic plans for dealing with the state of emergency.⁷

While separate, these components must be compatible; in other words, the legal framework must take into account operational requirements, and the operational requirements must respect the legal framework, which include international law.⁸ In short, the principle of state of emergency recognizes the right of every sovereign state to take all reasonable steps needed to protect and preserve the integrity of the state. However, this does not mean that the state can always resort to a state of emergency as a matter of principle because a state of emergency is a state of exception; the state can derogate rights if and only if the circumstances that constitutionally warrant derogations are satisfied.

International Principles Governing State of Emergency

Substantive Principles

The substantive requirements are those rules which govern the material, temporal, and geographical scope of the state of emergency and the emergency measures, including derogation of human rights.⁹ ICCPR has unequivocally indicated substantive principles governing state of

⁵ Sadaf Fatimaa, *Emergency and Suspension of Fundamental Rights*, Aishwariya Sandeep, p..., (2021)

⁶ Vesna Stefanovska, *Derogation of Human Rights Rules in Times of Emergency*, Cambridge Int. L. jou. P. (2021)

⁷ Supra at 3.

⁸ Id.

⁹ Yibeltal Assefa, *Upholding International Human Rights Obligations during a State of Emergency: An Appraisal of the Ethiopian Experience*; LLM thesis, AAU (unpublished), p.19 (2019)

emergency.¹⁰ These are principle of necessity, legality, proportionality, the respect and protection of non-derogable rights, consistency with other state's obligation under international law, and the principle of non-discrimination. The above principles will be further discussed in the subsequent section.

The Principle of Strict Necessity

The main idea of this principle is that an exceptional crisis that “threatens the life of the nation” must occur before a state party declares a state of emergency and derogate from its international human rights obligation.¹¹ It is said necessary when the existence of a country is likely to be shaken to the core, or the system is so destabilized as to lead to a crisis in governance.¹² It is stated that “not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation.”¹³ In light of this, there was a controversy that whether the reality on the ground is threat to the life of the nation or the incumbent government. According to Mr. Mesgana Mulugeta, lecturer of law, and Monitoring and Investigation Regional Director at the EHRC, almost all constitutional systems give the power to determine national security to the executive. Mr. Mesgana further added, “the state/executive with all its security apparatuses is the one which has the information about the actual security situations of the country, and whether it entails to be a public emergency that threatens the life of the nations”.¹⁴ Mr. Mesgana argues that it is highly difficult for anyone, be it an individual or juridical person, to verify the existence of a public emergency that threatens the life of the nation because the mandate of assessing national intelligence information falls solely on the executive branch of government for obvious reasons.

Mr. Mesgana pointed out that, in Ethiopia, a state of emergency has been declared for matters much less dangerous than the one that we are in right now. He endorses the fact that the current

¹⁰ See, article 4 of ICCPR

¹¹Ibid.

¹² Getachew Jima, *The Role of Courts in protecting Human Rights during state of Emergency in Ethiopia*; LLM thesis, AAU (unpublished), p.39 (2020)

¹³ See, CCPR General Comment No. 29

¹⁴ Mesgana Mulugeta, *lecturer of law at Addis Ababa University and Monitoring and Investigation Regional Director at Ethiopian Human rights Commission*, interviewed at his office of Ethiopian Human Rights Commission

Ethiopian situation amounts to a public emergency that threatens the life of the nations.¹⁵ Mr. Befekadu Hailu, CARD's Executive Director, also strengthened the point that the reality on the ground is a threat to the life of the nation. According to Mr. Befekadu, this was attested by the call for the establishment of a new confederation by TPLF and its allies, and the rhetoric which unequivocally depicted Ethiopia as an empire, further stating the "Ethiopian empire should collapse".¹⁶ Therefore, for Mr. Befekadu, there is no question that the reality on the ground is legally and morally justifiable for the declaration of state of emergency. However, he claimed reservation on its implementation. Mr. Marga Fekadu, lecturer of law at Wolkite University argued that despite the contentious nature of the election which brought the ruling party to government power, the FDRE Constitution clearly states that election is the only way through which government powers can be assumed. TPLF and other insurgent groups are fighting the government to assume political/government power which is an extra constitutional practice; it is inconsistent with the constitutional provision which dictates election as the sole means of assuming political powers. In other words, the constitutional order is under immense threat.¹⁷

According to a person who request to be anonymous, the fact that a rebellion with an objective of dismantling the central government and terrorizing the public is advancing and controlling significant parts of the country , along with the immense economic, social and diplomatic costs incurred of the war, the situation constitutes an emergency, where the constitutional order and security of the country is threatened. Hence, the proclamation of state of emergency was legally justifiable and satisfies the requirements of the principle of necessity.

The Principle of Proportionality

The proportionality principle prescribes that emergency measures should be directed to achieve a legitimate public interest and it must be proportionate to the danger posed to help to make a proper balance between individual rights and public interests.¹⁸ The requirement of proportionality is met through comparing the impending harm intended to be prevented on the one hand and the gravity

¹⁵ Ibid.

¹⁶ Befekadu Hailu, *Executive Director of Center for Advancement Rights and Democracy*, interviewed in person at his office

¹⁷ Marga Fekadu, *Lecture of Law at Wolkite University*, interviewed via phone

¹⁸ Supra at 12.

of the limitative action or decision on the other.¹⁹ Proportionality can also be assessed against the geographic coverage. According to several experts, the geographic scope is one of the most contested and problematic parts of the recent proclamation because it was declared throughout Ethiopia.

Indeed, the conflict, which posed an existential threat to the life of the nation, is active in most parts of the country. There are also some parts of the countries where there is no ongoing armed conflict. However, the absence of active conflict in some parts of the country doesn't imply stability. Cognizance of the national intelligence information is an essential precondition to determine and assess the proportionality of the decree against its geographic expanse.²⁰

An academic who requested anonymity added that while the war was limited to certain areas, the measures taken - including restrictions related to liberty, press, habeas corpus, access to justice, fair trial, privacy, associations, and assembly - are inflated. Therefore, the state should justify the fact that these restrictions are required to avert emergencies. Needless to say, human rights protection is a principle while a state of emergency is an exception and exceptions shall be interpreted very narrowly. The geographic scope of the proclamation is broad, in light of the matters which necessitated the emergency and the golden rule of interpretation, which dictates that exceptions shall be interpreted narrowly.²¹

According to Mr. Befekadu Hailu, the application of the proclamation in some parts of the country such as the Somali Regional State, the State of the Southern Nations, Nationalities and Peoples and Addis Ababa does not make sense.²² The geographic span of the proclamation is broad and problematic. The aforementioned points made by the experts indicate that the geographic span of the emergency proclamation has deviated from the principle of proportionality which is unequivocally provided under article 4(1) of the ICCPR.

¹⁹ Ibid.

²⁰ Supra at 14

²¹Supra at 17

²² Supra at 16

The Principle of Non-Derogability of Certain Human Rights

The principle of non-derogability of fundamental rights means that even when there is a real need for recourse to the state of emergency, there are some rights which should never be infringed upon. There are certain rights, which have been recognized as non-derogable in character at both universal and regional levels.²³ At a universal level, the ICCPR contains seven non-derogable rights under Articles 4(2): the right to life, the right not to be subjected to torture or to cruel inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude to fulfill a contractual obligation, right against ipso facto law; the right to recognition everywhere as a person before the law and the right to freedom of thought, conscience and religion. Regionally, the ACHPR does not contain a clause permitting suspension of human rights during public emergency.²⁴ The African Commission on Human and Peoples' Rights has reiterated that a declaration of state of emergency cannot be invoked as a justification for violations or permitting violations of the African Charter.²⁵ Instead of opting for a non-derogable provision, the African Charter preferred to qualify certain rights as absolute rights; their absolute character under the Charter amounts to the non-derogable character of other human rights treaties.²⁶

The Principle of Consistency with the State's Other International obligations

American Convention on Human Rights and article 15(1) of the European Convention on Human Rights lay down the condition that derogatory measures must not be inconsistent with a state party's other obligations under international law. The term "other obligations under international law" is broad and can be interpreted to comprise any legal obligation derived from an international treaty or customary law, or even general principles of law relevant to the enjoyment of the human rights and fundamental freedoms affected by a derogation. Under General Comment No. 29, the UN Human Rights Committee states "no measure derogating from the provisions of the Covenant may be inconsistent with the State party's other obligations under international law, particularly the rules of international humanitarian law." Article 4 of the ICCPR cannot be read as a

²³ ICCPR, ECHR, ACHPR all contain derogation clauses which become affected during emergencies

²⁴ ABDI JIBRIL ALI, *Derogation from constitutional rights and its implication under the African Charter on Human and Peoples' Rights*; vol.17, law Demo & Dev't pp. 79-102 p.101 (2013)

²⁵ Id at 102

²⁶ Supra at 13

justification for derogation from the Covenant if such derogation would entail a breach of the State's other obligations, whether based on treaty or general international law. This is also reflected in article 5, paragraph 2, of the Covenant, which states that there shall be no restriction upon or derogation from any fundamental rights recognized in other instruments on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.²⁷

International Humanitarian Law (IHL) which regulates armed conflict has its own principles. Ethiopia has signed and ratified the Geneva Conventions and its additional protocols which are applicable during armed conflicts. Therefore, derogation prerogatives given to the state during a state of emergency under article 4 of ICCPR should not be invoked if it is contradictory to the obligation that IHL has imposed on Ethiopia.²⁸ The government needs to be extremely cautious because Ethiopia has signed and ratified the Geneva Conventions and its additional protocols, and the principles of IHL are non-derogable even during a state of emergence.

Despite the existence of law that regulates war, it has not been observed by the warring parties in the Ethiopian context.²⁹ This is further vindicated by the joint investigation report of Ethiopian Human Rights Commission and the UN Human Rights office which found military crime, mass murder, civilian attacks, rape as a weapon of war and other war crimes committed by all the warring parties namely: the Ethiopian National Defense Force (ENDF), the Tigray People's Liberation Force (TPLF), the Eritrean Defense Force (EDF) and the Amhara Special Force and militia.

The Principle of Non-Discrimination

The principle of non-discrimination requires that emergency measures adopted by the derogating state should not entail discrimination solely on the basis of race, color, language, religion, sex, ethnic group, political belief, or other status.³⁰ The multiple references to the principle of non-discrimination in international instruments shows that the principle has already attained a status of *jus cogens* which could render a legitimate suspension of human rights invalid if done in a

²⁷ See, ICCPR, Article 4(1), ACHR, Article 27(1)

²⁸ Supra at 17

²⁹ Supra at 16

³⁰ Ibid.

discriminatory manner based on the above grounds.³¹ As far as this principle is concerned, the nature of the conflicting parties posed difficulty. Since TPLF is an ethno-national party, its members and supporters are primarily Tigrayan. This puts innocent Tigrayans in a vulnerable position in contrast with other citizens.

There are two kinds of discrimination: direct and indirect discrimination. Though there is no provision in the proclamation which discriminates against specific ethnic groups, the impact of the proclamation has been absolutely discriminatory. This can be understood from its implementation.³² It is being implemented in a way that deems “all Tigrayans are guilty until proven innocent”.³³ Being a member of a certain ethnic group and speaking a certain language by itself should not suffice to make a person suspect. The emergency proclamation is also enacted in a way that does not discriminate based on ethnicity and language but it is being implemented in a way that indicates ethnic profiling. Being a member of a specific ethnic group and speaking a certain language should not make a person suspect unless there are additional substantive requirements.³⁴ What can be understood from the above-mentioned points of experts and stakeholders makes clear that the emergency decree is not discriminatory in itself but there are indications that it is being implemented in a discriminatory manner. Therefore, the law enforcement agency should be cautious while implementing the proclamation.

Procedural Principles

The procedural requirements are those norms determining the procedures for initiation, execution, and termination of the emergency powers. The ICCPR under article 4(1) and 4(3) provides the principle of official proclamation and the principle of international notification as mandatory procedural requirements that should be obeyed by the state which declares a state of emergency.

³¹Ibid.

³² Befekadu Dereba, *Lecture of law at Hawassa University, and Protection and Research Officer at Ethiopian Human Rights Defender, interviewed via phone*

³³ Supra at 16

³⁴ Supra at 14

The Principle of Official Proclamation

As per Article 4 (1) of the ICCPR, official proclamation is one of the procedural requirements that should be fulfilled during a state of emergency. Similarly, the Human Rights Committee minutes states that official proclamation of the state of emergency is a fundamental prerequisite for invoking derogation power by states.³⁵ The purpose of this requirement is to inform the public of the declaration of state of emergency and its territorial, material, and temporal consequences which also helps to maintain the principles of legality and rule of law.³⁶ The Council of Minister had officially declared the state of emergency which after receiving the approval of the HPR became law. Therefore, the principle of official proclamation is satisfied.

The Principle of International Notification

According to this requirement, a derogating state must notify other state parties of the derogations through the depositary of the instrument, to the United Nations Secretary-General in the case of the ICCPR. This is useful in ensuring international supervision over derogation measures by other state parties or treaty monitoring organs. As per the Siracusa Principles, a states' notification should include information regarding the derogated provision of the Covenant; a copy of the emergency proclamation together with the constitutional provisions, legislation or decrees governing the state of emergency; the date of proclamation and effective date of the state of emergency; the reasons for derogation; and effect of the derogation on the Covenant rights. It also provided that states parties to the Covenant should include in their reports submitted under article 40 sufficient and precise information about their law and practice in the field of emergency powers.

The FDRE Constitution

The FDRE Constitution empowers the Council of Ministers to declare a state of emergency under limited conditions. These conditions are exhaustively listed: an external invasion, a breakdown of law and order which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster or an epidemic.³⁷ If one of the aforementioned substantive criteria is fulfilled, the

³⁵ See, general comment No 29

³⁶ Ibid.

³⁷ See, Article 93(1)(a) of the FDRE Constitution.

Council of Ministers can declare a state of emergency. A key informant who requested anonymity, contended that there was a breakdown of law and order which could not be controlled even by the Ethiopian National Defense Force let alone regular law enforcement agencies. Hence, according to the informant, the proclamation of the emergency decree by the Council of Ministers was constitutionally justifiable. Besides the above-mentioned substantive requirements, the FDRE Constitution also provides the mandatory procedural requirements to be fulfilled. The proclamation of state of emergency by the Council of Ministers can only be binding and effective if it passes through the procedural requirements. The constitutional procedure through which the emergency decree was proclaimed is not a contentious subject.

Generally speaking, rights enshrined in the FDRE Constitution, whether they are human rights or democratic rights, individual rights or group rights can be summarized into two: derogable and non - derogable.³⁸ In the FDRE Constitution certain rights have been considered so important that they are not derogated even during state of emergency; Article 1 which has to do with Nomenclature of the State, Article 8, Prohibition against inhuman Treatment, Article 25, The Right to Equality, and Article 39 (1) and (2) the unconditional right to self-determination of every Nation, Nationality and People, including the right to secession. This is explicitly provided under article 93(4)(c) of the FDRE Constitution. However, there is a common major misconception. Every time a state of emergency is declared the assumption is that all rights stipulated in the FDRE Constitution, apart from the aforementioned four rights, are out rightly and forthwith suspended. Contrary to that, Article 93 of the FDRE Constitution merely provides the maximum threshold. Put differently, the reading of FDRE Constitution implies that depending on exigencies of situations, the government prerogatives during a state of emergency could go to the extent of suspending and derogating all rights excluding of the above mentioned four rights.

Furthermore, according to Article 9(4) of the FDRE Constitution, international human rights agreements ratified by Ethiopia are considered an integral part of the law of the land. The FDRE Constitution states that the fundamental rights and freedoms guaranteed by the Constitution shall be interpreted in conformity to the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. The right to life

³⁸ See, Article 93(4) (b and c) of the FDRE Constitution.

and the right to freedom of thought, conscience and religion are recognized as non-derogable rights under international bills of rights. Therefore, despite the presence of explicit provisions, the reading of article 4 of the ICCPR, article 9(4) of the FDRE Constitution in conjunction with article 13(2) of the same Constitution gives the impression that the right to life and the right to freedom of thought, conscience and religion are non-derogable even under the FDRE Constitution. According to Mr. Befekadu Hailu, there is a contradiction between the FDRE Constitution and ICCPR on those lists of rights deemed to be non-derogable. Under the FDRE Constitution the right to life is derogable whereas it is non-derogable under ICCPR. Therefore, extrajudicial killings can be justified under the FDRE Constitution during a state of emergency. Additionally, the right to secession is non-derogable while it is not provided among the lists of rights considered as non-derogable under ICCPR.

On the other hand, according to Mr. Marga Fekadu, there is no contradiction between the FDRE Constitution and ICCPR on those lists of rights considered as non-derogable. Article 93 of the FDRE Constitution from which the concept of derogable and non-derogable rights derives should be seen in conjunction with article 13(2) of the FDRE Constitution. And since Ethiopia has ratified the ICCPR, chapter three of the FDRE Constitution shall be interpreted in a way that is conforming to the ICCPR. Hence, extrajudicial killings cannot be justified even during a state of emergency under the FDRE Constitution and the ICCPR.

The Ethiopian Human Rights Commission did not conduct a proper legal analysis on the current state of emergency decree. Hence, they don't have an official position. But they have done a comprehensive legal analysis on the emergency decree that was proclaimed during the onset of Covid-19 which is applicable for any kind of emergency irrespective of its nature. In addition to those lists of rights recognized as non-derogable rights under article 93 of the FDRE Constitution, the Commission argued that the right to life and due process of law should be considered as non-derogable rights. Therefore, the provision of the proclamation which suspends the power of the court to entertain matters that fall within the realm of emergency proclamation is against international human rights standards. The failure to establish an administrative judiciary or an ad hoc court which can entertain these matters, and not the suspension itself, is seen as problematic.

Mr. Befekadu Dereba, an interviewee, and lecturer of law at Hawassa University, argued that, in addition to those lists of non-derogable rights provided under article 4(1) of the ICCPR, there are non-derogable rights that derive from customary international law. Among them, due process of law is the most important one. He added that due process of law has already reached status of *jus cogens*. Hence, the provision of the proclamation which suspends the power of the court to entertain the matters that fall within the domain of the emergency proclamations are against international human rights standards and absolutely unacceptable.

Another controversial provision of the proclamation is the one that deals with CSOs, journalists and media houses. It is controversial for two main reasons. One is that it penalizes suspicion. If a certain CSO, journalists or media house is suspected of providing support for the terrorist organization, it suffices for the command post to order the suspension or permanent cancellation of the license of the CSO, media house or journalist suspected of providing support.

The second point is concerning the notion of moral support. The proclamation prohibits providing moral support to the terrorist organizations. At the same time, it fails to provide definition for what ‘moral support’ stands for. According to a person who requested anonymity, the prohibitions under articles of 4(9), 4(10) and 6(3) – not to give moral support to terrorists -is dependent on subjective definitions, difficult to prove with material evidence and restricts one of the non-derogable rights stipulated under article 18 of the ICCPR: right to have conscience and thought.

Mr. Befekadu Dereba also contended that the provisions of the proclamation which bans moral support without providing an ‘objectively workable definition’ is inconsistent with the freedom of conscience, which is recognized as a non-derogable right under the ICCPR. Therefore, it infringes the constitutional and international human rights obligations of the Ethiopian polity. According to Mr. Mesgana Mulugeta, the most visible and obvious impact of the state of emergency on the media, journalists and other institutions tasked with upholding human rights is the chilling effect. Therefore, it's very risky for the media houses, journalists and CSO to investigate any issues related to the state of emergency and the ongoing armed conflict.

Conclusion

Conflict is a major threat to human rights. When constitutional order and the very existence of the nation is under existential threat, the state can resort to a state of emergency. The FDRE Constitution and the ICCPR have set preconditions that need to be fulfilled before the state resorts to the declaration of state of emergency and suspends and derogates human rights of its citizens. The FDRE Constitution has specified the occurrence of one of the following conditions as a ground for the declaration of state of emergency: an external invasion, a breakdown of law and order which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster or an epidemic. On the other hand, the ICCPR has stated that in order for the State to declare a state of emergency and derogate human rights, there must be a “threat to the life of the nation”.

There was a debate whether the current situation in Ethiopia amounts to a “threat to the life of the nation” or to the life of the incumbent government. In addition to the contentious nature of the election which brought the ruling party to government power, there is a clear attempt by the TPLF and other insurgents’ groups to take government power in an extra constitutional manner. It is extra constitutional because the FDRE Constitutions designates election as the sole means of assuming government power. Hence, there is a breakdown of law and order which cannot be controlled even by Ethiopian National Defense let alone regular law enforcement agencies. The existence of a threat against constitutional order is tantamount to the threat to the life of the nation. Therefore, it can be concluded, theoretically speaking, there was sufficient justification which necessitated the declaration of the state of emergency. On the other hand, the state of emergency proclamation No.5/2021 deviated from constitutional and international principles governing state of emergency in many ways. For instance, the geographic scope of the proclamation is broad and deviates from the principle of proportionality. By suspending the power of court, the proclamation violates due process of law which should not be violated under any circumstances. It has failed to

adhere to the principle of respecting and protecting non-derogable rights such as freedom of conscience. It also indirectly infringes on the principle of non-discrimination.

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