

Navigating Public Health Emergencies and Constitutional Challenges in Ethiopia: Key Issues, Gaps, and Valuable Lessons from the COVID-19 Crisis

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Abstract

Ethiopia's COVID-19 state of emergency has enacted public health measures that curtail civil rights, many of which could have been implemented under existing laws. However, the federal proclamation lacks an institutional structure for Constitutional governance and accountability during and after the crisis. Furthermore, it introduces a federal commandeering clause that is incompatible with the cooperative nature of Ethiopia's federal system and hinders coordinated action. The postponement of national elections exemplifies the potential for misuse and abuse of power under this state of emergency framework. The paper argues that while emergencies justify extraordinary measures, these should not override constitutional accountability or marginalise democratic institutions. Lessons drawn from global practices, such as those in South Africa and Germany, are used to recommend reforms aimed at institutional resilience, legal clarity, and rights protection. The study concludes by emphasising the importance of constitutionalism in emergency governance and calls for clearer legislative frameworks and more robust oversight mechanisms to ensure that public health responses do not erode democratic norms.

Key words: Accountability, Civil Liberties, Federalism, Public Health Emergency, State of Emergency

1. Introduction

The World Health Organization (WHO) declared the COVID-19 outbreak a Public Health Emergency of International Concern (PHEIC) on January 30, 2020, citing the high risk of global spread from its origin in Wuhan, China. By March 4, 77 countries had reported cases of COVID-19. (WHO, 2019). The World Health Organization (WHO) characterised COVID-19 as a pandemic in March 2020 and officially declared it on March 11 (Ibid.).

Three months after the occurrence of the virus and its spread to many countries, the world has witnessed the collapse of healthcare systems. The crisis has put governments of all infected nations in the spotlight in terms of how some responded earlier and how others needed to respond and control the exigency (Alon, Farrell and Li, 2020). COVID-19 has become a global public health threat that forced different states to activate, enhance and take different public health emergency laws and measures, including a declaration of a state of emergency. While the health threat of the pandemic urged many countries to initiate and apply public emergency health laws and measures, the nature of the responses varied from country to country.

As a legal and administrative response to prevent and control Covid-19, the Ethiopian Federal Ministry of Health launches the activation of its Public Health Emergency Operation Center (PHEOC) on January 27, 2020 under the Ethiopian Public Health Institute to respond to the pandemic (Ministry of Health, Covid -19 Situation Report, 13 March-7 June 2020, p.3). The regional states also took certain restrictive measures and public health emergency responses. The Tigray regional State declared a state-wide state of emergency on March 26. While other regional states also began to take different practical measures in that regard, it was only the Tigray regional state that publicly issued a state of emergency decree.

The Amhara and Oromia states had reportedly closed their borders on March 31. Bahr Dar, the capital of Amhara state, had been in complete lockdown. Several cities in Oromia, such as Adama and Assela, had suspended public transport. However, some of the regions eased their restrictions after April 10, two days after the declaration of the state of emergency by the Federal government. In particular, Oromia, Harari, SNNP and Dire Dawa relaxed their ban on public and cross-region transportation; and the lockdown measures imposed in the four towns in Amhara Region were also lifted as of April 14 (Ibid).

On April 8, 12 days later than the Tigray state of emergency decree, the Federal government announced a five-month state of emergency on the grounds of the pandemic. The Federal state of emergency has incorporated public health powers and restrictive measures that are intended to apply all over the country. Both governments used the decision of the WHO on the pandemic

nature of the public health threat of the COVID-19 emergency as a background to declare emergencies.

Following the emergency decrees, the federal level of government has tried to apply public health police powers and restrictive measures. The state of emergency measures prohibited different activities and events that involve public gatherings and social contact. In particular, the state of emergency laws incorporated the commonly known public health police powers of quarantine isolation, medical treatment, travel ban, shutdown of certain business and entertainment activities and places and schools, possibility of lockdown, stay home, social distancing measures and other related public health precautionary measures. As such, both the federal and the regional state of emergency regulatory measures impose restrictions on many types of civil rights and liberties that were normally protected as individual and communal privacy rights and autonomy.

This paper examines the legal and constitutional issues raised by the COVID-19 state of emergency, focusing on: (1) whether it introduced new public health emergency powers and restrictions compared to preexisting laws; (2) whether it established or properly activated the constitutionally required emergency governance structure; (3) whether the federal government possesses constitutional power to direct regional states during a public health crisis; and (4) whether emergency legislation is susceptible to misuse of power.

To address the aforementioned issues and questions, the paper inquiries into Ethiopia's COVID-19 public health responses and emergency within its federal system, examining it through state of emergency principles under the FDRE constitution, general emergency theory, and comparative constitutional experiences, which begins by discussing the concept of a public welfare state of emergency.

The discussion sections of the paper are organised as follows: First, the paper examines the legal and constitutional issues raised by Ethiopia's COVID-19 state of emergency, focusing on the necessity of the decree and its alignment with preexisting laws. Next, it analyses the institutional structures for emergency governance, comparing Ethiopia's approach with experiences from federal systems like the U.S., Canada, and Australia. The paper then explores the tension between federal and regional powers, critiquing the federal commandeering clause and its impact on

cooperative federalism. Finally, it addresses the design flaws in the state of emergency decree, highlighting risks of misuse and abuse of power, particularly in the postponement of elections. The discussion culminates in recommendations for legal and institutional reforms to uphold constitutionalism during emergencies.

2. Methodology and Approach of Inquiry

This paper employs a qualitative research methodology to analyse the legal and constitutional implications of Ethiopia's COVID-19 state of emergency and adopts a multifaceted approach that aims to provide a comprehensive understanding of the public health emergency and the legal and constitutional issues and challenges posed. The following steps outline the proposed approach:

- I. Document Analysis: This study examines relevant legal documents, including federal and regional decrees, related to public health emergencies and the COVID-19 state of emergency. This section provides a detailed review of the provisions invoked and the expressions used to understand the scope and limitations of emergency powers.
- II. Comparative Legal Framework: A comparative analysis was conducted to assess Ethiopia's emergency measures with existing laws and frameworks. This involves evaluating whether the health measures introduced were new or could have been implemented under pre-existing legal provisions.
- III. Institutional Review: This study analysed the institutional structures in place to manage public health emergencies in Ethiopia. This includes evaluating the efficacy of constitutional governance mechanisms intended to oversee emergency powers and ensure accountability.
- IV. Case Study Analysis: Specific instances of the implementation of emergency powers are scrutinised, such as the decision to postpone national elections and restrictions on civil liberties, which are examined. These case studies help illustrate the practical implications of emergency measures on governance and civil rights.
- V. Capturing Expert Opinions: Insights from legal experts, public health officials, and civil society organisations were incorporated to understand the broader context of the emergency response and its impact on constitutionalism and federalism in Ethiopia.

VI. Theoretical Framework: This study integrates theoretical frameworks around federalism and constitutional governance to assess how the Ethiopian government's actions align with or deviate from established principles of constitutional and democratic governance.

Through this multi-faceted approach, this study aims to provide a comprehensive understanding of the legal challenges posed by the state of emergency and to recommend pathways for strengthening Ethiopia's legal framework in future emergencies.

3. The Notion of Public Welfare State of Emergency

While the focus in much recent work has been on violent crises and emergencies such events as wars and international armed conflicts, rebellions, and terrorist attacks, state of emergency normally refers to different types of public threats and dangers that include socio-economic crises and natural disasters, infrastructure disasters, epidemics, floods, and earthquakes. Indeed, anything that poses a real and urgent threat on a grand scale is an emergency, insofar as one aspect of a government's job is to keep its citizens safe (Lazar, 2009, p.7). The experience of countries shows that emergency powers could be used in times of great economic consternation and situations of severe natural disasters as frequently as, and perhaps even more than, in the context of violent crises (Gross and Aoláin, 2006, p. 74-76).

While some constitutions provide general emergency clauses that could capture different types of state of emergency, several constitutions establish a dual structure of emergency regimes in a way that distinguishes public welfare emergencies from public order emergencies. Constitutional systems also distinguish between a multiplicity of states of exception (state of emergency), allocating different emergency powers to the government according to the particular type of exigency at hand. For instance, the Canadian Emergencies Act of 1988 authorizes the federal government to declare four different types of emergencies: “public welfare emergency” that may be declared in circumstances of natural disasters; “public order emergency” in case of serious threats to the security of Canada emerge; “international emergency” dealing with situations involving acts of intimidation toward Canada or other countries; and finally, “war emergency” that may be proclaimed in case of real or imminent armed conflict involving Canada or any of its allies (Government of Canada, 1988).

Many of the constitutions of Latin and South America draw distinctions between a multiplicity of states of exception (*estado de excepción*), allocating different emergency powers to government according to the particular type of exigency at hand (Ibid.)¹ Though the pattern of separating several types of emergency regimes is not universally followed, different categories of emergencies could be identified from a constitutional list of emergency circumstances that may be provided under one general state of emergency clause, too. The Constitution of South Africa, for example, recognises only one type of emergency regime, following a declaration of a state of emergency. However, the constitution recognises that such a state of emergency may be invoked in a range of cases when “the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency”, Ibid (p.77).

Similarly, the FDRE Constitution has adopted one general emergency clause that aims to avert different circumstances of extraordinary threats or dangers. Art 93(1)(a) of the FDRE Constitution reads:

The Council of Ministers of the Federal Government shall have the power to decree a state of emergency should an external invasion, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.

Art 93(1)(b) goes on saying :

State executives can declare a statewide state of emergency should a natural disaster or an epidemic occur. Particulars shall be determined in the State Constitutions to be promulgated in conformity with this Constitution.

¹ No fewer than nine different states of exception can be identified in those constitutions. These include, among others, the state of siege (*estado de sitio*), state of emergency (*estadode emergencia*), state of alarm (*estado de alarma*), state of prevention (*estado de prevenci'on*), state of defense (*estado de defensa*), and state of war (*estado de guerra*), state of public catastrophe. It is usual to find several distinct states of exception in the same constitutional document. Thus, for example, Article 139 of the Constitution of Guatemala lists five distinct situations of emergency: state of prevention; state of alarm; state of public catastrophe (*estado de calamidad pública*); state of siege; and state of war.

While the FDRE constitution incorporated a general emergency clause under Art 93(1)(a), it, however, indicated the distinction between public order emergency and public welfare emergencies when it allocates the power to declare state of emergency to avert disasters to both the federal and the regional states under paragraph (b) of the same provision.² In light of Art 93(1)(b) of the Constitution, regional states have also adopted a state of emergency clause in their constitutions. For instance, Art. 103 of the Tigray regional state Constitution incorporated that the executive council (cabinet) of the regional state can decree and implement a state of emergency should any natural disaster or epidemic occur.

Despite the variation on the specific consequence of the respective state of emergency, the public welfare state of emergency shares the basic characteristics of a state of emergency in general. Andrej Zwitter and Lazar have provided a good explanation of the meaning and nature of the state of emergency based on an ontological and basic characteristic of the situation. According to Andrej Zwitter (2012, p.4), an emergency is a de facto situation, which, because of its nature, prompts the state to temporarily change some state structures so that it can more effectively and efficiently address the situation at hand. Such a situation, therefore, represents a condition which is rather different from the normal state of affairs under which the government usually operates. In other words, the emergency is an extraordinary situation that urges the state to change or modify the ordinary legal order; there should be a concrete and urgent problem (conditions of necessity) that would necessitate the state to invoke a state of emergency power to give an adequate response to avert the danger. This shows that the elements of urgency, concreteness and scale are the key characteristics of a state of emergency.

As provided by Lazar (2009, p.7), when we say a state of emergency is an urgent situation, it means that it is an exigency that poses an immediate threat, one too pressing to be dealt with

² Public order emergency is declared in the event of 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. Besides, the government can also declare a public welfare state of emergency which refers to the state of emergency that is attributed to the occurrence of a natural disaster or epidemics /public health crises. While the public order state of emergency can be declared by the Federal government, the public welfare state of emergency can be declared by both the Federal government and the regional state governments.

through the normal, years-long process of policy and legislation making. An urgent threat must be dealt with immediately, if it is to be eliminated or mitigated. Citizens cannot wait for lengthy bicameral debate to decide on the best way to confront an epidemic, at the risk of allowing the epidemic to spread exponentially, with exponentially greater loss of life.³ Concreteness is closely related to urgency. Both describe a situation that forces the state to act, revealing that the normal state functions are unable to effectively deal with the problem. Both are temporal elements. However, urgency describes a need for speedy action (a question of efficiency), while concreteness relates to its precisely defined beginning and end.⁴

The second characteristic is what Lazar (2009, p.7) has called ‘scale.’ Scale refers to the range of people or objects likely to be affected by the event. This feature of scale is also more illustrated by Andrej Zwitter. When we say there is a public threat, according to Andrej Zwitter, the threat cannot be marginal. It must be of a magnitude that severely harms the state or its citizens and of such a gravity that the state can only successfully face by changing its own structure. The necessity lies in the need to change the state structures out of a need for urgency and concreteness. The nature of a situation requires the restructuring of state functions to mitigate the situation's negative effect on the state and its citizenry more effectively (better) and more efficiently (faster). The reason for the existence of legal regulations on states of emergency is, thus, the need to ensure the survival of a state and its citizenry and to bring the situation back to normal by temporarily changing the structure of governmental functions and system of governance (Zwitter, 2012, p 4-5).

4. Public Health Emergency and Review of COVID-19 Responses in Ethiopia

4.1 COVID-19 State of Emergency, Public Health Powers and Restrictive Measures

³ For Lazar (2009), a man who has had a heart attack is experiencing an emergency, but it is not an emergency from the perspective of the state. If a power grid disaster shuts down all the hospitals so that he and others cannot receive care, it becomes a matter of emergency for the government, at whatever level of jurisdiction

⁴ In line with Zwitter (2012, p.15), the condition of concreteness in combination with the limitation of objective and the rule of law prohibit the executive from establishing by emergency acts laws for eventualities that might happen in future but are not causing an emergency yet and are not in the predictable near future. This is because the lack of concreteness always means a lack of urgency. And if urgency is missing, then the democratic principle demands that the regular legislation establishes laws.

The Federal Council of Ministers issued a Regulation to Implement the State of Emergency Proclamation No. 3/2020 Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact. The Federal public health emergency regulation has regulated and imposed public health police powers and restrictive measures that claim to be taken to counter and mitigate the humanitarian, social, economic and political damage that could be caused by COVID-19. To that end, the federal public health emergency regulation prohibited conduct of meetings for religious, government, social or political purposes in places of worship, public institutions, hotels, meeting halls or any other place (Art 3(1), shaking of hands (Art 3(3), serving alcohol or recreational services at night clubs and bars (Art 3(10). Besides, the regulation also regulated and imposed restraint measures on hotels, restaurants and cafes (Art 3(3), cross-country public transport (Art 3(4), inter-city transport service (Art 3(5), driver of a private automobile (Art 3(6), Addis Ababa light railway (Art 3(7), Ethio-Djibouti railway (Art 3(8), and the entry into or exit from the country or import and export (Art 3(14). The regulation also incorporated different restrictive measures including quarantine, isolation, the duty to report, the duty to put on a cover on his nose and mouth up on any person who is found at banks, marketplaces, transport depots, in public transit, shops, pharmacies, places where public services are provided or any other public space where a large number of people are found (Art 4(1-8).

In general, the federal regulation has imposed various restrictive measures that limit civil rights and liberties, which are typically protected as individual and communal privacy rights. However, many of these public health police powers and restrictive measures could have been exercised under preexisting public health emergency laws and regulations. The substance of the federal public health powers and restrictions could have been introduced through the activation and enhancement of existing legal frameworks, as Ethiopia already has established public health institutions and regulatory mechanisms designed to prevent and manage public health threats, including communicable diseases. For instance, provisions in the Public Health Institute Establishment Regulation 301/2013 (Art 5(1-4)), Proclamation No. 661/2009 (Arts 3(2)g, 4(14), and 4(15))—which address quarantine and communicable disease regulation at ports of entry and exit—and the Food and Medicine Administration Proclamation No. 1112/2019 (Arts 4(5) and 63(1-8))—which outline the police powers of the Food and Medicine Authority—demonstrate that the measures in the emergency decree were already anticipated under existing laws. This raises the

question: If these preexisting laws and regulations were sufficient to address the situation, what was the need for an additional state of emergency decree? The necessity of the emergency decree should be revisited, or the author must sufficiently elaborate on why the existing frameworks were inadequate and why the decree was justified. Similar arguments can be made regarding regional laws, which also provide mechanisms for managing public health emergencies.⁵

4.2 Review of the Ethiopian COVID-19 Response Measures and Expert Opinions

Before the official declaration of a public health emergency on April 2020, Ethiopia already began implementing emergency measures to address the COVID-19 pandemic in January 2020, ahead of most countries and before it detected its first case, by introducing strict passenger-screening protocols at airports and conducting house-to-house screenings for 11 million households, and subsequently scaled up its response after the first confirmed case was reported on March 13, 2020, by closing international land borders (except with Djibouti to ensure smooth transport of commercial goods), banning inter-regional public transport and public gatherings, closing schools and entertainment venues, and announcing social distancing measures.⁶ Subsequently, a federal state of emergency was declared from April to September 2020.

Ethiopia's early federal response to the COVID-19 pandemic involved implementing various federal directives aimed at mitigating the spread of the virus. Key directives were issued by the Public Health Institute (PHI) on October 5, 2020, and the Ministry of Health (MOH), which provided guidelines for how hospitals, clinics, and other healthcare establishments should operate during the pandemic (Zemelak *et al.*, 2024, p.7). While various federal agencies were observed to

⁵ With regard to the existing regional public health emergency laws and public health police powers and restrictive measures, see, for instance, Art 2(64) and Art 4(1-4) of the Tigray regional state proclamation on the definition and organization of powers and functions of the executive organ No. 183/2011; see also Art 5(1-7) of the Tigray Health Research Institute Proclamation No. 265/2015.

⁶ McCann J, Sinno L, Ramadhan E, Assefa N, Berhane HY, Madzorera I, Fawzi W. COVID-19 Disruptions of Food Systems and Nutrition Services in Ethiopia: Evidence of the Impacts and Policy Responses. *Annals of Global Health*. 2023; 89(1): 30, 1–16. DOI: <https://doi.org/10.5334/aogh.3980>; see also Z A Ayele, Y T Fessha, B Dessalegn, B A Gebeye, 'Ethiopia: Legal Response to Covid-19', in Jeff King and Octavio LM Ferraz et al (eds), *The Oxford Compendium of National Legal Responses to Covid-19* (OUP 2021). A few days after the first case of Covid-19 was confirmed, the CoM banned all public gatherings and sports events and ordered the closure of bars, nightclubs, schools, universities, and colleges. Restrictions were also placed on religious gatherings.

issue directives and were involved in the implementation of different public health emergency measures, a ministerial committee was created under the prime minister office, which passed and announced several decisions before the Declaration of State of Emergency, and the Decisions of the *de facto* Ministerial Committee were communicated to the public in the form of a press release with the Prime Minister's office letterhead (Ibid., p.15).

Although the ministerial committee did not have a legal basis and constitutional authority and there was a lack of legally defined roles and responsibilities, it was claimed that a three-layered coordination structure was established to support the coordination of the COVID-19 readiness and response in Ethiopia: the strategic level coordination consisting of ministerial task forces chaired by the Prime Minister; the multi-sect oral level coordination led by the National Disaster and Risk Management Committee (NDRMC); and the tactical levelled by the Public Health Emergency Operations Center (PHEOC) (Lanyero *et al.*, 2021, p.2).

Several medical research articles have also praised Ethiopia's coordinated response to the pandemic, particularly in its initial stages. One study by Mossie *et al.* (2025) emphasised the establishment of a multi-sectoral and multi-stakeholder coordination mechanism, which was bolstered by high levels of political engagement (Muluneh Yigzaw Mossie *et al.*, 2025). Similarly, Abdulnasir Abagero *et al.* (2022) discussed Ethiopia's national COVID-19 response, which included collaboration with international development partners, donors, and the private sector. Accordingly, the National Preparedness and Response Coordination Platform, led by an emergency operation centre, were considered to be central to the country's pandemic management (Abagero *et al.*, 2022).

The aforementioned claims by medical experts also found corroborative support from additional public health-related initiatives and reports that provide a positive assessment of the leadership and coordination of the Federal COVID-19 response. One project initiative in that regard stated, "the National Taskforce for Multi-sectorial COVID-19 Pandemic Response, led by the Deputy Prime Minister, coordinated various ministries, including those for health, justice, and defence, aimed to facilitate coordination at the national, regional, and local levels." The National Disaster and Risk Management Committee (NDRMC) and the Public Health Emergency Operations Center (PHEOC) played key roles in overseeing these efforts." (Joint Learning Network, 2025). Despite

these positive assessments and sympathetic reactions, a notable gap exists in the medical literature regarding the legal, policy, and constitutional aspects of Ethiopia's response to the pandemic. While much focus has been placed on the effectiveness of public health responses, the legal and policy implications of federal responses and the balance of power between the federal government and regional states remain underexplored.

Only a few works and discussions have focused on the legality and constitutionality of the measures taken concerning the COVID-19 response and Ethiopia's federal system of governance. Some legal scholars have raised important concerns regarding constitutional issues related to Ethiopia's COVID-19 response. Zemelak *et al.* questioned the legality of the restrictive measures imposed by the federal government, which began before the formal declaration of a state of emergency in April 2020. These measures, such as bans on public gatherings, religious services, and closures of schools, raised questions about the scope of the federal government's authority to impose such restrictions without clear constitutional authorisation (Ibid.) However, the absence of a legal basis or constitutional authority is not critically addressed.

Zemelak Ayele *et al.* (Ibid.) critiqued the federal government's dominant role in managing the pandemic, noting that state governments were relegated to implementers of federal policies, with limited autonomy or input in decision-making. Their critique of Ethiopia's response to public health emergencies within a federal system highlights the disproportionate centralisation of power and the limited role of local governments in managing the crisis (Yonatan and Zemelak, 2023). While the authors raised the question of centralization, the issues of institutional structure and system of emergency governance are not separately dealt with and do not attempt to look for a constitutional defensible emergency governance system that would address the interplay between federalism and public health governance and would ensure constitutional safeguards against the misuse of emergency powers.

Yidnekachew Mitiku (2022), in his analysis of public health emergency declarations in Ethiopia's federal system, delves into the scope of emergency powers at both state and federal levels. However, his work presupposes that the principles of a public order state of emergency are directly applicable to public health emergencies without fully exploring the unique nature of public health crises and their impact on constitutional governance. While his argument is insightful, he

overlooks the cooperative nature of Ethiopia's federal system, which is essential for ensuring that both the federal government and regional states share responsibility for managing public health emergencies.

The potential for abuse of power during states of emergency has been a key concern in Ethiopia's recent political discourse. Mengie (2023) critically examined the constitutional interpretation provided by the House of Federation (HoF) concerning the extension of government terms during the COVID-19 pandemic. While Mengie's analysis acknowledges the HoF's decision as a pragmatic exit strategy for the government, it also raises important questions about the impartiality of the House and the broader implications for democratic legitimacy. Although his work provides a nuanced evaluation of the legal reasoning employed, it does not fully explore the broader constitutional dangers inherent in emergency declarations, particularly the risks associated with rights suspension, executive overreach, and the erosion of institutional checks and balances (Mengie, 2023).

In summary, while Ethiopia's response to COVID-19 has been praised for its coordination and leadership by non-lawyers, there remains a significant gap and flaw in the legal and constitutional aspects of the response. The preferable approach of governance and coordination that addresses the tension between federal authority and regional autonomy, the concern of abuse of emergency powers, and the need for a more nuanced understanding of the constitutional implications of public health emergencies has remained out of the preexisting research outputs. Against the backdrop of such gaps, the author has inquired about the issue of emergency governance and the federal system, and pointed out the possible constitutionally defensible public health emergency system in Ethiopia.

5 Institutional Structure and System of Emergency Governance: Experiences with Constitutional Federal Systems

As it is stated by Andrej Zwitter, the nature of state of emergency dictates the concrete and urgent necessity to change or modify the governance structures to mitigate the situation's negative effect on the state and its citizenry more effectively (better) and more efficiently (faster). The reason for the existence of legal regulations on states of emergency is, thus, to ensure the survival of a state and its citizenry and to bring the situation back to normal by temporarily changing the structure of

government functions in favour of efficiency and effectiveness. The experience of other countries on public health crisis management systems also indicates the need to establish and develop the constitutionally required public health emergency governance structures and arrangements. The experience of other countries on the public health crisis management system also indicates the need to establish and develop constitutionally required public health emergency governance structures and arrangements.

5.1 The US Experience

Different countries invoke their General Emergency Management Act to exercise broad powers to combat the effects of different types of emergencies, including public health emergencies, such as COVID-19. The US Parliamentary Act of the Federal Emergency Management Agency (FEMA) delegated the power to coordinate disaster relief and provide emergency assistance to states. In addition, the fact that President Trump determined the COVID-19 pandemic was an emergency of nationwide scope under 42 U.S.C. 5191(b) allowed FEMA to more easily dispense emergency funds to any state that required them.⁷

In this regard, the US public health and disaster management system was designed in consideration of a cooperative Federal System. The U.S. public health and emergency management systems reject a strict dual federalism model of “either-or” that would divide responsibility and power into distinct categories. Instead, a cooperative federalism model that uses a flexible application of the Tenth Amendment and designs systems that envision a national government leading cooperative relations within itself and with states is in place. Shared power is at the heart of federalism; therefore, leadership matters, including the need to coordinate all actors and government levels while working in the private and nonprofit sectors (Ibid., p.5).

⁷ For more see *Responding To The Covid-19 Pandemic: Constitutional Implications: A Guide to Relevant Constitutional Legal Principles Implicated When Responding to a Public Health Crisis*, Prepared by University of Maine School of Law, <https://mainelaw.maine.edu/wp-content/uploads/sites/1/2020-responding-covid-19.pdf>, p14, the President’s declaration of a national emergency based on the COVID-19 pandemic on March 13, 2020 made a broader scope of powers available to the federal executive branch, including approximately 160 powers delegated to it by the legislative branch that may be used during a national emergency.

While the US national government had extensive powers to combat the approaching coronavirus and had a legal ‘coordinative’ responsibility to do so, federal authorities were not plenary, and what federal officials could do was limited. There is no federal power to close or reopen schools or businesses, require individual mask-wearing outside federal property, or issue lockdowns or stay-at-home orders. However, state actions can be encouraged through persuasion, funding, and other incentives, and a president can offer clear, consistent guidelines for non-pharmaceutical mitigation (stay-at-home, social distancing), testing, contacting, isolation protocols, data collection and analysis protocols, clear and consistent criteria for reopening schools/businesses, vaccination priorities, and distribution guidance. Federal officials cannot “command” states to discharge their public health responsibilities, but they do possess a significant degree of statutory grants of power for responding to a major health emergency (Cigler, 2021).

The general experience of the US federal system dictates that public health police powers and restrictive measures are the sovereign and residual powers of regional states. The powers and functions of public welfare and/or public health are understood in terms of the doctrine of police power under the jurisprudence of the US legal system. The doctrine of police power in the US dictates that states have a civil authority and capacity to (1) promote public health, morals, or safety, and the general well-being of the community; (2) enact and enforce laws to promote general welfare; (3) regulate private rights in the public interest; and (4) extend measures to all great public needs (Galván, Atchison, and Levey, 2005).

The concept of police power is rooted in the Tenth Amendment of the U.S. The Constitution reserves powers that are not delegated to the federal government to the states. This includes the authority to regulate health, safety, and welfare (Gostin 2000). A landmark case often cited in discussions on police powers is *Jacobson v. Massachusetts* (1905), which upheld the authority of states to enforce compulsory vaccination laws. Public health officials may use police power to compel treatment, prohibit or direct a particular conduct, or detain and isolate in a quasi-criminal manner (Galván, Atchison, and Levey, 2005).

5.2 The Canadian Experience

The power of the Canadian federal government to act in a public health emergency is largely governed by two pieces of legislation: the Emergencies Act 17 and the Emergency Management Act. The Emergency Services Act gives the government of Canada the authority to “invoke exceptional yet incident-specific powers to deal with emergencies, including public welfare emergencies”.⁸

Through its federal, provincial, territorial (FPT), and municipal governments, Canada established the plans, experience, and infrastructure to effectively manage and respond to a pandemic. The Canadian pandemic response and Emergency Management System in that regard is designed and applied in light of the decentralized Federal structure. As a highly decentralized federation, public health measures in Canada are the shared responsibility of FPT governments. Although the federal government is responsible for a few other designated public health measures and public health surveillance, PT governments are primarily responsible for most pandemic emergency responses and the administration of their tax-funded universal health insurance programs. PT governments have further delegated some public health responsibilities to dedicated provincial and regional public health agencies; most PT and many local governments also formed dedicated COVID-19 response teams responsible for advising and assisting political leaders with decisions regarding public health and economic measures. Overall, the emergency management framework in Canada positions the federal government largely in a coordinating and convening function, with provinces taking the lead and only requesting support from the federal government when needed (Allin *et al.*, 2022, p.2).

5.3 Australia and Argentine Experiences

The Australian experience provides instructive insight into the need to adopt a cooperative and collaborative emergency governance structure in federal systems. The 2011 National Emergency Response adopted a cooperative and collaborative mechanism of emergency governance that involves the participation and respective roles of the federal government, states, and territorial

⁸ The Emergency Management Act “sets out the leadership role and responsibilities of the Minister of Public Safety and Emergency Preparedness, including “coordinating emergency management activities among government institutions and in cooperation with the provinces and other entities (Ahmad, 2020, p.45).

level of governments that are needed for the strategic coordination of responses to national emergencies, including public health crises. One of the prime reasons to adopt a cooperative and collaborative emergency response is the residual legislative power of the member states of the Federation. Since states and territories in the Australian federal system have residual legislative powers concerning health care, the management of emergencies is also not generally a matter for which the federal government may give directions and commands to states and territories under the Constitution (Law Library of Congress Global Legal Research Directorate, 2015, p.18).

The Argentine experience underscores the need to establish a shared organizational structure and a cooperative and collaborative emergency response to prevent and control public health crises. Argentina has a Federal Health Council composed of health ministers from all provinces and municipalities throughout the country. This approach facilitates the coordination of health policies and services between the National Health Authority and the provinces (Pan American Health Organization, 2012, p.34-35).⁹

6. Inquiry on the Ethiopian Response to COVID-19 and Issues of Legality, Constitutionalism, and Federalism

6.1 The Federal COVID-19 Responses and the Lack of a Constitutionally Defensible Governance System

In the early COVID-19 response in Ethiopia, executive decisions and measures were made without a clear legal framework or constitutional basis. Since the de facto structure of the COVID-19 response was announced without a clear legal basis and constitutional authority, the early Federal response was not supported by a predetermined legal framework and authority that defined clear legal responsibilities and accountability mechanisms. In the absence of a clearly defined responsibility and mechanisms of accountability, the claimed coordination structure does not allow for the proper tracking of progress and the measurement of the success of coordination efforts. Since the executive decision of the Prime Minister did not establish legally defined, clear, and measurable goals and objectives for the coordination effort, it is difficult to measure and track its

⁹ Such a collaborative structure of public health emergency response fits with the cooperative Federal system since the Federal government could not command the provinces which have autonomy in setting their health policies and laws for the protection of their population.

performance and progress and ensure accountability of the government and public officials involved in the coordination process.

Despite the announced composition attempts to create horizontal coordination between various federal agencies and ministerial authorities, there were no legally outlined roles and responsibilities for each public official and institution, and the legal relationship between the senatorial teams and authorities was not defined. Worse, the initiative is limited to considering the vertical coordination mechanisms that should have reflected the constitutional authority and autonomy of the member states of the Federation and the sub-local authorities. The COVID-19 response after the declaration of a state of emergency posed similar legal and Constitutional challenges.

As is provided in the preamble of the FDRE COVID-19 State of Emergency, the impossibility of curtailing the spread of the pandemic through the normal system of government had been claimed as a rationale for declaring a state of emergency. However, this is not reflected in the content of the state of emergency proclamation. The proclamation neither created a new COVID-19 emergency power structure that fit the federal system nor restructured the normal government system in a manner to coordinate and cooperate with the regional states and the local authorities.

The COVID-19 State of emergency has also not invoked and activated the national disaster and risk management system. Ethiopia has a national disaster risk management system that could have been properly activated and strengthened to mitigate and control the risks and impacts of COVID-19. Unlike the former disaster management, which was mainly designed to focus on a policy-based response to drought and supply of life-saving relief emergency assistance during disasters, a comprehensive disaster management system was adopted in 2015 in a way to cover all man-made and natural disasters.

The 2015 Ethiopian disaster management system has created an institutional framework that adopts a comprehensive approach to disaster management that covers all grounds of disasters that are either natural or man-made hazardous occurrence, matter, human movement or condition that can cause serious disaster, death, bodily injury or basic health influence to humans or that may cause loss of basic income source and service, or cause impediment of social and economy

development or environmental damage.¹⁰ As such, the risk and disaster management commission have expansive power and responsibility to prevent and avert disasters, including the mitigation, rehabilitation, and recovery functions of the disaster management system.¹¹

Before the WHO declared a global pandemic, the Ethiopian NDRMC announced the establishment of a National Coordination Centre that attempted to set up quarantine centres and food banks in various areas. However, the powers and responsibilities of the commission were not properly activated, and it did not take a leading role in even the early COVID-19 pandemic response.

According to Zemelak Ayele and Yonatan Fessha (2023), the NECC was formed on the understanding that COVID-19 was not only an imminent health disaster but posed numerous risks, especially humanitarian ones that called for a multi-sectoral response. However, there was no official declaration or determination of COVID-19 as a disaster. Instead, the Council of Ministers, in the same period, claims to have activated a National Public Health Emergency Preparedness Centre and began preparations to deal with a potential outbreak of COVID-19, with control mechanisms at ports of entry requiring anyone entering the country to undergo a temperature check before the declaration of a public emergency. Despite the early attempt of the Commission to establish a national coordination centre in that regard, the risk and disaster management system was sidelined after the Declaration of the COVID-19 State of Emergency. Thus, the powers and responsibilities of the commission were not properly activated, and the commission did not have a leading role both in the early COVID-19 response and after the declaration of the State of Emergency.

The COVID-19 state of emergency did not invoke or activate preexisting public health powers and responsibilities. The Public Health Emergency Centre was established in 2017 based on Council of Ministers Regulation No. 301/2013, which gives the EPHI the mandate to lead and coordinate public health emergency preparedness, early warning, surveillance, response, and recovery and rehabilitation efforts. A standalone PHEOC has been in place at the national level since August

¹⁰ National Disaster Risk Management Commission Establishment Council of Ministers Regulation, Regulation No. 363/2015, Art 2(5).

¹¹ Ibid , Art 6(4)-(9).

2017, and it was first activated to coordinate Acute Water diarrhoea disease outbreaks in multiple regions of the country. Since then, the PHEOC has been activated to coordinate a broad range of public health responses, including Ebola preparedness, humanitarian response for internally displaced persons (IDPS), malaria, measles, yellow fever, chikungunya, dengue fever, circulating vaccine-derived polio virus, and the COVID-19 global pandemic response.¹²

The Public Health Institute claims the activation of the Public Health Emergency Centre's incidental management system to respond to COVID-19, before the declaration of the State of emergency. One medical research team has also appreciated that Ethiopia constructed a unified national response, informed by clinical and public health experts with local expertise and supported by professional societies. It claims that first, an Emergency Operation Centre was 'activated', 'Clinical Advisory and Multi-Sectorial Teams established', a national COVID-19 task force was established, and later on, a state of emergency was declared.¹³

However, the activation, activation level, and legal consequences of activation are not clear. The legal authority to request the necessary resources and budget and the required health services and facilities from the Ministry of health, the Federal government, and other pertinent organs were not defined; the mode of cooperation with regional states and local authoritative and the policy and substantive legal framework to coordinate and cooperate with Federal and regional governments and private actors were not realized. In the absence of such activation and strengthening measures, we cannot say that the federal health emergency has been properly and the declaration of a state of emergency does not demonstrate the need to activate and strengthen the Federal Public Health Emergency System.

¹² See the *National Public Health Emergency Operations Centre Handbook*, prepared by the Ethiopian Public Health Institute, Ministry of Health, 2024; <https://ephi.gov.et/ephi-declared-activation-of-pheocims/#:~:text=EPHI%20Declared%20Activation%20of%20PHEOC%20IMS%20%E2%80%9320Ethiopian%20Public%20Health%20Institute>).

¹³ See Huluka, et. al.(2022). *Strategic response to COVID-19 in Ethiopia. Public Health Action*, 12(4), 191–194. <https://doi.org/10.5588/pha.22.0007>, p.1. The team, however, does not deny the need for equitable, reliable and trustworthy pandemic response as it urges for equitable vaccine distribution across developing countries like Ethiopia, and strong community engagement to create trust and to ensure global health security.)

Despite the early fragmented attempts, the lack of proper activation of risk and disaster management and the public health emergency system became clear when a COVID-19 state of emergency was declared later on. Since the aforementioned general disaster/public welfare emergency management and public health system ` were possible solutions to prevent and combat the public health emergency and the associated threat of disaster, the federal government could have properly activated and strengthened the disaster and risk management and public health emergency system to address the public health threats and risks and impacts of the COVID-19 pandemic.

Taking into account the experience of other Constitutional systems discussed in section 4, three possible institutional structures are plausible options. One way would be to activate and strengthen the disaster and risk management system and make the disaster and risk management commission a lead institution, which would have enabled the government to facilitate and support the coordination of responses to mitigate and manage the risks of COVID-19. If the government believed the preexisting disaster and risk management system was not adequate to give effective and efficient response to prevent and control the virus, it could amend the law of establishment of the commission and thereby built in additional legal authority and responsibility and/or could have initiated and established a new structure or a system of emergency governance or management that can avert the public health pandemic and associated risks and impacts. Many countries' governments across Asia and the Pacific have relied on national disaster management laws and public health frameworks.¹⁴

As it is indicated in section 4, the US, Canada and other Western Constitutional States have utilised and strengthened preexisting emergency management and public health systems that were established in line with their Federal systems. The Declaration of COVID-19 Pandemic Emergency by President Trump is to complement the preexisting disaster and emergency system and is justified by the US Congressional Act of the Federal Emergency Management Agency

¹⁴ See Legal Approaches to Responding to Emergencies: Covid-19 as a Case Study, *Constitutional Insights* No. 6, The Melbourne Forum on Constitution Building in Asia and the Pacific, P 4; for example, Myanmar and Vanuatu both used national disaster laws to respond to Covid-19. Such laws are more likely to include provisions permitting governments to limit people's movement and set up hot zones (presumably because many disasters affect only parts of a country), although some public health laws did contain useful quarantine provisions.

(FEMA), which delegated the power to coordinate disaster relief and provide emergency assistance to states. As such, the fact that President Trump determined the COVID-19 pandemic was an emergency of nationwide scope under 42 U.S.C. 5191(b) allowed FEMA to more easily dispense emergency funds to any state that required them. Adopting a similar approach in Ethiopia was a good and a missed opportunity for the Federal government to fulfil its Constitutional responsibility to provide disaster relief and assistance for regional States¹⁵ and manage the crises in line with the Constitutional system.

Second, activating and strengthening the public health emergency system and establishing a shared organizational structure and cooperative and collaborative emergency response to prevent and control the pandemic was a possible and defensible option. This approach is a constitutionally defensible option in Cooperative Federal systems, as adopted in Argentina. Thirdly, adopting a general cooperative and collaborative mechanism of emergency governance that involves the participation and respective roles of the federal government and states was needed for the strategic coordination of responses to combat the COVID-19 pandemic. This approach is also a defensible option adopted in federal systems such as Australia. The prime reasons to adopt a cooperative and collaborative emergency response system are the cooperative nature of the Federal system and to respect the residual legislative power of the member states of the Federation.

Thus, the reasonable and logical approach of emergency management or governance that should have been adopted in the COVID-19 state of emergency was either the activation and strengthening of the disaster management system or the public health emergency system or the creation of a new structure of emergency governance that fits the cooperative nature of the Federal System and the shared powers of the Federal Government and the member states of the Federation. However, in Ethiopia, the federal COVID-19 state of emergency law does not establish a new emergency

¹⁵ Art 94(2) of the FDRE Constitution, “the Federal Government may grant to States emergency, rehabilitation and development assistance and loans, due care being taken that such assistance and loans do not hinder the proportionate development of States.”

management structure or system, nor does it activate and strengthen preexisting disaster and risk management and public health emergency systems.

6.2 Public Health Powers, Public Health Emergencies, and Federalism: The Issue of Cooperative Federalism and Federal Commandeering

To the extent that states follow a federal system, they face the issue of allocation and scope of power and responsibilities to ensure public health and to avert public health emergencies among federal and state governments. This is the same in the United States and the European federal states, as an overview in the above section. The need to balance public welfare responsibilities with federalism calls for a constitutionally defensible cooperative and collaborative approach to the emergency management system.

Ethiopia's political organization was established by the FDRE constitution as a federal democratic republic comprising regional states (similar to the provinces of other Federations) and one autonomous city administration. Each regional state has its governmental organs, state constitutions, legislation, regulations, directives, and resolutions. The regional states have constitutionally entrenched power and autonomy to establish their forms of government and different levels of administrative units. While federal and state governments have their exclusive power, they also share power and functions in certain areas. For instance, the federal government and the regional state governments have shared power and responsibilities to implement public welfare policies, strategies, and plans to ensure public health and protect from public health crises and emergencies.

The FDRE Constitution contains clear provisions that impose a duty and responsibility on both the federal and the regional government's organs to ensure and promote the health and well-being of the people and protect them from natural and man-made disasters. In the human rights chapter, Art 44(1) of the constitution provides that "all persons have the right to a clean and healthy environment". Art 41(3) provides that "every Ethiopian national has the right to equal access to publicly funded social services". Besides, sub-Art. 4 of the same provision provides that "the State should allocate ever-increasing resources to provide to the public health, education and other social services". These provisions are relevant to the formulation of public health policies,

strategies, standards, and laws. The duty to respect and fulfil these rights is a shared responsibility of all levels of government.¹⁶

The social policy objectives have also imposed a duty on all governmental organs to ensure and protect public health and avert possible man-made and natural disasters, including health disasters. Art 89(8) of the constitution provides that: “the government shall endeavour to protect and promote the health, welfare and living standards of the working population of the country”. Moreover, Sub-Art 3 of the same provision states that “the Government shall take measures to protect against natural and man-made disasters; and, in the event of disasters, it shall provide timely assistance to the victims”. Similarly, Art 90(1) states that “to the extent the country’s resources permit, the state will provide all Ethiopians access to public health and education, clean water, housing, food and social security”. This shows the need to ensure public welfare and public health, and protect the people from man-made and natural disasters, is the very duty of the government to be realized through ordinary laws and policies of the federal and state governments.

The duty to ensure public welfare and public health and to protect people from natural and synthetic dangers, including epidemics, is a constitutional duty of any organ of government. The second paragraph of Art 85 of the Constitution states: “the term ‘Government’ in this chapter shall mean a Federal or State government as the case may be”. The framework power of the federal government in public health policy is a manifestation of the shared power under the FDRE Federal system. While the federal government has the power to set standards and general health policy criteria, the regional states have the sovereign power to make detailed laws in that regard. To this end, the regional states have residual legislative and executive power under Art 52(1) of the constitution.

The shared power of the federal government and regional states is also reflected during the time of a public welfare state of emergency that can arise from the occurrence of synthetic and natural disasters. While both levels of government have to ensure public health and prevent disaster as their permanent duty, they also have the constitutional power and responsibility to declare a state

¹⁶ Art 13(1) of the FDRE Constitution: “All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.”

of emergency to avert danger if a natural disaster or an epidemic occurs. This power is also allocated to the shared function and responsibility of both levels of government.¹⁷

Thus, although a question could arise as to who has a primary role and responsibility under specific circumstances, both levels of government have a shared duty and responsibility to prevent and avert disasters. COVID-19 is a public health disaster or crisis that lies under the category of a public welfare state of emergency. About the relationship and implementation of federal and state laws and policies, and related public health emergency powers and functions, the Constitution has adopted a cooperative federalism that envisages the cooperation and mutual respect of the federal government and the regional governments. With the adoption of cooperative federalism, the Constitution avoids the possibility of federal supremacy. Although the federal government has the power to establish and implement national standards and basic policy criteria for public health, it cannot command the regional states since they have constitutionally listed powers to issue their policies, legislation, strategies, and plans.¹⁸

Moreover, the regional states have residual power to make public health laws and introduce public health police powers, such as quarantine, isolation, medical treatment, lockdown/shutdown, travel bans, and other social distancing measures. Art 52(1) of the Constitution reads: “All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States.” The power to make public health laws is not given to the federal government. In this regard, the regional states can invoke their residual sovereign power to make laws and introduce restrictive regulatory measures.

The federal and state division of public health powers is also reflected under preexisting laws and practices.¹⁹ The regional states have preexisting public health laws, regulations, and institutions

¹⁷ See Art 93(1)(a) and (b).

¹⁸ Art 50(8), FDRE Constitution: “Federal and State powers are defined by this Constitution. The States shall respect the powers of the Federal Government. The Federal Government shall likewise respect the powers of the States.”

¹⁹ About the public health and public health emergency powers of the Ethiopian public health institute, See Art. 5(1-4), Public Health Institute Establishment Regulation, Council of Ministers Regulation. 301 /120 13, See Art 72(2.), the food and medicine proclamation 1112/ 2019, the Regulatory functions under Articles 3(2)(g), 4(14) and 4(15) of Proclamation No. 661/2009 that deals with quarantine and regulation of communicable disease at ports of entry and exits shall be performed by the Ethiopian Public Health Institute. About the public health police powers of the Food and medicine authority, See Art 4(5), art 63(1-8), food and medicine proclamation, the

that are entrusted to play a significant role in the protection of public health as well as to prevent and control public health threats and dangers. The absence of a federal supremacy clause, the nature of cooperative federalism, and the residual power of regional states to make public health laws preclude the possibility of the federal government commandeering power against the regional states. So, the anti-commandeering principle is under the genesis of the FDRE constitution. Although it may be necessary to direct and command persons to avert crises, regional states are not individual citizens and properties that can be commanded; rather, they are entities that need to be cooperated with.

5.3 Design of the State of Emergency Decree and the Overuse or Abuse of State of Emergency Power

When we see the content of the federal Covid-19 State of Emergency Proclamation, it does not determine the legal and operational resources available to respond to the public health emergency. The decree did not declare emergency powers or the required restrictive measures. The Regulation neither declares the type and extent of emergency power nor the types of rights and regulations that are suspended. Without declaring the type and extent of emergency powers and required restrictive measures, however, the COVID-19 state of emergency states that: “any federal or regional law, procedure or decision that is in contravention with this proclamation or regulations issued under this proclamation shall have no effect while this proclamation is valid”.

Moreover, the anomaly and ill design of the state of emergency proclamation is apparent when the executive authorises detailed regulations without issuing general rules and provisions that could enable and constrain the state of emergency power. Art 5(1) of the proclamation reads: “The detailed conditions concerning the suspension of rights and measures will be decided by the Council of Ministers or a Ministerial Committee to be established for this purpose and notified to the public.” The stipulation of Art 5(1) may appear to indicate that the parliament has determined

proclamation 1112/ 2019; About the existing of regional public health authorities that has a pre- established public health emergency and public health police power, see, for instance, See Art. 2(64), and art 4(1-4), Tigray regional state proclamation on the definition and organization of powers and functions of the executive organ, proclamation number 183/2011; see also See Art 5(1-7), the Tigray Health research institute, Proclamation 265/2015.

the suspension of certain rights and has prescribed certain restrictive measures. However, the proclamation neither determines the suspension of rights nor prescribes restrictive measures.

Without providing any restraining framework in this regard, the parliament has provided a blanket check to the executive. In doing so, the proclamation simply obliges every person to comply with the instructions and commands of all law enforcement agencies or any lawful authority issued by the proclamation.²⁰ Worse, the state of emergency proclamation has authorised the executive to determine the conditions for the suspension of rights and the restrictive measures to be imposed.²¹

Normally, the declaration step of a state of emergency involves the need to specify the grounds on which a state of emergency can be declared within the ambit of the constitution. It is important to ensure that emergency powers are not used inappropriately and disproportionately (Bulmer, 2008, p. 12-13). The official declaration of the circumstances of a state of emergency necessitates the invocation of emergency power. However, the proclamation authorised the executive to create post-ante circumstances of emergencies. This opens the highest opportunity for the government to misuse the state of emergency inappropriately and disproportionately. Although the rationale of a state of emergency seems to focus on the occurrence of the public health crisis of COVID-19, the stipulation of countering and mitigating humanitarian, social, economic, and political damage under the preamble is too broad to be misused and abused by the government.

In addition, the specific provision of the state of emergency proclamation has created additional opportunities for the possible misuse and abuse of the state of emergency power. The proclamation gives a free hand for the executive to create and determine further emergency circumstances, suspend rights and impose restrictive measures. The opportunity for such possible abuse is triggered under Art. 4 (1) of the proclamation, which reads: “as per the FDRE Constitution Article 93 (4) (a) and (b), the Council of Ministers shall, through the Regulations it will adopt as per this Proclamation, stipulate details of the suspension of rights and measures to adopt to counter and

²⁰ See Art 5(2).

²¹ Art 7(1) of the State of Emergency Proclamation: “The Office of the Prime Minister and the Attorney General shall communicate the conditions about suspension of rights and measures to be put in place in accordance with this Proclamation through media outlets that are widely accessible to the public.”

mitigate the humanitarian, social, economic and political damage that could be caused by the pandemic”.

Thus, the stipulation of countering and mitigating humanitarian, social, economic, and political damage under Art 4(1) and the preamble is too broad and serves as a convenient background tool for the overuse and abuse of the state of emergency. The risk of overuse and abuse has become clear when the CCI/HOF has ultimately applied the broad stipulation of the COVID-19 state of emergency as grounds of constitutional interpretation to extend the term of office of the government and to delay the national election. Though the nature of the public health emergency requires the suspension of civil rights, the government has found the opportunity to misuse and abuse and to apply the public health state of emergency to suspend and restrict political and democratic rights. The executive and the National Electoral Board have used the loophole and broad stipulation of the state emergency clause when they initiated the intention to delay the election using the Covid-19 state emergency. As provided in the decision of the CCI, the need for constitutional interpretation arose because of the occurrence of Covid-19 that compelled the state to declare a state of emergency during the time of the election and the constitutional silence to address the issue. As such, the CCI has considered the impossibility of conducting an election because of COVID-19 as a *fait accompli* by accepting the presupposition of the parliament for granted.²² The CCI did not justify which specific provision of Art 93 would allow the suspension of democratic rights to prevent and control COVID-19, and it did not consult the relevant paragraphs of Art 93 that provide substantive limitations on state of emergency power. CCI disregarded the principle of necessity and proportionality, which are designed to limit the state of emergency power.

The CCI could not justify the necessity and proportionality issues in that regard. It just referred to Art 93(4) as part of its analysis to support the suspension of election and democratic rights. However, the consecutive paragraphs of Art 93(4) presuppose a declaration of public order emergency. When a public order state of emergency is declared because of the occurrence of

²² The decision of the CCI, May 27, 2020, File Number 5216/2012, p5. *see* also the letter of parliamentary submission for interpretation letter number 28/65/June 6, 2020.

dangers to peace, sovereignty, public security, law and order, the council of ministers is authorised to apply the necessary emergency power to avert the danger. The Council of Ministers also has the power to suspend political and democratic rights to the extent it is necessary to avert the danger. The constitution has also adopted the principle of necessity when it authorises COMS to determine and apply all necessary types of power that would help avert the abnormal threat/danger of the political order and enable it to return to a normal state of affairs. The need to invoke and justify the necessity of the power of state of emergency under art 93(4(a)) is constitutionally linked with the goals and aims of protecting the country's peace and sovereignty, and of maintaining public security, and law and order. Moreover, Art 93(4)(b) is an extension of sub 4(a) of the same provision. Sub (4)b authorises the Council of Ministers to the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that require the declaration of a state of emergency that are provided in sub 4(a) of article 93.

Therefore, the state of emergency clause has enabled and restrained the emergency power when a public order state of emergency is invoked. As such, the possible conditions of a state of emergency that could serve to suspend political and democratic rights are public exigencies that endanger peace and sovereignty, and public security, law, and order. Although epidemics and natural disasters are conditions for the declaration of a state of emergency under Art 93(1), the necessity to suspend political and democratic rights to avert epidemics and natural disasters is not authorised under the state of emergency clause.

The CCI used the COVID-19 state of emergency as a ground to explain the validity of its decision to delay elections and extend the term of office of the government. However, the nature of the COVID-19 state of emergency is a public health emergency and does not create the necessary nexus suspension of democratic rights and elections. A public health emergency like that normally requires the suspension of civil rights and the application of public health police powers such as quarantine, isolation, medical treatment or vaccination, and related social distancing measures that could affect civil rights and liberties. Besides, any state and constitutional authority that attempts to derogate rights for state of emergency reason, in that regard, is required to satisfy two discrete tests: first, that must be an emergency which must be an exceptional circumstances that require a suspension of certain rights and laws in order avert the danger, and second, the measures taken in

consequence of such an emergency which restrict fundamental rights are ‘strictly required by the exigencies of the situation’ (the ‘interference issue’).

Additionally, an election emergency requires separate treatment. In case the situation was an emergency circumstance that would have resulted in the postponement of elections, the government should have declared an extra-constitutional state of emergency that requires a separate declaration of ‘election state of emergency’ and a contingency plan that is different from the public health emergency. While the public health emergency could be invoked to ensure public health and avert communicable disease, an election emergency, declared on constitutional and legal grounds, could have justified the suspension of the election and related political rights.

In the absence of legal and constitutional grounds to postpone an election, the constitutional states have two plausible options to escape the difficulty. One is conducting an election with a necessary public health safety measure to prevent and mitigate the possible risk of disease transmission. Many countries have conducted elections in the context of COVID-19 by adopting precautionary measures and mitigation strategies.²³

Another option is to invoke an extra-constitutional necessity power to postpone the election, which would allow a government to act extra-constitutionally based on the doctrine of constitutional necessity. This can be considered as a last resort measure. However, invoking such a sort of extra-constitutional measure on a unilateral decision of the government usually precipitate an operational kind of constitutional crisis in which various stakeholders, including opposition political parties, would accuse the Government of a coup d’état and might ultimately lead to conflicts, public disorder and chaos. To avoid such a possible risk, the government is urged to render a decision that creates political agreement based on inclusive and genuine participation of stakeholders, including the opposition. This approach is adopted in France to postpone the second round of the municipal elections to March 2020.²⁴

²³ see “Elections Held and Mitigating Measures Taken during COVID-19,” International Foundation for Electoral Systems, July 15, 2020.

²⁴ With the agreement of all political parties and in light of the restrictions, the French Government decided to postpone the second round of the municipal elections using the case law theory of exceptional circumstances. As

In the absence of a declared public order or state of emergency in that regard, there is no reason to justify the public health emergency to suspend fundamental democratic rights such as election, freedom of expression, freedom of the press, and self-determination. There is no rational nexus or proximity between a public health state of emergency and the suspension of democratic rights. Even though it may be necessary to suspend democratic rights and elections, the restrictive measures are necessary and proportional. However, these issues and requirements have not been considered and justified in the decision and analysis of the CCI/HOF. With these gaps and lack of justifications, the CCI has overused the COVID-19 state of emergency inappropriately and disproportionately to delay elections and extend the term of office of the government. To this end, the CCI manipulated and abused the ill-designed state of emergency proclamation.

7. Conclusion

The COVID-19 state of emergency in Ethiopia raises significant legal, constitutional, and governance challenges, particularly in balancing public health measures with the protection of civil liberties and the principles of federalism. The study has examined the nature of Ethiopia's emergency response, focusing on the legal framework, institutional structures, and the implications for federalism and constitutionalism. The findings reveal that while the federal government introduced restrictive measures to combat the pandemic, many of these could have been implemented under preexisting public health laws and regulations, raising questions about the necessity of the state of emergency decree. Furthermore, the failure to establish a new emergency management structure or activate the preexisting disaster and risk management system highlights gaps in the governance of public health emergencies.

The analysis also underscores the tension between federal and regional powers in Ethiopia's cooperative federal system. The federal commandeering clause introduced during the state of emergency contradicts the constitutional principles of shared responsibilities and mutual respect between federal and regional governments. This has implications for the legitimacy and effectiveness of emergency measures, particularly in a federal system where regional autonomy is

such, the French Parliament started to work on a 'law of emergency to face the COVID-19 epidemic', both to postpone the elections and create a state of emergency. See "Elections Held and Mitigating Measures Taken during COVID-19," International Foundation for Electoral Systems, July 15, 2020.

constitutionally protected. The study has made further critiques on the design of the COVID-19 state of emergency decree, which lacked clarity on the suspension of rights and granted excessive discretion to the executive, creating opportunities for misuse and abuse of power. This was evident in the postponement of the national election, where the state of emergency was used to justify the suspension of democratic rights, despite the absence of a clear constitutional basis. In light of these findings, the study calls for a re-evaluation of Ethiopia's emergency legal framework to ensure that future public health crises are managed in a manner that respects constitutional principles, promotes accountability, and upholds the rule of law. This includes strengthening institutional structures for emergency governance, clarifying the scope of federal and regional powers, and ensuring that emergency measures are necessary, proportionate, and time-bound. By addressing these gaps, Ethiopia can better navigate the challenges of public health emergencies while safeguarding democratic governance and the rights of its citizens.

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