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CONTROLLING PUBLIC HEALTH EMERGENCIES IN FEDERAL SYSTEMS

The case of Ethiopia

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17.1 Introduction

It was merely a day after the World Health Organization (WHO) declared the coronavirus disease (Covid-19) a global pandemic that Ethiopia recorded its first case of infection. On 12 March 2020, a week after entering the country from Burkina Faso, a 48-year-old Japanese national presented himself at a public health centre in the capital city, Addis Ababa, and was diagnosed as having Covid-19. The number of cases in Ethiopia's estimated population of 110 million climbed steadily in the following months, and by the end of October some 96,000 people were infected in what is one of the most populous countries in Africa.

According to official statistics, the infection rate reached its peak when 2,000 new cases were reported in August 2020, after which it began to decline. This was, however, not necessarily because the prevalence of Covid-19 decreased; it was because the government cut back on its daily testing for the disease. In August, it had been conducting more than 20,000 such tests a day; from the beginning of September, it reduced them by three-quarters to 5,000 (FDRE Ministry of Health 2020). It was little wonder that infection rates seemed to have dropped – here, as elsewhere in a country as vast and diverse as this, matters were not as straightforward as they appeared on the surface.

Located on the Horn of Africa, Ethiopia's territory of 1,104,300 km² is host, if not always home (increasingly a point of contention), to more than 80 ethnic groups, which gives the country a multifaceted character amply reflected in the complexity of its history. In the modern era, Ethiopia became a republic in 1974 when a popular revolt against the monarchy culminated in a coup that ousted Haile Selassie I and led to a period of military government and unitary statehood. A 17-year-long civil war ensued, in which the ruling junta, the Derg, were defeated by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF),

a coalition of ethnic-based rebel groups. After this victory, Ethiopia became a federation in 1995 and would be ruled by the EPRDF for most of the next 30 years.

However, a three-year public protest that started in 2015 against what many described as the EPRDF's authoritarianism saw Dr Abiy Ahmed Ali emerge as Prime Minister in April 2018. He oversaw various reforms with the declared aim of transforming Ethiopia into a democratic state, among which was the amalgamation of the EPRDF coalition into a single party, the Ethiopian Prosperity Party (EPP). The sixth national elections, scheduled for August 2020, were meant to be a litmus test of whether the country was moving towards democratisation and a peaceful transition, but they were postponed due to the Covid-19 pandemic – events which, at the time of this writing, culminated in federal military intervention in one of the states.

Clearly, then, Covid-19's arrival in Ethiopia was especially inopportune, coming as it did when the country was at a political crossroads and the federation under heavy strain. This chapter argues that the 2020 pandemic further complicated the political entanglements that beset the federal system, in the process deepening the communal divisions that already threaten the country with disintegration.

17.2 The federal constitutional and legislative framework

17.2.1 Federal structure

The Federal Democratic Republic of Ethiopia is composed of a federal government and 10 states, demarcated along ethnic lines, and two self-governing cities, Dire Dawa and Addis Ababa; the tenth state, Sidama Regional State, was created in June 2020.¹ As Ethiopia has a parliamentary system of government, the executive is headed by a Prime Minister who governs the country together with the Council of Ministers. The federal parliament is a bicameral one in which only the lower house, the House of Peoples' Representatives (HPR), exercises legislative powers; the upper house, the House of Federation (HoF), exercises non-legislative functions that include resolving constitutional disputes.

At the state level, elected legislatures exercise powers over state matters. The highest executive authority in the state lies with the chief administrator (sometimes referred to as president), who presides over the state cabinet. In terms of the Constitution's dual court system, each state has a judiciary of its own to administer justice based on state law.

Local government is not explicitly recognised as an autonomous level of government; as such, its establishment is left within the exclusive competence of the state (Constitution, article 50(4)). In practice, states have formed ethnic local government (composed of special zones and special *woredas*) and regular local government (composed of *woredas* and city administrations) (Ayele and Fessha 2012). Dire Dawa and Addis Ababa, both of which are answerable directly to the federal government, are included in the category of local government (Ayele 2014).

17.2.2 Division of powers: Federal competences

Ethiopia has a dual federal system in which competences are divided between the federal and state governments. Local government is not part of the power division. Article 51 of the Constitution contains a list of 20 functional areas that usually fall under the exclusive competences of the federal government, including foreign affairs; defence; printing money; borrowing; immigration; and air, rail, waterway, and sea transport, as well as major roads linking two or more states. The powers of the federal government also extend to functional areas that are mentioned directly or indirectly in other parts of the Constitution (Fiseha 2007). The Constitution contains a short list of state competences (article 52(1)). Residual powers are left to state governments.

The federal government has broad powers in the area of public health. It has the power to ‘establish and implement national standards and basic policy criteria for public health’ (Constitution, article 51(3)). This implies that the federal government has the competence to develop policies and framework legislation for containing pandemics. However, a global pandemic like Covid-19 is not solely a public health issue, but also involves issues linked to, *inter alia*, the national economy, social services, international relations, and national security.

That makes the long list of powers of the federal government outlined in article 51 of the Constitution relevant, in one way or another, in the event of a global pandemic. For example, inasmuch as cooperation with other states is necessary to contain the spread of viruses, a pandemic has implications for foreign affairs. The immigration-related powers of the federal government are also implicated in that travel bans are a major way of containing pandemics. What is more, pandemics have economic repercussions which may require that the federal government use its power of regulating the national economy to minimise them.

The federal government’s emergency powers are relevant too, since combating a pandemic may require restricting freedoms and liberties and then using coercive power to enforce these restrictions. Accordingly, Ethiopia’s federal government not only has the power to declare a state of emergency but the competence to ‘establish and administer national defence and public security forces as well as a federal police force’ (Constitution, article 51(6)).

17.2.3 Division of powers: State competences

The Constitution does not expressly provide the states with competence in regard to public health. However, the federal government’s power to ‘establish and implement national standards and basic policy criteria’ (Constitution, article 51(3)) in the area of public health implies that it is expected to restrict itself to setting the standards and defining the minimum requirements to which states have to adhere; this leaves room for states to come up with their own detailed policies based on the national standard (Fiseha and Ayele 2017). By implication, public health is a concurrent competence of the federal and state government in the mould of ‘framework concurrency’.

Moreover, article 52(1)(2)(c) provides that the states can ‘formulate and execute their own social and development policies, strategies and plans’. Arguably, public health is a social matter with respect to which the state could formulate its own policies. This, together with the reading above of article 51(3), would entail that states have competences in the area of containing the spread of a global pandemic such as Covid-19. The inference is bolstered by the fact that the Constitution expressly authorises the states to declare a ‘state-wide state of emergency should a natural disaster or an epidemic occur’ (article 93(1)(b)).

17.2.4 Local government competences

The role and power of local government in public health are not evident from the federal constitution, as it is silent on the functional competences of local government (article 50(4)). The state constitutions also tell us little about the role local government could play in public emergencies in general and the Covid-19 pandemic in particular. A brief survey of them finds that *woredas* and cities are authorised simply to implement their own plan on local social and economic matters; none of the state constitutions define the specific social and economic matters that are within the competences of local government (Ayele 2014).

In practice, local governments in Ethiopia play a robust role in matters of public health. They are responsible for providing basic utilities such as primary health care (by establishing health stations and clinics), drinking water, primary education, and security maintenance (ibid). The relevance of these competences, especially primary health care, in the fight against Covid-19 is self-evident.

17.3 Preparedness for a national disaster: The institutional framework

Long before Covid-19 emerged, various federal and state institutions were tasked to deal with emergencies, including public health emergencies. Among these institutions are the Federal Ministry of Health (MoH), the Ethiopian Public Health Institute (PHI), and the Ethiopian Food and Drug Control Authority (EFDCA).

The MoH has the primary duty of dealing with public health matters in general and public health emergencies in particular. Under article 27(6) of the Proclamation to provide for the definition of powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia 1097 (2018), it has the duty to ‘devise and follow up the implementation of strategies for the prevention of epidemic and communicable diseases’. Additionally, it has the mandate to ‘take preventive measures against events that threaten the public health; in the events of an emergency situation coordinate measures of other stakeholders to

expeditiously and effectively tackle the problem' (article 27(7)). As per Public Health Proclamation 200 (2000), the MoH also has the power

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.

(article 17(3))

The main responsibility of the PHI is to undertake research to detect and prevent public health emergencies. It is expected to create early warning systems that enable other concerned organs, including the MoH, to take appropriate and timely measures. The EFDC's main responsibility is to ensure that foods, medicines, and medical devices that are imported or produced in the country and distributed at national level are of appropriate quality and do not pose a risk to public health. The EFDC had the additional authority of controlling ports of entry, enforcing laws and combating pandemics. This included quarantining or denying entry into the country to travellers suspected of being infected with communicable diseases. By way of Food, Medicine and Health Care Administration and Control Proclamation 661 (2009) and 1112 (2009), this power was transferred to the PHI in 2009.

Other federal agencies dealing with health emergencies are the Ethiopian Revenue and Custom Authority and the Ethiopian Civil Aviation Authorities, which are mandated to report, through their posts at ports of entries, individuals suspected of infection with a communicable disease to the relevant authorities so that the country's quarantine rules can be enforced (Council of Ministers Regulation 299 (2013), articles 45 and 46). Another federal institution with an important role in combating pandemics is the National Disaster and Risk Management Commission (NDRMC), which is charged with storing food and non-food items for use in cases of emergency.

States seem to organise their executive and administrative agencies in such a way that there is a counterpart to a federal agency at the state level, despite the absence of hard and fast rules requiring them to do so. Thus, as a counterpart to the MoH, there is a bureau of health at the state level and an office of health at the local level. State bureaus of health have the power to deal with public health emergencies. There are also state-level public health institutes and disaster and risk management commissions.

These state agencies work (or at least are expected to work) in coordination with their federal counterparts. In the absence of strong, formalised forums for intergovernmental relations (IGR), federal ministries or agencies interact on an ad hoc basis with their counterparts at state level. Thus, the MoH interacts with state bureaux of health, while the federal PHI interacts with state PHIs.

The blame for the ad hoc nature of these interactions can be laid at the door of the EPRDF, which controlled eight of the nine states and operated on the

basis of democratic centralism: since IGR issues were addressed within the party structure, this practice stifled the emergence of formal IGR forums. When Covid-19 broke out, however, the EPRDF was no more and, in the absence of established IGR forums, the only mechanism for coordinating efforts to contain the pandemic was cooperative engagement among federal and regional sectoral offices with complementary mandates.

17.4 Rolling out measures to contain the pandemic

The response to Covid-19 was dominated by the federal government. The state governments took little or no initiative: with a few exceptions, outlined below, they were passive and merely followed federal instructions. This can be explained by the fact that the Ethiopian federation operates within a dominant-party state that reduced state governments to implementing agents of the federal government (Fessha 2019). At the same time, the effort to combat the pandemic took place in the context of major political developments that undermined the ability of the federal government to dictate to state governments, that prompted unusual defiance among state governments, and that saw the emergence of inter-communal conflicts across the country.

17.4.1 Taking the initiative

The spread of the coronavirus was initially slow, and almost all the confirmed cases were from Addis Ababa: from March to May 2020, the daily confirmed cases were less than 10. The virus nevertheless continued to spread throughout the country in subsequent months, even though Addis Ababa remained the epicentre and accounted for two-thirds of infections. By October 2020, there were close to 100,000 confirmed cases, and it was suspected, moreover, that the actual number of infected individuals was much higher than what was officially reported.

All eyes were on the federal government after the outbreak of the coronavirus in Wuhan, China, was reported in January 2020, even so before a global pandemic was declared. This was because only the federal government could have prevented its entry into Ethiopia, given that it is the level of government charged with controlling ports of entry into the country. There were public demands on mass and social media for the federal government to close borders and suspend flights, especially Ethiopian Airline's flight to and from China; concerns were heightened by the fact that Bole International Airport, located at the heart of Addis Ababa, is one of the largest and busiest airports in Africa as well as home to Ethiopian Airlines, the largest airline on the continent. The federal government initially rejected the demand for the suspension of flights and closure of the country's borders.

However, it did start taking precautionary measures even before the first case of Covid-19 was confirmed. On 27 January 2020, prior to the WHO's

declaration of a global pandemic, the Council of Ministers ‘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. In the same period, the NDRMC established a National Coordination Centre (NECC) in which various sectoral agencies were represented (Public Health Emergency Operation Centre (PHEOC), Ethiopia: Weekly Bulletin 2020). 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 multisectoral response. Accordingly, this body set up quarantine centres and food banks in various areas.

A few days after the first case of Covid-19 was confirmed, the Council of Ministers banned all public gatherings and sports events. It also ordered schools, including universities and colleges, to close and placed restrictions on religious gatherings. The decision was to be applicable at the national level. This was followed by a decision on 20 March 2020 requiring anyone entering the country to stay in quarantine for up to 14 days. One could be quarantined in designated hotels if one could cover the cost, or remain in other quarantine facilities at the expense of the government. The Council also ordered the closure of bars and clubs. Federal and state security organs were charged with enforcing these decisions.

Moreover, the Council of Ministers ordered that Ethiopian Airlines cease flights to 30 selected cities (surprisingly, cities in China were not on the list). On 24 March 2020, it decided that, from 25 March, all federal employees were to work from home, except those designated by each ministry and federal agency as essential workers. Likewise, the president of the Federal Supreme Court declared that federal courts would remain partially closed from 19 March to 2 April. The restrictions were imposed without a state of emergency having been declared.

The heavy hand of the federal government was evident in the early days of Covid-19. There was little initiative by the states to use their competences in the fight against the pandemic – their attitude seemed to be to wait and see what the federal government would do. However, some of them of their own accord took measures with the declared purpose of containing the pandemic, albeit that most of these measures were less than comprehensive. For instance, on 31 March 2020, the states of Oromia, Amhara, and the SNNP for two weeks banned public transport from entering or leaving them. The states took even more restrictive measures in some of the cities within their jurisdiction. For example, on 31 March, the Amhara state ordered a total lockdown and banned any movement of public transportation for two weeks in four cities, among them the state capital, Bahr Dar (Fana Broadcasting Corporation 2020). However, Addis Ababa, the country’s capital, did not impose a complete lockdown despite its being the epicentre of Covid-19.

There was one major exception. Tigray National Regional State declared a state of emergency on 25 March 2020, long before similar action was taken by

the federal government. As part of the emergency measure, the state government introduced several restrictions. It forbade any travel to and from rural areas within the state. It also required the closure of cafés, restaurants, bars, and clubs and banned all social activities including weddings. Anyone entering the state had to stay in quarantine for two weeks. It should be noted, though, that Tigray's declaration of a state of emergency was not simply an exercise of a constitutionally allocated power in the interests of the greater good. It is to be seen in the light of the prevailing political tension between the federal and state government (discussed in the next section).

17.4.2 Federal action

As the spread of the virus increased in terms both of numbers infected and area covered, the Council of Ministers resolved on 8 April 2020 to impose a state of emergency. As per article 93 of the Constitution, the proclamation by which it was declared was adopted by Parliament on 10 April.

The State of Emergency Proclamation (3/2020) was short and composed of a preamble and eight articles. The preamble explained that the state of emergency was necessary as Covid-19 had become a global pandemic that could not be controlled by regular methods of law enforcement. The adverse political, social, and economic impacts of the pandemic and the need to mitigate the ensuing humanitarian crises, said the preamble, warranted 'coordinated' decision-making and implementation, which in turn necessitated the state of emergency. The proclamation, which had nationwide application, superseded contrary federal and state laws. It also imposed a criminal penalty on those acting or failing to act in accordance with its provisions. The penalty was up to three years' imprisonment, or a fine of between ETB 1,000 and 200,000. The state of emergency remained in force for five months, starting on 8 April 2020.

On the basis of article 4 of the State of Emergency Proclamation, the Council of Ministers issued a regulation (Regulation 466 (2020)) detailing measures to contain the virus. The regulation banned some activities entirely and others partially. Among the activities that were banned entirely were gatherings of more than four people regardless of the purpose, shaking hands, teaching and learning in schools, and sports activities; clubs, bars, theatres, cinemas, and the like were ordered to close. Public transport, including buses and trains, was allowed to operate at half of its usual capacity. Cafeterias, restaurants, and hotels were required not to serve more than three people at a single table and to ensure sufficient space between tables. International borders were closed, although Ethiopian citizens were allowed to enter the country if and when the Council of Ministers permitted it.

Various rights and freedoms were thus restricted for the duration of the emergency. Freedom of expression was limited, as the regulation barred the media from reporting Covid-19 news in a way that could 'cause terror and undue distress among the public' (article 3(27)); in addition, factual information about

Covid-19 could be communicated only in a centralised manner (article 3(16)). Freedom of movement was restricted in that travellers from abroad had to be quarantined for 14 days. The regulation required everyone to wear masks in public.

Furthermore, the rights of property owners were restricted inasmuch as they could not evict tenants or increase rental fees. An owner of a vehicle, apartment, hotel, or other property could be required by the Ministerial Committee, established by the regulation, to submit his or her property to be used in the fight against the pandemic. Employers could not dismiss employees except in accordance with a protocol issued by the Ministry of Social Affairs. The regulation also placed obligations on certain service providers by requiring them not to discontinue their services during the state of emergency. This included electricity, water, and telecom service providers, along with, *inter alia*, banks, construction workers, and cleaners.

The pandemic created major economic challenges. Close to half a million jobs were lost due to Covid-19; many businesses closed down, while others suffered a significant loss of earnings as demand for goods and services plummeted. This resulted in a 4 per cent drop in growth in gross domestic product (GDP), dragging more than 2 million people under the national income poverty line. About half of urban and rural households experienced income loss (Dabalen and Paci 2020). In addition, the arrival of the virus during the rainy season led to poor agricultural productivity, as a result of which the country saw a 30 per cent rise in food inflation (World Food Programme 2020).

In response, the federal government sought to mitigate these impacts by, among other things, giving tax exemptions to affected companies and cancelling interest and penalties for unpaid taxes that had been due between 2015 and 2018. Moreover, it introduced price controls on basic commodities. The National Bank injected liquidity to the value of ETB 15 billion (USD 450 million) into private banks so that they could provide grace periods or 'debt relief and additional loans to their customers in need' (Samuel 2020). State and local governments also extended tax exemptions to small traders and businesses.

The federal government decided not to renew the state of emergency when it expired in September 2020; many of the restrictions were subsequently lifted. Although the rate of infection appeared to decrease from September and onwards, this was mainly because the MoH substantially reduced testing for the virus as it was running out of test kits.

17.4.3 State government action

After the federal government declared a state of emergency, the states adopted a more structured approach to Covid-19, given that the federal proclamation and its regulation, which had nationwide application, provided the necessary framework for state action. The states were responsible mainly for enforcing the

state of emergency. They established quarantine centres and transported patients to and from these centres. They also mobilised health extension workers, who provided various services ‘including immunization, at the community level and educated members of the communities on how to prevent the spread of the virus’ (Getachew 2020).

As it was responsible for the area most heavily affected by Covid-19, the Addis Ababa city government took a number of measures to contain the pandemic. It established quarantine centres in various locations, including at the Millennium Hall, a venue usually used for music festivals. To curb the spread of the virus without hampering food supply to residents, the city government relocated Atkilt Tera, the largest fruit and vegetable market, to Jan Meda, an open space ordinarily used for sports and religious activities.

There was, however, one exception to the practice of state governments’ limiting their role to enforcing the decisions of the federal government. The state of Tigray declared a state of emergency long before the federal government declared a nationwide state of emergency. Thereafter, in April 2020, Tigray undertook ‘a state-wide door-to-door Covid-19 screening testing campaign’ (Addis Fortune 2020). After the campaign, the state government eased the measures imposed by its state of emergency by lifting restrictions on public transport, cafés, restaurants, bars, and the like and allowing them to provide services subject to conditions. Tigray eased its restrictions two weeks after the federal government imposed its state of emergency – this did not necessarily violate the federal state of emergency since the remaining restrictions were as severe as those imposed by the federal government.

17.4.4 Local government action

Woredas and cities took measures to prevent the spread of the virus, albeit in an unstructured manner. As early as March 2020, some cities in Oromia imposed a partial lockdown, while those in the Amhara state, including the capital, imposed a complete lockdown (Fana Broadcasting Corporate 2020). Although this was done at the behest of the respective state governments, it was undertaken without a clear legal framework.

In April 2020, the Addis Ababa city government launched what it called ‘door-to-door screening’ in which more than a thousand health workers went from door to door to take temperature checks and isolate people showing the symptoms of Covid-19 (Ethiopian News Agency 2020). In the SNNP, some local government units attempted to impose restrictions to contain the spread of the virus. For instance, the Gurage zone government barred people from travelling to the zone for the Islamic holiday, Arafa, during which members of the Gurage community traditionally travel to the zone to celebrate the holiday and get married.

After the federal government declared a state of emergency, local governments were expected to play a key role in enforcing the emergency regulations,

including the requirement that masks be worn in public spaces and that cinemas, bars, and so on be closed.

17.4.5 *Intergovernmental relations*

Although Ethiopia adopted a federal constitution in 1995, IGR has never had more than academic relevance in how its federal system operates (Fessha 2020). As an aspect of federalism, it was ignored in the past mainly because the EPRDF, which acted on the basis of ‘democratic centralism’ and controlled all levels of government, dealt with intergovernmental issues through party channels; federal agencies and their counterparts at state level interacted with each other, if at all, on an ad hoc basis (Fiseha 2009). As noted, the EPRDF has transformed itself into a new party, the EPP, which now controls nine of the country’s 10 states. The EPP, unlike the EPRDF, is not a coalition of ethnic-based state parties but a single national party with state branches legally and politically accountable to the centre. Its party structure remains the most important mechanism for coordinating federal and state relations in Ethiopia – not much has changed in this respect.

There was, nonetheless, an attempt to formalise IGR, and to this effect a policy document on it was adopted in May 2018 by the HoF, the institution which is supposed to play a major role in facilitating federal-state relations, though it had not been implemented at the time of writing. A draft proclamation on IGR, prepared under the auspices of the HoF, was only recently endorsed by the HPR (Anberbir 2020). In the interim, the relevant federal and state agencies interacted with each other to coordinate their efforts in the fight against Covid-19. The MoH in particular was in regular contact with state bureaus of health, among other things making test kits available for them, receiving their reports, and consolidating these in nationwide test results that were published daily.

It might not be accurate to say nothing much has changed in federal-state relations: for the first time in three decades, a major intergovernmental dispute has arisen in Ethiopia. Although Covid-19 was not the main cause of the dispute between the federal government and the state government of Tigray, there is no doubt that it played a role in escalating the dispute.

The pandemic, as mentioned, broke out when the country was in political turmoil thanks to a split in the EPRDF, one precipitated by three years of countrywide protests against the party’s authoritarianism and the country’s ever-rising corruption. Abiy Ahmed, who assumed chairmanship of the EPRDF and premiership of the country after Haile Mariam Dessalgn resigned as Prime Minister, reconstituted the ethnic-based EPRDF into a single, formally non-ethnic party with a new name, EPP, and new ideology, that of ‘*medemer*’, an Amharic word roughly translatable as ‘convergence’ (Ayele 2021). The Tigray People’s Liberation Front (TPLF) – the founder, nucleus, and most influential member of the coalition – did not join the new party.

In April 2018 and thereafter, disgruntled members of the TPLF, including former ministers, Members of Parliament, and senior government officials in

the federal government, left Addis Ababa and retreated to Mekelle, the capital of Tigray; the dispute between the Tigray state and the federal government soon began to unfold. The altercation worsened when it became clear that, due to Covid-19, the sixth general elections would not be held in August 2020 as per the schedule prepared by the National Electoral Board of Ethiopia (NEBE). The NEBE itself declared that it would not be able to administer free and fair elections in the context of Covid-19. At the same time, the term of the current Parliament was due to expire on 5 October 2020, so it was unclear how and by whom the country would be governed after the expiry and until elections could be held.

The government then sought the advice of the HoF, which, as noted, has the power to interpret the Constitution. The HoF, based on the recommendation of the Council of Constitutional Interpretation, the institution that assists it in discharging its mandate of constitutional interpretation, decided to extend the term of Parliament and all state councils until the next elections are held (FDRE Council of Constitutional Inquiry 2020; FDRE House of Federation 2020).

In response, the TPLF declared the HoF's decision unconstitutional. Furthermore, it decided to hold its own state elections by establishing its own electoral board and adopting its own electoral law (Addis Standard 2020a). This was constitutionally problematic since the power to administer any elections in the country exclusively belongs to the NEBE. Nevertheless, on 9 September 2020, the Tigray state went ahead with the elections, defying repeated warnings by the federal government against such actions.

Having conducted the elections and forming a new government, the Tigray state declared that, post-5 October 2020, when the terms of Parliament and the incumbent administration would have expired were it not for the term extension by the HoF, it would not recognise Abiy Ahmed's government as legitimate and have any relationship with it (Addis Standard 2020b). The federal government, for its part, declared the elections in Tigray null and void, refused to recognise the state government as legitimate, and said it would not have relations with it.

Intergovernmental tension was exacerbated when the HoF decided to suspend federal revenue transfers to the Tigray state government. Tigray reacted by making public its intention to withhold all federal taxes collected in the state. The federal government then declared its intention to bypass the state government of Tigray and interact directly with local authorities, including in the transfer of funds. Those were constitutionally suspect measures (Ayele 2020) and added a financial dimension to the already strained relations.

The actions and reactions of the two governments revealed the limits of the law's ability to dampen intergovernmental tensions. The state of Tigray labelled the federal government as illegitimate even though the bodies with the ultimate power to interpret the Constitution, the Council of Constitutional Interpretation and the HoF, allowed the federal government to stay in power until the next elections were held. Some aspects of that decision are arguably

problematic (especially with regard to the extension of the terms of state governments). Nevertheless, those were the final words of the body given the power to interpret the Constitution and were expected to be respected as such. While a state government probably has the right to hold state and local elections, the Constitution envisages a single national body that administers elections.

Eventually, the federal government invoked its constitutional power of federal intervention and, at the beginning of November 2020, launched a military offensive against the government of the state of Tigray.² At the time of this writing, the federal military had removed the state government and the federal government had installed a transitional government in its place.

These disturbing developments highlight the absence of traditions and institutions of intergovernmental dialogue that allow for peaceful resolution of disputes. Indeed, what is striking, tragically so, is that there was not a single report of the federal government and government of Tigray having met behind closed doors to engage in intergovernmental dialogue. Instead, matters that should have been resolved by intergovernmental negotiation conducted away from the public arena were allowed to fester in a war of words. That is extremely concerning. The developments clearly indicate that Ethiopians are living in an era when they have to take the federal experiment seriously, a stance that should include an intent commitment to a culture of intergovernmental dialogue and negotiation.

17.4.6 Intergovernmental fiscal relations

The duality of the Ethiopian federal system is evident in the way that fiscal powers are divided between the federal and state government. The principle governing their fiscal relations is, as provided under article 94(1) of the Constitution, that ‘federal government and the states respectively bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law’; this also explains why ‘the financial expenditures required for the carrying out of any delegated function by a state [are] borne [by the federal government]’. An exception to the principle is that the federal government could ‘grant to states emergency, rehabilitation and development assistance and loans’. This suggests that, if it so wishes, the federal government can grant financial assistance to the states to deal with public health emergencies, including the Covid-19 pandemic.

In practice, the federal government makes two types of financial transfers to the states. The first, commonly known as block grants, are unconditional financial transfers. These comprise a little more than 36 per cent of the federal budget. The Constitution does not specifically mention this type of revenue transfers. The second type is specific-purpose grants (SPGs), which are conditional grants.

The outbreak of Covid-19 bore financial consequences both for the federal and the state governments. In particular, the federal government saw a massive drop in the revenue it usually collects. According to Ahmed Shide, the Minister of Finance, ‘[a] slowdown of economic activities and exports, because of COVID 19, affected the government’s revenue ... [for] the budget year’

(Wondwosen 2020). He added that the collection of indirect taxes, including value-added tax (VAT) and excise taxes, decreased by close to 15 per cent in March 2020 compared to revenue collected in the same period in the previous year. Federal government estimates show that, between March and July, more than ETB 11 billion (USD 294 million) of revenue that could have been collected in the form of federal taxes had been lost.

On the expenditure side, the federal government incurred additional expenses of ETB 15 billion in buying personal protective equipment, medicines, and the like. Covid-19 also resulted in humanitarian challenges, including a growing need for emergency food assistance. This required the immediate purchase of more than 600,000 metric tons of wheat, costing billions of Ethiopian birr. The humanitarian situation was worsened by floods during the country's rainy season (June–September) and the invasion of much of north-eastern and south-eastern Ethiopia by desert locusts. These together put an estimated 15 million people or more in need of food assistance (Fikade 2020). To deal with the emergencies, the HPR in May 2020 adopted a supplementary budget of ETB 48.5 billion (USD 1.2 billion).

As for the states, even under normal circumstances they have never been financially self-sufficient and depend on federal transfers to cover in excess of 70 per cent of their annual budgets; as such, the transfers are used mainly to cover the current expenditure of the state and local governments. The pandemic aggravated the situation in two respects, however. In the first place, it led to a reduction in the revenue they could collect from taxes and service fees. Numerous businesses closed down due to Covid-19, while others requested tax relief from their respective state governments to avoid going bankrupt and keep paying salaries to employees. The states had no choice but to grant these requests.

Secondly, states' expenditure increased since they had to take a variety of measures to contain the virus, including opening and operating quarantine centres. In this regard, they received federal assistance both in cash and in kind. In the latter case, the federal government purchased and disbursed personal protective equipment and other medical equipment – for instance, it distributed more than 50 million masks to the states for subsequent distribution to returning students. It should be noted that most of the states ceased virtually all capital investments and used their full resources to deal with the economic and humanitarian consequences of the pandemic; this increased their dependence on federal government handouts in order to carry out their expenditure responsibilities.

17.5 Findings and policy implications

Although Ethiopia has a federal constitution, it functions largely as a centralised system. This meant it was taken for granted that efforts to manage the threat of Covid-19 would be driven by the centre. Conversely, state and local government

were not expected to take separate initiatives to control the virus and manage its socio-economic impacts: as implementers of the decisions of the national government, they were required to follow directions given by the federal government. Indeed, this is exactly what happened.

The federal government dominated efforts to manage Covid-19, with state governments acting as implementers and local governments playing a peripheral role. There was no report of health ministers across the two levels of government engaging in dialogue to ensure coordination and protect citizens from the spread of Covid-19 across the country – even the breadth of the pandemic's impact did not prompt governments to engage in regular intergovernmental dialogue. This is no doubt linked to the fact that subnational governments acted as implementers of the federal government's decisions. They are, in other words, yet to be seen by the federal government as equal partners that need to be consulted through an intergovernmental mechanism.

There was one important exception, however. The state of Tigray took the initiative to declare a state of emergency within its territory, doing so long before the federal government declared a nationwide state of emergency. We cannot think of any other situation where a state in Ethiopia took a decision that departed from federal government action, let alone one that preceded it. Nevertheless, Tigray was acting within the limits of the Constitution.

Its decision to take actions independently of the federal government was an encouraging development as far as the federal experiment is concerned. Yet it was unavoidable to conclude that the action of the Tigray state was motivated largely by its desire to demonstrate its distinctiveness and autonomy from the federal government; put differently, it was hardly based on any specific assessment of Tigray's epidemiological status. The use of the pandemic to score political points against the federal government was clear. After all, this was the same state that, on the one hand, seemed to have taken Covid-19 with great seriousness, but, on the other, emerged as the fiercest opponent of the decision – made in response to Covid-19 – that allowed the federal government to postpone the national election.

From the foregoing, it is clear that the pandemic did not alter the way the federation operates; it did, however, serve as an opportunity to amplify the tensions that ensued after the election of Abiy Ahmed as Prime Minister and the reconfiguration of the ruling party that displaced the TPLF as the dominant member of the coalition. Indeed, the tensions that Covid-19 exacerbated can be read as harbingers of the intergovernmental disputes that are bound to emerge as the country transitions from a federation that operated under a dominant-party system. Developments during the Covid-19 pandemic exposed the absence of traditions and institutions of intergovernmental dialogue that allow for peaceful resolution of disputes within the federation. Ethiopians, it was clear, find themselves living in an era when they must take the federal experiment seriously and, in particular, make a commitment to entrenching a culture of intergovernmental dialogue and negotiation.

Notes

- 1 The original nine are Afar, Amhara, Benishanul-Gumuz, Gambella, Hareri, Oromia, Southern Nations, Nationalities and Peoples (SNNP), Somali, and Tigray. The new Sidama state seceded from the SNNP.
- 2 The offensive began on the night of 4 November 2020 when the Prime Minister, alleging that the TPLF had attacked military bases of the Northern Command of the Ethiopian National Defence Force, ordered armed intervention in the state. Many characterised the armed conflict between the two entities as a ‘civil war’; for its part, the federal government described it as a surgical operation intended to enforce the rule of law in the Tigray state and conducted under the rules of federal intervention. The HoF ordered the Prime Minister to abolish the Tigray state government and appoint a transitional administrator once the federal government secured the TPLF’s military defeat and gained full control of the state.

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