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Ethiopia: Legal Response to Covid-19

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Except where the text indicates the contrary, the law is as it stood on: 26 July 2021

I. Constitutional Framework

1. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE),¹ which was promulgated in 1995, is the supreme law of the country which, among other things, defines the Ethiopian state and government structures.² It organized Ethiopia, a formerly unitary state, into a federation.³ The Ethiopian federation is composed of a federal government and 10 states, and one constitutionally recognised self-governing city (Addis Ababa).⁴ The states are Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, Southern Nations, Nationalities and Peoples (SNNP), Somali, Tigray, and Sidama. Dire Dawa, another self-governing federal city, does not have constitutional recognition. Ethiopia is a parliamentary system under which the Prime Minister is appointed by the lower house of parliament.⁵

2. The federal system is one that aims to accommodate the ethnic diversity of the Ethiopian people. The subnational units of the federation, save for the two federal cities, are structured along ethnic lines.⁶ Addis Ababa and Dire Dawa, the two largest and multi-ethnic cities, are under the jurisdiction of the federal government. Local government, not constitutionally recognised as a level of government, is within the exclusive competencies of the states.⁷ The states have created different local government institutions, including *woredas* (rural district) and city administration (urban local government). Multi-ethnic states, such as Amhara and SNNP, have also established ethnic local governments—special zone and special *woredas*—to accommodate territorially structured intra-state ethnic minorities.

3. The Federal Government has a bi-cameral Parliament—the House of Peoples' Representatives (HPR) and the House of Federation (HoF).⁸ The HPR, the lower house, is composed of elected representatives and exercises legislative powers on federal matters. Composed of indirectly elected representatives from the ethnic communities of the country, the HoF, the upper house, exercises non-legislative power, such as resolving constitutional disputes, addressing claims of ethnic identity, and ordering federal intervention into states when a situation calls for it.⁹ A Council of Ministers (CoM), headed by a Prime Minister, who is elected by and from among members of the HPR, exercises the highest executive powers at the federal level.¹⁰

4. Each of the 10 states have a unicameral state council—except for the SNNP and Harari which have bicameral state councils. Elected state legislatures exercise legislative powers over state matters.¹¹ The highest executive authority at the state level lies with the Chief Administrator—also sometimes referred to as a state president—who presides over the state cabinet.¹²

5. Ethiopia has a dual federal system and, therefore, each level of government has its own judiciary that resolves cases based on laws that the legislative organ of the relevant level of government has passed. The courts at each level are structured as a first instance court, a high court, and a supreme court. The Federal Supreme Court (FSC) is established for the whole country. Federal first instance and high courts are however established only in some areas, such as Addis Ababa and Dire Dawa, even though parliament can establish these in any of the states with a resolution passed with a two-thirds majority vote.¹³ In the states

where federal first instance and high courts are not established, their jurisdictions are delegated to state high courts and state supreme courts, respectively.¹⁴

6. The 1995 Constitution divides functional competencies between the Federal Government and the states; local government is excluded from the power division.¹⁵ The Federal Government is entrusted with powers that are normally assigned to a federal or a national government including national defense, foreign relations, monetary policy, and foreign investment.¹⁶ The Constitution, which assigns all residual functions exclusively to the states, also contains a rather short list of exclusive state competencies.¹⁷ There are also certain competencies that the Constitution assigns concurrently to both the states and the federal government. What is often referred to as a ‘framework concurrency’ is visible in the Constitution.¹⁸ This type of concurrency allows the Federal Government to adopt a broad legislative or policy framework on certain matters while leaving the details for the states to fill in. Thus, as per the Constitution, the Federal Government may adopt ‘national standards and basic policy criteria for public health, education, science, and technology [and] for the protection and preservation of cultural and historical legacies’.¹⁹ This gives the Federal Government the competence to develop policies and framework legislation that deal, among other things, with preventing or containing the spread of pandemics, such as Covid-19.

7. The Constitution does not expressly mention the competencies of the states concerning public health matters. The competency of the states in this area is only implied in that the power of the Federal Government is restricted to setting a broad policy and legislative framework in the areas of public health, which are applicable at the national level. This allows the states to adopt health policies that meet their unique contexts while adhering to the national standards.²⁰ The states have the authority to adopt and implement ‘social and development policies, strategies and plans’.²¹ This seems to permit the states to formulate policies and enact laws on public health since public health is a social matter. Hence, the states can establish standards and devise policies that are appropriate to their particular situation so long as the standards and policies meet the minimum requirements set by the Federal Government.

8. Both levels of government are authorized to deal with emergency situations, such as pandemics, by declaring a state of emergency.²² As will be discussed in Part II(A) below, it is unclear whose emergency law prevails when the Federal Government and a state government simultaneously declare a state of emergency due to the same cause but adopt different or contradictory measures.

9. As is the case in all dual federal systems, both the states and the Federal Government have the constitutional power to exercise legislative, executive, and judicial powers on matters assigned to each of them.²³ The HPR enacts proclamations—which are the equivalent of statutes in other systems, and are the highest federal laws below the Constitution—on federal matters.²⁴ The legislative councils of the 10 states and the two federal cities also adopt proclamations on matters within their competencies.²⁵ There is no hierarchy between a federal and a state proclamation since each level of government enacts, or at least it is presumed to enact, laws on matters that fall within its exclusive legislative competencies.

10. With the adoption of the 1995 Constitution, for the first time in its political history Ethiopia formally introduced a multiparty political system. However, the multiparty system did not properly function since in practice the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), the ruling party until 2018, instituted an electoral authoritarian system in the country.²⁶ Elections were held regularly even though the results of the elections were a foregone conclusion. The party employed various legislative and non-legislative mechanisms in order to maintain its dominance and to exclude political opponents from any meaningful

participation. The laws adopted with the purpose of ensuring the continued dominance of the EPRDF include the Anti-terrorism Law, the Civil Society Law, the Election Law, and the like. EPRDF's rule faced public resistance following the 2015 election in which the party claimed total electoral victory. The public protest which began in 2015 and continued for three years led to a political rift within the party and the rise to power of Abiy Ahmed, the current prime minister, who introduced various reforms including transforming the party into a new one called the Prosperity Party (PP) (for more see Part III(D) below).

The Federal Government has been playing a leading role in the efforts to contain the spread of the Covid-19 virus, therefore this report focuses on the measures taken by the Federal Government, with those that have been taken by the states mentioned wherever appropriate.

II. Applicable Legal Framework

A. Constitutional and international law

11. The Constitution authorises the CoM to declare a state of emergency if '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'.²⁷ The states are also authorized to declare a state-wide state of emergency when a natural disaster or an epidemic occurs.²⁸ Thus a global pandemic, such as Covid-19, can be a sufficient ground for declaring a state of emergency by a state, the Federal Government, or both. A state of emergency declared by the CoM has to be endorsed by the HPR within 48 hours if the latter is in session or within 15 days if it is on recess.²⁹ A state of emergency that is approved by the HPR expires within six months unless renewed by HPR with a special majority.³⁰ The Constitution leaves it to each state to determine when and how it would declare a statewide emergency and the role the state's cabinet and legislative council play in this respect.³¹

12. During a federal state of emergency, the CoM can exercise any power it deems pertinent 'to protect the country's peace and sovereignty, and to maintain public security, law and order'.³² It can also suspend any right and freedom the suspension of which it finds necessary save for those that are listed in the Constitution and international human rights laws as non-derogable.³³ The right to be protected from inhuman treatment and the right to self-determination of the ethnic communities of the country are on the list of non-derogable rights and freedoms. It is often debated whether the right to life is a derogable right during a state of emergency since it is not on the list of non-derogable rights. The International Covenant on Civil and Political Rights (ICCPR), to which Ethiopia is a party, puts this right in the list of non-derogable rights.³⁴ Thus, it seems that the federal and state governments cannot under the Ethiopian Constitution take measures derogating the right to life and other non-derogable rights and freedoms in the name of enforcing a state of emergency.

13. The Federal Government began restricting certain rights in the name of containing the spread of Covid-19 even before the state of emergency was declared in April 2020 (see Part IV below). The legal status of those restrictions was, however, controversial. 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. When the state of emergency was declared under State of Emergency Proclamation No. 3/2020,³⁵ the subsequent Regulation 466/2020 was promulgated to give effect to the Proclamation.³⁶ Regulation 466/2020 formally imposed aforementioned restrictions (see Part IV). The

emergency Proclamation also imposed penalties of up to three years imprisonment or a 200,000 Birr fine for violating the emergency restrictions.³⁷

14. The state of Tigray was the first to invoke its constitutional power to impose emergency laws for the sake of fighting pandemics. Hence, on 25 March 2020, a little over ten days after the first case of Covid-19 was confirmed in the country, Tigray declared a state-wide state of emergency.³⁸ The state emergency in Tigray was not simply meant to contain the spread of the virus, it also formed part of the political tension between the Tigray People's Liberation Front's (TPLF) government and Prime Minister Abiy Ahmed's Federal Government, which finally culminated in an armed conflict that began on 4 November 2020. The Tigray state of emergency was followed with a nationwide state of emergency which the Federal Government declared on 8 April 2020.³⁹ The declaration of a state of emergency by the two levels of government raised several constitutional issues, including: which emergency law would be applicable when the Federal Government and a state simultaneously declare a state of emergency; and what happens if there are contradictions between the state and the federal emergency laws, eg what happens if one level of government takes a measure that is more or less restrictive of fundamental rights and freedoms compared to the other. The Constitution does not provide a straightforward answer to these questions.⁴⁰ In any case, the State of Emergency Proclamation No. 3/2020 provides that 'any federal or a [state] 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.'⁴¹ This implies the federal emergency proclamation prevails over regional ones in the event of conflict. However, such a stipulation remains constitutionally suspect given Ethiopia does not have any provision within its Constitution that creates a hierarchy between federal and state proclamations.

B. Statutory provisions

15. There is no single federal proclamation (ie statute, see Part I above) that regulates emergencies in general, let alone public health emergencies. Several federal proclamations establish ministries and other federal agencies to be directly or indirectly tasked with controlling emergencies, including health-related emergencies. Proclamation No. 1097/2018 establishes that the Ministry of Health (MoH) is responsible for addressing health emergencies along with 19 other ministries.⁴² This Ministry bears the principal responsibility of devising and following up 'the implementation of strategies to prevent epidemic and communicable diseases'.⁴³ The Ministry has to 'take preventive measures against events that threaten the public health and in the events of an emergency coordinate measures of other stakeholders to expeditiously and effectively tackle the problem'.⁴⁴

16. Another relevant statute is Proclamation No. 200/2000 which regulates matters of public health. It provides that someone coming from an epidemic-affected area may be denied entry into the country unless they possess a valid certificate showing that they are not infected with the disease.⁴⁵ It also authorizes the MoH 'to restrict movements to certain countries, or to the areas where there is epidemic, or to close schools or recreational areas, or to remove workers with communicable diseases from their working places, and to take other similar measures whenever an epidemic occurs'.⁴⁶ As per the Proclamation, the MoH is authorized to control ports of entry and deny entry into the country to travellers suspected of being infected with communicable diseases.⁴⁷

17. The Criminal Code of Ethiopia,⁴⁸ which has a nationwide application, is also a relevant statutory law since it imposes a criminal penalty for certain actions and inaction during public emergencies. For instance, it imposes up to a two-year imprisonment on anyone who

'intentionally disregards measures prescribed by law for the prevention, limiting or arrest of a communicable human disease'.⁴⁹

18. The statutory law that is directly linked to the prevention of the spread of Covid-19 is the State of Emergency Proclamation No. 3/2020.⁵⁰ This proclamation was fast-tracked in the sense that on 8 April 2020 the CoM, based on Article 93(1)(a) of the Constitution, declared a state of emergency. On 10 April 2020, the HPR endorsed the emergency proclamation in a single sitting day, and on 11 April the CoM issued Regulation 466/2020 which detailed the emergency measures.⁵¹ Proclamation No. 3/2020 governed the conduct of citizens and government during the five months of state of emergency. The preamble explained that the state of emergency was necessary, as Covid-19 had become a global pandemic that the Government could not control by regular methods of law enforcement. The adverse political, social, and economic repercussions of the pandemic and the need to mitigate the ensuing humanitarian crises, said the preamble, warranted 'coordinated' decision-making and implementation, which, in turn, caused the state of emergency. The Proclamation, which had a nationwide application, expressly superseded contrary federal and state laws (however, see discussion in Part II.A above).

19. Proclamation No. 3/2020 remained in force for a period of five months and expired after it was not renewed. While the state of emergency was unanimously supported in parliament, politicians in the opposition expressed their fear that it could be used to unduly restrict peoples' rights and freedoms and the political work of opposition parties.⁵² The state of emergency also had the effect of postponing the sixth general election which caused various controversies (see Part III below).

C. Executive rule-making powers

20. The CoM has a subsidiary legislative power and it issues regulations while each federal ministry issues directives.⁵³ Regulations and directives are not standalone laws. The CoM issues regulations based upon existing proclamations (ie statutes) that confer such powers upon it. The state cabinets can also adopt regulations, while each state executive bureau issues directives. The CoM has adopted several regulations which deal with public health issues in general. The first in this respect was the Ethiopian Public Health Institute (PHI or 'Institute') Establishment Council of Ministers Regulation 301/2013,⁵⁴ which established the PHI. The PHI was first established in 1996 following the merger of three federal agencies: the National Research Institute of Health (NRIH); Ethiopian Nutrition Institute (ENI); and the Department of Traditional Medicine (DTM).⁵⁵ The PHI is primarily an early warning system since its primary responsibility is to detect and declare the rise of national and global public health emergencies so that other responsible federal and state organs can take appropriate measures.⁵⁶ It has thus the mandate 'to conduct, during epidemics or any other public health emergency or public health risk, on-site investigation when deemed necessary, verify outbreaks, issue alerts, provide warning and disseminate information, mobilize or cause the mobilization of resources, support the response activities carried out at *woredas*, zones, and regional levels as deemed necessary'.⁵⁷ The Institute also has the power 'to design strategies, issue guidelines, provide support to prevent and mitigate public health emergencies'.⁵⁸ The Institute is entrusted with the mandate to 'conduct surveillance for early identification and detection of public health risks and prevent public health emergencies through adequate preparedness, and alert, warn, and dispatch timely information during public health emergency'.⁵⁹

21. The aforementioned State of Emergency Proclamation No. 3/2020 was rather short, composed of a preamble and eight articles. It did not define the emergency measures that the Federal Government would take and the rights and freedoms that it would restrict to contain the spread of the virus.⁶⁰ These were elaborated in Regulation 466/2020 that the CoM adopted on the 11 April 2020, two days after the HPR approved the state of emergency.⁶¹ As will be discussed in Part IV below, this regulation provided the specific emergency measures that were to be implemented during the state of emergency.

22. A federal agency is often authorized to issue directives based upon a given proclamation or regulation that established it. Several federal agencies have thus adopted various directives, providing for measures to be taken to prevent the spread of Covid-19. A case in point is a directive issued by the PHI on 5 October 2020.⁶² The MoH has also issued a directive which details how hospitals, clinics, and other health establishments are expected to provide their regular services within the context of Covid-19. It, for instance, provides how mothers, children, those with communicable diseases (such as Tuberculosis), and those with non-communicable diseases (such as cancer) are to be treated.⁶³

23. The Covid-19 National Ministerial Committee ('Ministerial Committee') was officially established in April 2020 by Regulation 466/2020, even though it existed *de facto* since March 2020.⁶⁴ Chaired by the Deputy Prime Minister, the Ministerial Committee is composed of five ministers—the Minister of Peace, the Attorney General, the Minister of Science and Higher Education, the Minister of Foreign Affairs, and the Minister of Defence—and is responsible to the Prime Minister.⁶⁵ The Ministerial Committee adopted several decisions even before the state of emergency was declared, and its decisions were communicated to the public in the form of a press release with the Prime Minister's office letterhead (for discussion, see Part II.D below).

24. The Ministerial Committee has further developed and concretised the more abstract emergency measures authorized by Proclamation No. 3/2020. For instance, the Ministerial Committee's Directive 1(2020) dealt with measures relating to public transportation.⁶⁶ Directive 2(2020) created different committees and sub-committees at the federal and state levels, which were supposed to play different roles in containing the spread of the virus.⁶⁷ Directive 3(2020) detailed precautionary measures to be implemented in market areas including malls, shops, open markets, and the like.⁶⁸

D. Guidance

25. As mentioned in Part II.C above, the Ministerial Committee communicated decisions that had no or a doubtful legal basis to the public in the form of press releases shared on social media (the Prime Minister's Office Twitter and Facebook accounts). It is unclear if these press releases were mere guidance with no legally binding effect. Almost every press release contained a report on measures taken by the Ministerial Committee, with some resolutions appearing to be mere guidelines, and others appearing to be mandatory. For instance, the press release on 9 March 2020,⁶⁹ outlined the different preparations made by the MoH in anticipation of Covid-19 cases including the establishment of quarantine centres, emergency call centres, and the like. It also recommended that everyone should begin sanitation practices including washing hands frequently, avoiding physical contact and consuming immunity-boosting foods.⁷⁰ The 16 March 2020 press release of the Ministerial Committee, on the other hand, banned large gatherings and ordered schools to be closed.⁷¹ These were intended to be compulsory orders as opposed to mere guidelines,

and the police seem to have understood them as such since it enforced the ban on large gatherings especially in churches and mosques.⁷²

26. The MoH and Ethiopian PHI, both federal institutions, have come up with various guidelines relating to health facilities and activities. There are over 30 guidelines on the PHI website.⁷³ The guidelines cover various issues including child protection during the Covid-19 pandemic, home-based isolation, cleaning and disinfection, quarantine implementation, rational use of PPE, burial management, glove and mask utilization, and other matters relating to the Covid-19 pandemic.

III. Institutions and Oversight

A. The role of legislatures in supervising the executive

27. Supervising the executive is one of the principal responsibilities of the HPR. It does so in two ways. First, it endorses or rejects any policy proposal or decision that the executive might seek to implement. The power of the HPR to do so is provided under Article 55(10) of the Constitution which authorises the HPR to ‘approve general policies and strategies of economic, social and development, and fiscal and monetary policy of the country.’ The policy of the Government in the areas of public health thus needs the approval of the HPR. A state of emergency that is declared by the Council of Ministers, in particular, needs the approval of the HPR within 48 hours after declaration if the latter is in session and within 15 days if it is on recess.⁷⁴ A state of emergency that is not so approved ceases to have any effect. State councils also have a similar power of approval under state constitutions. The HPR has the power to renew the emergency period every four months with a two-thirds majority vote. A state of emergency comes to an end upon the expiry of the emergency period. However, it is unclear whether the HPR can terminate a state of emergency it has approved before it expires without being asked to do so by the CoM.

28. Secondly, the HPR has the power ‘to call and question the Prime Minister and other federal officials and to investigate the executive’s conduct and discharge of its responsibilities’.⁷⁵ The HPR, through its 10 standing committees, receives a quarterly report from each federal agency and conducts an oral hearing at least twice a year. Moreover, the HPR is required to follow up on the implementation of a state of emergency that the CoM declares in the name of controlling a national public health emergency. The primary aim of the follow-up is to ensure that the executive would not take measures that are too intrusive of individuals’ freedoms and liberties under the pretext of managing a public emergency. Thus, the Constitution requires the HPR to establish a State of Emergency Inquiry Board (SEIB) whenever it approves a state of emergency that the executive declares. The ad hoc Board comprises seven persons that the HPR selects from its own members and non-member legal experts.⁷⁶ The Board is expected to publicise the names of those who have been arrested in the process of enforcing emergency laws, investigate whether the government has taken measures that derogate from non-derogable rights and freedoms, and suggest corrective measures that the Prime Minister has to take. It also ensures that public officials who violate non-derogable rights and freedoms are held accountable.⁷⁷

29. The supervisory role of the HPR is limited for two reasons. First, the Constitution limits the role of Parliament to endorsing or rejecting a state of emergency that the CoM declares.⁷⁸ Parliament is not involved in determining the measures that should be taken during a state of emergency. The CoM enjoys an exclusive power of determining through a regulation which rights and freedoms to suspend and to what extent.⁷⁹

30. Secondly, in the past, the Ethiopian Parliament has been less than effective in preventing abuses of power by the executive despite routinely receiving written and oral reports from them. This is mainly because a single party dominated the HPR. In the past 30 years, the EPRDF has almost exclusively controlled the HPR. The EPRDF changed: its name, now it is called the Prosperity Party; its structure, becoming one national party as opposed to a collation of regional parties; and ideology, following the coming to power of Abiy Ahmed in April 2018 after three years of public protest (on elections see further Part III.D below). In both the EPRDF and PP, the most senior members join the executive while the junior ones remain simply members of the HPR. Given the hierarchical relations within the party, members of HPR often refrain from raising tough questions for the executive. Thus, the SEIB and the HPR have largely praised measures that the Government has taken as part of enforcing these emergency laws and have refrained from providing any criticism against the manner in which these emergency laws were enforced. This is despite the fact that there were several reports of abuse of power and human rights violations by the police while enforcing emergency law.⁸⁰

B. The functioning of the legislature where its ordinary business is disrupted

31. There is no clear constitutional provision nor statutory law regulating how Parliament should function during a state of emergency, including during a public health emergency. The HPR continued to function more or less routinely, even after several cases of Covid-19 were confirmed and after it declared a public health emergency. On 10 April 2020, the HPR changed the venue where it met, moving its meeting place from the Parliament building to an enormous hall which is found within the premises of the Minilik II Palace where the Prime Minister's office and residence are located.⁸¹ Since then, all meetings of the HPR have continued to be held in this building. This hall was selected apparently because it was spacious, making it possible to observe social distancing rules. There is no indication from the government on whether virtual meetings took place for either the plenary sessions or committee meetings. The operations of the HPR have not been suspended for a more than normal duration apart from the change of venue.

32. Parliament had to be in session and hold periodic meetings despite the health emergency since several urgent matters needed its attention. On 31 March 2020, the National Electoral Board of Ethiopia (NEBE) decided that, because of the emergence of Covid-19, it could not administer the sixth general election as per the predetermined schedule (see further, Part III.D below). The elections were scheduled for 29 August 2020. This gave rise to a constitutional issue of who would or should govern the country after the expiry of the term of Parliament, state councils, and the CoM on 5 October 2020. The HPR referred the matter to the HoF which, through a process of constitutional interpretation, passed the controversial and ultimately fateful decision of extending the terms of Parliament,⁸² the Council of Ministers, and state councils and their governments until such time that Covid-19 was no longer a public health threat. Parliament also needed to deal with the constitutional crisis linked to the dispute between the federal government and the TPLF-led Tigray state government. The HPR also had to meet to discuss violent inter-communal conflicts and ethnic-based attacks that occurred in places, such as Shashemene, Metekel, Wollega, and the like.

C. Role of and access to courts

33. The Constitution envisages no special role for federal and state courts during emergencies. Courts do not have the power to determine the constitutional validity of a state of emergency that is adopted by the CoM and endorsed by the HPR. The role of the courts in checking the validity of the state of emergency seems completely missing from the Ethiopian Constitution. This is partly because the Constitution has stripped the courts of the power of constitutional interpretation, a power that belongs to the HoF.⁸³

34. On 18 March 2020, a few days after the MoH confirmed the first Covid-19 case and before the state of emergency was declared, Meaza Ashenafi, the President of the Federal Supreme Court, the final court of appeal on questions of laws over any final court decision,⁸⁴ declared that federal courts would remain partially closed for two weeks starting from 19 March 2020.⁸⁵ According to Mrs Ashenafi, the courts would entertain only 'urgent cases' which would affect 'life, liberty, and public safety' during the two weeks and non-urgent cases would remain adjourned for two weeks. Urgent cases include domestic violence.⁸⁶ New cases, which were not urgent, would also not be accepted. The federal court benches which would remain operational during the partial closure had the discretion to determine whether a case was urgent or otherwise.⁸⁷ On 1 April 2020, one week before the declaration of the state of emergency, the federal Supreme Court renewed the partial closures for about 23 working days.⁸⁸ This decision was reportedly made after the Supreme Court president held discussions with Dr Lia Tadesse, the Minister of Health.

35. Another round of closures followed from 5 June to 17 July 2020 which was announced in a press release.⁸⁹ This partial closure was linked to the nationwide state of emergency, which was declared on 8 April 2020. During this time, the Federal Supreme Court came up with a more structured approach regarding how the courts would operate during the partial closure. First, the federal high court and Supreme Court would entertain appellate cases that were opened before 7 July 2019 and those that do not involve a hearing. Second, the courts would see criminal cases through video conferencing and defendants would be allowed to submit their oral defences in writing. Third, courts would decide on civil matters that do not require face-to-face interaction. Fourthly, the special benches of the federal court would hear appeals they deem to be urgent. Urgent cases include those relating to child maintenance, bail, labour disputes, domestic violence against women and children, and cases that deal with the implementation of the state of emergency. This announcement also required people coming to courts to wear face masks, wash their hands before entering the court premises, and observe rules of social distancing. On 20 July 2020, the Federal Supreme Court announced federal courts would step-by-step begin their normal operation, despite Covid-19 remaining a public health threat. It defined the steps towards the resumption of the work of the courts in a directive it issued.⁹⁰ Normal activities of the court resumed as of 7 August 2020.

D. Elections

36. Elections are perhaps the biggest casualty of the Covid-19 pandemic in Ethiopia. The sixth general elections (elections to Parliament and state councils), which were scheduled for August 2020, were postponed on 31 March 2020 after the NEBE declared that it would not be able to administer free and fair elections within the context of Covid-19.⁹¹ It then became apparent elections could not be held before 5 October 2020 on which date the terms of Parliament and the state councils would expire. Furthermore, on 8 April 2020, the CoM declared a state of emergency in the name of containing Covid-19. This gave rise to the constitutional issues of whether elections could be postponed and who would govern at the federal and state level after the expiry of the terms of Parliament and the state councils. The HPR requested the intervention of the HoF in settling this constitutional matter, since the latter is the constitutional umpire of the federation. The HoF, as per the

recommendation of the Council of Constitutional Inquiry (CCI) which assists the HoF in resolving constitutional issues, decided that the sixth general elections should be postponed until such time the HPR, based on the recommendation of the Ministry of Health, resolved that Covid-19 was no longer a public health threat.⁹² It further decided that the elections would be held within a year after HPR resolved that Covid-19 was no longer a public health threat. In the meantime, Parliament, state councils, and federal and state executives would continue governing.

37. On 22 September 2020, based on the recommendation of the MoH, the HPR passed a resolution for the sixth general elections to be held in accordance with the Covid-19 precautionary measures that the former had prepared. On 29 December 2020, the NEBE announced that the elections would be held on 5 June 2021. However, the election had to endure another round of postponement since voter and candidate registration could not be completed as per the NEBE's schedule. It was finally held on 21 June 2021.⁹³ In addition to the Tigray region, several constituencies in six regions could not vote in the elections due to logistical and security issues.⁹⁴

38. The sixth general election was supposed to be the culmination of the process of political transformation in Ethiopia that began in 2018 following the three-year public protest against the authoritarian rule of the EPRDF. The public protests that began after the 2015 election in which the EPRDF claimed 100 per cent victory led to the rise to power of Abiy Ahmed and the expulsion from the political centre of the TPLF, which was the ruling party of Tigray and, until 2018, the most influential members of the EPRDF. The TPLF, the ruling party in the Tigray state, dismissed the decision of the HoF as unconstitutional. Furthermore, the Tigray state council, which was fully controlled by the TPLF, enacted an electoral law and established an electoral board, and on 9 September 2020, held a state election in Tigray, despite having no clear constitutional power to do so and defying repeated warnings by the Federal Government against such actions.⁹⁵ The political dispute between the Federal Government and the TPLF-led Tigray state led to an armed conflict which began on the 4 November 2020, when the Tigray Special Police unleashed a blitzkrieg against the Northern Command of the Ethiopian National Defence Force (ENDF).⁹⁶

E. Scientific advice

39. There is no explicit legislative requirement enjoining the government to base its decisions in relation to public health issues, or any issues for that matter, on scientific advice. Indeed, federal agencies often commission scientific studies before adopting policies. It is also common though to hear federal authorities refer to studies conducted on certain matters when explaining the validity of their decisions. Moreover, there are certain institutions which are established with the explicit purpose of providing scientific advice to the government. One such institution is the PHI which is the institution established with the primary responsibility of providing scientific advice to the Government in the area of public health. This is clear from the establishing regulation of the PHI which empowers the PHI with conducting 'research, based on national public health research agenda on priority health and nutrition problems, and generate, absorb and disseminate scientific and technological knowledge to improve the health of the public'.⁹⁷ The Ministry of Health also has the responsibility to 'provide appropriate support to promote research activities intended to provide solutions for the country's health problems and for improving health service delivery'.⁹⁸ Regulation 466/2020 provides to the MoH an exclusive power of providing professional commentaries and scientific advice in relation to Covid-19.⁹⁹ Thus, scientific advice in the area of public health largely rests on these two institutions. Thus, Dr Lia Tadesse, the Minister of Health, appeared before the CCI to provide her opinion on whether Covid-19 was a serious health risk that justified a state of emergency and the

postponement of the sixth general elections, to which, by referring to some scientific studies, she responded in the affirmative.¹⁰⁰

F. Freedom of the press and freedom of information

40. Various rights and freedoms were restricted for the duration of the state of emergency that was declared to contain the Covid-19 pandemic. Freedom of expression was limited, as the regulation barred the media from reporting Covid-19-related news in a way that could be construed as causing 'terror and undue distress among the public'.¹⁰¹ Information about Covid-19 could be communicated only in a centralised manner.¹⁰² This is to mean that Regulation 466/2020 prohibits the dissemination of 'any information about Covid-19 and related issues' other than by the MoH.¹⁰³ Hence, Yayesew Shimelis, a journalist, was arrested on 26 March 2020 because he posted on his Facebook page that, in anticipation of Covid-19's impact, the Government had ordered the preparation of 200,000 burial places.¹⁰⁴

41. On the same day, the MoH condemned his statements as false. The next day, police detained Yayesew. On 21 April 2020, the Federal Attorney-General charged him under a newly enacted bill, the Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020, at the Federal High Court.¹⁰⁵ The adoption of the hate speech Proclamation had caused a lot of uproar from human rights groups since they were of the view that it would unduly restrict freedom of expression. The Proclamation was enacted after the Government was praised for revising the anti-terrorism law,¹⁰⁶ which was in the past used to prosecute journalists and opposition party members. The hate speech Proclamation is thus seen as a regression in terms of protecting freedom of expression.¹⁰⁷

G. Ombuds and oversight bodies

42. There are domestic bodies that exercise oversight during a state of emergency. The Human Rights Commission plays a critical oversight role. The Commission was not viewed as an independent organ until recently. It seems to have gained some level of independence in the past three years, especially after the appointment of Daniel Bekele as the Director of the Commission.¹⁰⁸ The Commission and its Director have been critical of the emergency laws (the proclamation and regulation) and the manner in which they were enforced. For instance, on 7 May 2020, the Commission released a report assessing the legal and human rights issues pertaining to the state of emergency.¹⁰⁹ In this report, the Commission expressed its displeasure with the emergency laws, such as Regulation 466/2020, and how they were enforced. According to the Commission, the laws were too sweeping and broadly defined actions and inaction that were criminalized in connection with Covid-19.¹¹⁰

IV. Public Health Measures, Enforcement and Compliance

A. Public Health Measures

43. Since the outbreak of Covid-19, the public health measures adopted in Ethiopia consisted of, on the one hand, executive measures which lacked clear legal foundations, and on the other, the declaration of a formal nationwide state of emergency. After the state of emergency was lifted, it seemed to rely on specific directives issued to combat the pandemic. Yet, as has already been mentioned, initial measures looked relatively uncoordinated. For instance, the Ministry of Labour and Social Affairs reportedly announced a plan for taking homeless people into camps. The Minister of Finance told Ethiopian Television that there is a plan to use the food reserve of the country. The capital city's vegetable market has also been moved to one of the biggest open spaces in the city,

'Jan-Meda'. Fast forward to the lifting of the state of emergency and all these measures look to have been rolled back and life seems to be continuing as normal.

1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc)

44. The Federal Government has not thus far imposed complete lockdown nor mobility restrictions. The only order that came from the Federal Government was the one that the CoM ordered on 24 March 2020 requiring all federal employees to work from home.¹¹¹ This order did not include so-called 'essential workers', and did not define who the essential workers were. It rather gave the option for each ministry and federal agency to decide whom it considers to be an essential worker.

45. Even at the state level, no state-wide lockdown was imposed. Indeed, around the time the first case of Covid-19 was confirmed, some cities in a few states had ordered a two-week lockdown requiring every resident of the city to stay indoors.¹¹² In the state of Amhara, Bahir Dar, the capital of the state, ordered a complete lockdown for two weeks beginning from 31 of March 2020.¹¹³ Certain towns, such as Assela and Adama (Nazareth) also imposed a total lockdown at the same time with Bahir Dar.¹¹⁴ This lockdown was ordered some 10 days before a state of emergency was declared. Addis Ababa has not imposed a total lockdown despite being the epicentre of the Covid-19 pandemic in the country.

2. Restrictions on international and internal travel

46. No nationwide internal travel restrictions were imposed nor mandated by the Federal Government. At the state level, Tigray, which declared a state of emergency on 25 March 2020, was the first to impose internal travel restrictions.¹¹⁵ The state banned public transport from entering the state. It also imposed travel restrictions within the state. The state also required anyone flying to the state to remain in quarantine for 14 days. The restrictions remained in place until 25 April 2020, when the state eased some of the restrictions it had imposed.¹¹⁶ There was, however, not a single confirmed case of Covid-19 in Tigray when the state imposed the state of emergency and imposed the above restrictions. The states of Amhara and Oromia also imposed internal travel restrictions on 31 March 2020.¹¹⁷ As part of the restriction, the two states banned public transport vehicles from crossing their boundaries.

47. Ethiopian Airlines, the largest airline on the continent of Africa, continued its flights—including to and from China—even after the first Covid-19 case was confirmed in Ethiopia on 13 March 2020. There were indeed calls for Ethiopian Airlines to suspend its flights to and from China, which Tewole Gebre-Medihn, the CEO of the airline, dismissed as unreasonable.¹¹⁸ He argued that simply suspending flights to China would not prevent the virus' entry into the country since, at the time, Ethiopia had not suspended flights to and from other countries.¹¹⁹ Other airlines, which also did not discontinue their flights to China, were also flying in and out of Ethiopia since Bole International Airport is a major international hub. Given this situation, the Ethiopian Airlines CEO argued, it was futile simply to suspend flights to China. In any case, the CoM had already activated the National Public Health Emergency Preparedness Centre as early as 27 January 2020, which put control mechanisms at ports of entry into the country.¹²⁰ For instance, anyone entering the country was required to undergo a temperature check and anyone with an abnormal temperature was put into quarantine.

48. On 20 March 2020, the Covid-19 Ministerial Committee ordered Ethiopian Airlines to discontinue its flights to 30 cities.¹²¹ Most of these cities were African cities, and the number of passengers flying to these cities was already dwindling. Chinese cities were not, however, on the list of cities to which the airline discontinued its flights. In any case, 10 days later, the airline announced that it had suspended its flights to 80 cities.¹²² The Committee also decided that anyone entering the country would remain for up to 14 days quarantined in designated hotels, at their own expense. Before that, international travellers were simply asked to self-isolate themselves.¹²³

49. The state of emergency Regulation 466/2020, which was issued on 11 April 2020, formalized the international travel restriction (see Part II.A above). The Regulation prohibited anyone from entering or exiting from the country, although the Ministerial Committee could allow Ethiopian citizens into the country ‘through inland entry ports’.¹²⁴ In any case, all those entering the country had to be ‘quarantined at a place designated for this purpose by the government and tested’.¹²⁵ Those who could afford to pay were quarantined at hotels designated for the purpose, while international passengers who were unable to cover the cost of being quarantined in hotels were moved to quarantine centres that were prepared by the Government. On 23 March, after having a meeting with the heads of the different federal security organs, the Prime Minister ordered the ENDF to ‘halt all movements of the people’ along the country’s international borders.¹²⁶

3. Limitations on public and private gatherings and events

50. On 16 March 2020, the Covid-19 Ministerial Committee had a meeting with the Prime Minister and passed a decision to ban all ‘large gatherings’.¹²⁷ The order did not define what constituted a ‘large gathering’, even though it mentioned sports events as an example of a large gathering. Small gatherings and meetings could take place only if the MoH approved. Religious institutions and places of worship were ordered to ‘limit’ gatherings which implies that they were not required to completely shut down. Four days later, the Prime Minister’s Office released another order in which it suggested it would be preferable for all religious institutions to avoid a large gathering of their followers in churches and mosques. It was therefore clear that the Committee was making suggestions rather than imposing mandatory restrictions. However, on 23 March 2020, it ordered the security sector to enforce the order of the Committee banning large gatherings.¹²⁸ Small gatherings were not banned and thus government institutions and political parties were allowed to conduct meetings so long as they maintained social distancing. Yet, the ruling party, PP, conducted several meetings and training in overcrowded halls, without adhering to social distancing rules and wearing masks.¹²⁹

51. Followers of the Ethiopian Orthodox Church were banned from entering church premises for several months after the order banning large gatherings was released.¹³⁰ The order came during the month of Ramadan from 23 April to 23 May 2020, and during the Lent period for the followers of the Ethiopian Orthodox Church. Followers of these two faiths thus had to follow religious ceremonies during the Lent period and the Ramadan months on television as some public and private television broadcasters showed the ceremonies live. This order was not endorsed by the Council of Ministers and was also communicated to the public in the Press Release of the Prime Minister’s Office. The legal status of the order is thus dubious (see Part II above).

52. The state of emergency Regulation 466/2020 adopted on 11 April 2020 imposed a near-total ban on all ‘meetings for religious, government, social or political purposes in places of worship, public institutions, hotels, halls or any other place’.¹³¹ The exception to this ban was that meetings could be held when there is a compelling reason to do so and when the

Ministerial Committee or sub-committees it had established at federal, state, and local level granted permission for holding such meetings.

4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)

53. The Ministerial Committee decided on 16 March 2020 that educational institutions, save for universities and colleges, would be closed for two weeks.¹³² The Ministry of Science and Higher Learning was instructed to work with universities to arrange for university students to receive course content and lectures online whilst remaining confined to their dormitories. On 27 March 2020, the Ministerial Committee extended school closures by an additional two weeks.¹³³ This time around, the Committee also ordered the closure of higher educational institutions. The federal state of emergency required the closure of bars, nightclubs, cinemas, schools, and sports venues for the duration of the emergency.¹³⁴ The Tigray state of emergency, which was declared before the federal state of emergency, had already required the closure of facilities such as cafes, restaurants, and the like.¹³⁵ Most restrictions were lifted with the expiry of the state of emergency in August 2020.

5. Physical distancing

54. The need for physical distancing to prevent the spread of Covid-19 was advertised on radio and television. Moreover, on 27 March 2020, the Ministerial Committee called upon the public to adhere to social distancing, especially in markets and religious institutions, so that the Government would not be forced to resort to declaring a state of emergency.¹³⁶ Clearly, either the call was not adhered to or it was ineffective and thus the Council of Ministers declared a state of emergency. The state of emergency regulation prohibited shaking hands and provided that, as part of enforcing the physical distancing rules, private cars, buses, taxis, trains could only operate at half their capacity. Hotels, restaurants, and cafes were not required to close. However, they could not serve more than three customers at a single table. They were also required to maintain a distance of 2.5 adult strides between two tables.¹³⁷ Buses and taxis began using their full capacity after the expiry of the state of emergency in August 2020, although the spread of the virus was only worsening.¹³⁸ Banks, marketplaces, transport stations, shops, pharmacies, or any other similar settings were also required to provide services by adhering to social distancing rules.¹³⁹ This rule remained in force until the expiry of the state of emergency in August 2020. Some of these restrictions were reintroduced in October 2020 by the PHI's Directive No. 30/2020,¹⁴⁰ even though, as mentioned, this Directive remained unimplemented until 27 March 2021 (see Part II.C above).

6. Use of face coverings and personal protective equipment

55. The use of coverings and masks was advertised and encouraged as early as March 2020. The emergency Regulation 466/2020 established a legal obligation on the use of coverings.¹⁴¹ The use of face coverings was especially mandatory when in public places such as 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.¹⁴² One could use 'coverings manufactured for this purpose, homemade masks or clothing of any kind'.¹⁴³

7. Isolation of infected individuals and quarantine of individuals suspected of infection

56. As previously indicated, the National Public Health Emergency Preparedness Centre was activated as early as January 2020, even before a single case was confirmed in the country. Quarantine centres were established in Addis Ababa and other urban areas and infected individuals and those who had contact with an infected person were kept in these centres. For instance, in Addis Ababa, the Millennium Hall, perhaps the largest hall in the city which is normally used for staging music concerts and similar events, was turned into a quarantine centre and thousands of infected patients were kept there.¹⁴⁴ Shortly after that, university campuses, including all campuses of Addis Ababa University, also became quarantine centres soon after university students were told to return home.¹⁴⁵ Hotels were also used as quarantine centres for those who could afford to pay.

57. On 20 March 2020, the Covid-19 Ministerial Committee decided that anyone entering the country had to remain in quarantine for 14 days.¹⁴⁶ Ethiopians traveling to the country from abroad had the option of remaining in quarantine centres, such as the Millennium Halls and university campuses, where they were provided with food and drink at the expense of the state. The second option was to stay in hotels that were designated for this purpose at their own expense.

8. Testing, treatment, and vaccination

58. Initially, the country could not test for Covid-19. As mentioned in Part IV.A.2 above, temperature checks were conducted at Bole International Airport and anyone with above normal temperature was quarantined, samples were then taken from the person and sent to South Africa.¹⁴⁷ Soon Ethiopia began testing within the country, and testing increased from a few hundred in April 2020 to over 20,000 a day in August 2020. However, beginning from August 2020, daily testing declined and, currently, only 6,000 to 7,000 daily tests are conducted and reported.¹⁴⁸ The reason for the reduced testing has to do with the shortage on the international market of testing kits that were compatible with the lab equipment in the country.¹⁴⁹

59. On 7 March 2021, almost a year after the first case of Covid-19 was confirmed in the country, Ethiopia received 2.2 million doses of the Astra Zeneca Covid-19 vaccine.¹⁵⁰ The vaccine was made available by the COVAX Facility. The first round of vaccination has already begun, and the beneficiaries are health workers, the elderly, and other vulnerable groups who volunteered to be vaccinated.¹⁵¹

9. Contact tracing procedures

60. The PHI, the organ with the primary responsibility for contact tracing, implemented a contact tracing protocol for several months after the first case of Covid-19 in the country was confirmed. Those who came into contact with a person infected by the virus were isolated. The PHI was initially strict in implementing this protocol, however, as the number of those infected increased and the quarantine centres became full, it began allowing those who identified themselves through contact tracing to self-isolate at home.

10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc

61. There are a few care facilities in Addis Ababa, most of which are run by charitable organisations, such as Macedonia Homes for Elderly and Mentally Disabled.¹⁵² Commercial care facilities are not common in Ethiopia because there is no tradition of putting the elderly in such homes. The dominant tradition is to care for the elderly within a family.¹⁵³ In any case, the state of emergency regulation did not provide any restrictions on visiting care centres for the elderly. There were indeed some adverts on television and radio, which were

sponsored by Macedonia homes and the like, asking everyone to refrain from physically visiting homes for the elderly and to simply send donations, such as, clothes, food, toiletries, sanitisers, and the like. PHI Directive 30/2020, issued on 5 October 2020, placed a clear ban on visiting homes or care centres for the elderly.¹⁵⁴

B. Enforcement and Compliance

1. Enforcement

62. After having a meeting with heads of the various security establishments—the Addis Ababa Police, Federal Police, and the ENDF—the Prime Minister declared that, beginning from 23 March 2020, security services would enforce the decisions of the Ministerial Committee in relation to containing Covid-19.¹⁵⁵ It was required, in particular, to prevent large gatherings and ensure social distancing. To this end, the Government stationed members of the federal and Addis Ababa police at the gates of churches and mosques preventing anyone from entering. The followers of the Orthodox Church were thus prevented from going to church throughout the Lent season—including on Good Friday and Easter (the most attended holidays in the Orthodox calendar—as were Muslims who were prevented from going to mosques during the month of Ramadan.¹⁵⁶ After the state of emergency was declared on 11 April 2020, the entire security apparatus was involved in enforcing the emergency laws. After the emergency expired in August, all restrictions were slowly lifted, despite the spread of the virus only getting worse. Directive 30/2020 was not strictly implemented for several months after it was issued in October 2020. As mentioned in Part IV.A.5, there has been a renewed effort to enforce this directive since 28 March 2021.

2. Compliance

63. As was clear from the press releases of the MoH from 27 March 2021, the public has not properly complied with the restrictions imposed and guidance provided in relation to containing the spread of Covid-19.¹⁵⁷ Indeed, there was better compliance with the restrictions imposed in the weeks immediately after the first Covid-19 case was confirmed. However, the virus is now spreading at an alarming rate. Daily test results in the last week of March 2021 showed a 25 per cent rise in the infection rate, and in cities, such as Dire Dawa and Hawassa, the infection rate approached 50 per cent.¹⁵⁸

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Footnotes:

¹ Proclamation of the Constitution of the Democratic Republic of Ethiopia (Constitution), art 9(1).

² Constitution, chapters 4, 5.

³ Constitution, art 1.

- 4 Constitution, art 47.
- 5 Constitution, arts 45, 73.
- 6 Constitution, art 46(2).
- 7 Z Ayele and Y Fessha, 'The place and status of local government in federal states: The case of Ethiopia' (2012) 58(4) *African Today* 89-109 Find it in your Library.
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- 15 Constitution, art 51-52.
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- 18 A Fiseha and Z Ayele, 'Concurrent Powers in the Ethiopian Federal System' in N Steytler (ed), *Concurrent powers in federal systems: Meaning, making and managing* (Brill Nijhoff 2017) 241-260 Find it in your Library.
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- 21 Constitution, art 52(2)(c).
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- 39 S Gebre, 'Ethiopia declares state of emergency over coronavirus' Bloomberg (Online, 8 April 2020) Find it in your Library.
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- 43 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018, art 27(6).
- 44 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018, art 27(7).
- 45 Public Health Proclamation No. 200/2000, art 16(2).
- 46 Public Health Proclamation No. 200/2000, art 17(3).
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- 48 The Criminal Code of the Federal Democratic Republic of Ethiopia 2004.
- 49 The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, art 522(1).
- 50 State of Emergency Proclamation Enacted to Counter and Control the Spread of Covid-19 and Mitigate Its Impact Proclamation No. 3/2020.
- 51 State of Emergency Proclamation No. 3/2020 Implementation Regulation No. 466/2020.

- 52** Al Jazeera, 'Ethiopia declares state of emergency to fight coronavirus' (Online, 8 April 2020) Find it in your Library.
- 53** Constitution, art 77(13).
- 54** Ethiopian Public Health Institute Establishment Council of Ministers Regulation No. 301/2013.
- 55** The PHI was established by the Ethiopian Health and Nutrition Research Institute Establishment Council of Ministers Regulation No. 4/1996; this was replaced by Regulation No. 301/2013.
- 56** Ethiopian Public Health Institute Establishment Council of Ministers Regulation No. 301/2013, art 5(2).
- 57** Ethiopian Public Health Institute Establishment Council of Ministers Regulation No. 301/2013, art 6(14).
- 58** Ethiopian Public Health Institute Establishment Council of Ministers Regulation No. 301/2013, art 6(9).
- 59** Ethiopian Public Health Institute Establishment Council of Ministers Regulation No. 301/2013, art 6(14).
- 60** State of Emergency Proclamation Enacted to Counter and Control the Spread of Covid-19 and Mitigate Its Impact Proclamation No. 3/2020.
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- 63** Ministry of Health, 'An executive directive issued to the continued provision of health services within the context of COVID-19' (Directive 1/2012) (2012).
- 64** State of Emergency Proclamation No. 3/2020 Implementation Regulation No 466/2020, art 5.
- 65** State of Emergency Proclamation No. 3/2020 Implementation Regulation No 466/2020, art 5.
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