

Memorandum on Averting the Looming Constitutional and Political Crisis in Ethiopia



**The Government of Regional state of Tigray
Ethiopia, Tigray Mekelle
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Introduction

Ethiopia is the second most populous country in Africa with more than 115 million people. It is located at the center of the Horn of Africa sub region and is culturally, linguistically and geographically interwoven with all the eight countries in the neighborhood. Its proximity to the Red sea and privileged position as a gate way to Africa intersecting Asian, Arab and African civilizations, has since time immemorial made it a center of international interest and rivalry. It withstood and foiled successive attempts by foreign powers to colonize and subjugate its people. As a result, Ethiopia is considered a symbol of independence and resistance by Africans and people of African descent all over the world. As the Headquarters of the OAU and later AU, it has also been the center of African politics since the 1960s. It is also host to many international organizations including UNECA and third largest diplomatic community in the world.

The other side of Ethiopian history is not, however, that glamorous. Ethiopia was a country incapable of managing the diverse identities and aspirations of the more than eighty nationalities in the country and as a result its modern history was mired by civil war, drought and underdevelopment. Ethiopia of the 70's and 80s was synonymous with fratricidal war and famine. After seventeen years of bitter armed struggle, the Dergue's military dictatorship was overthrown on 28 May 1991 and Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of four armed democratic forces, took the mantle of power. Ethiopia ushered a new bright chapter after long history of dictatorship and misery. The construction phase of the new Ethiopia was not, however, easy.

After thirty year long struggle for independence, the Eritrean People's Liberation Front (EPLF) victoriously entered Asmara a week before the fall of Addis Ababa in the hands of EPRDF forces. Eritrea's status, however, was determined through referendum under international observation in which the overwhelming majority of Eritreans opted for independence. The government of Ethiopia respected the decision of the Eritrean people and recognized Eritrea as a sovereign and independent state. During this challenging transition period, more than seventeen armed organizations inside Ethiopia with a secessionist agenda had also to be convinced not to take the Eritrean path and to give a chance for a new Ethiopia under Federal constitutional order. More than half a million soldiers of the

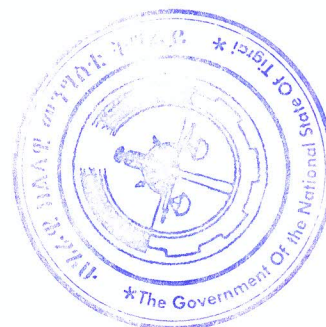


military regime had to be demobilized, rehabilitated and integrated in to the society. The economic and social malaise of the country was even more daunting. The EPRDF government had to launch an ambitious economic agenda if the country was not to descend into an economic and social chaos and eventually disintegrate under the weight of abject poverty, illiteracy and social ills.

A month after it assumed power, EPRDF, convened a multi-party peace conference and adopted a transitional charter on the basis of which a transitional administration was instituted. Subsequently, after a wide range of public participation and deliberations all over the country, a constituent assembly adopted a federal constitution in 1995. The new constitution incorporates individual rights enshrined in the Universal declaration of human rights of the UN charter and extends to group right, including the rights of people to self-administration up to secession. That was the formula that reconciled the demands of the extremists on both the secessionist and unitary camps. It was not a perfect formula but was the only realistic formula if the country was to stay together. On the basis of the new Constitution, Ethiopia held its first ever democratic national election in 1995 and five more elections have been held since.

Ethiopia's performance in the economic front was even more impressive. Since the early 2000, it registered double digit growth for fifteen consecutive years and had the honor of being placed as one of the few fastest growing economies in the world. The infrastructural boom literally transformed the trajectory of the country's social and economic development. Ethiopia is one of the few countries in the developing world that met the MDG goals in all sectors including health, education and poverty reduction.

But the galloping development was not without challenges. Despite the impressive growth, poverty remained formidable challenge. Political clientelism and maladministration became rampant. The ruling party was not able to open enough political space to accommodate the new social forces and their attendant social, political and governance demands. It became, so to say, the victim of its own success. EPRDF, the then ruling party, publicly admitted its failings and among other things changed its leader in the hope of rectifying its past mistakes and building on its achievement. But it was not to be.



Change and turmoil

The new administration led by Prime Minister Abiy, came to power with promises of reform, reconciliation and building a national unity. It was received with enthusiasm by wide spectrum of the Ethiopian people and was widely acclaimed by the international community for the initial reform measures it undertook.

The success of any reform program, however, hinges upon broad consensus among all stakeholders, including political parties, national regional states and the public at large. The democratization process in the country, however, has neither an agreed roadmap nor a semblance of participation. It became an exclusionary, partisan and a haphazardly unilateral undertaking on the part of the new leadership. As a result, the political trust among political forces plummeted, government institutions were deliberately rendered dysfunctional, rule of law and the constitutional order at large fell apart and the security situation of the country deteriorated. With three million internally displaced people (IDPs), Ethiopia surpassed Syria and Afghanistan as the country with a largest IDPs. This was a complete reversal of fortune for a country known for being one of the safest and biggest refugee recipient countries in the world.

The current administration's foreign dealings have been personalized and non-transparent. The nature and purpose of its secretive rapprochement with Eritrea and other countries with incompatible foreign policy objectives with that of ours have put our sovereignty and national interest in jeopardy. The government's cuddling with dictators and warmongers has been a source of insecurity and concern to many Ethiopians and Tigreans in particular.

In the last two years, Tigray Peoples Liberation Front (TPLF) leaders, members of Federal Parliament representing Tigray, Tigrean Intellectuals and the public at large were, on many occasions, on record expressing their concern on the flagrant violations of the constitution by the regime and had repeatedly warned that violating the constitution would not only jeopardize the democratic order but also unravel the country and endanger its survival. A region wide demonstration in July 2018, supporting and calling for transparency in the Ethio-Eritrean rapprochement, was held all over Tigray. Similarly, on December 2018, region wide rally was held in defense of the constitution and reminding the new leadership the danger of trampling on the constitution that held the country



basis of Universal suffrage and by direct free and fair elections held by secret ballot.

Similarly, Article 58 (3) of the constitution clearly stipulates the fact that the five year term constitutional provision has no room for misinterpretation. It says,

The House of people's representatives shall be elected for a term of five years. Elections for a new House shall be concluded one month prior to the expiry of the House's term.

The issue now is not, therefore, about a dispute on any part of the articles of the constitution; it is about looking for a legal cover to manipulate a clearly stated constitutional provision to suit the political ambitions of the ruling group. If such political manipulation is allowed to succeed, it will literally render the constitution irrelevant and there will not be any magic glue that will hold the country together. It will make a mockery of the constitutional order and the whim of a political leader will be supreme to the constitution. Article 9 of the Ethiopian constitution, however, underlines the supremacy of the constitution as follows,

The constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of a state or public official which contravenes this constitution shall have no effect.

The other article of the constitution that the government has tabled to parliament for 'interpretation' is Article 93 that deals with the Declaration of State of Emergency. The spirit of the article is about restricting rights during emergency situations and says nothing about extension of a term of a government in power. Neither Article 93 nor any single word in the constitution talks about extension of a term of an elected government. Article 93 (1- A) simply says,

The Council of Ministers of the Federal Government shall have the power to decree a state of emergency should an external invasion, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law



**enforcement agencies and personnel, a natural disaster
or an epidemic occur.**

It is within this context, that the Executive committee of the TPLF after having a three day deliberations, released a statement outlining its position regarding the constitutionally sanctioned 6th round national election. The following are the major points as outlined in the statement;

- The PP should immediately halt its attempt to dismantle the constitutional order with the intention to stay in power under the guise of constitutional interpretation. Article 83 of the constitution clearly stipulates that it is only when 'constitutional disputes' arises that the article is invoked and there are no disputing parties. The ruling party itself is playing the role of both a disputing party and a judge. There is no case nor are there disputants.
- Within the context and provisions of the constitution, establish an all-inclusive platform where all parties including PP, meaningfully participate towards undertaking the national election within the context of fighting COVID-19. The solution to the impasse we find ourselves cannot be resolved through constitutional manipulation. The only way out of the deadlock is a meaningful political dialogue.
- The current government has lost its morale and political credibility to be entrusted to lead a free and fair election and, therefore, an agreement should be reached to institute an independent body to undertake the task of conducting the election.
- Failing to reach an agreement on the aforementioned courses of action, the current government will not have the legal mandate to govern the country from October 5, 2020 onwards.
- The TPLF will earnestly play its part to avoid such political crisis at the national level and at the same time it will under no circumstances, accept any manipulation that will deny the Tigray people their hard won constitutional right to choose their leaders and their right to self-administration. In this regard, if the federal government fails to heed the aforementioned recommendations, we will conduct our own regional elections as per the provisions of the federal constitution and the constitution of the Regional State of Tigray.



- If the ruling party is allowed to postpone the election, we will find our country in a constitutional and political no man's land. And beyond that point it will be near to impossible to keep the country together let alone save the democratic constitutional order.

The role of International community

The ruling group has no convincing legal reason to justify its position and behavior with regards to the extension of its reign in power beyond its constitutionally set term limit. Its attempt to rationalize its political designs is even less convincing. In the last two years, it has only opportunistically and sporadically made reference to the constitution. It is useful to remember that the national election was postponed from May to August for no reason. The ruling group has the habit of selectively referring to the constitution when it is convenient to its ever changing political agenda. Otherwise, the new governing group has very little respect to the constitution. The ouster of a democratically elected front and replacing it with a new party with a different policies and programs speaks volumes regarding the ruling group's attitude to the constitution and rule of law in general. Its reference to the constitution in the current electoral saga cannot, therefore, be sincere. Of course, the central government was not, from the start, committed to holding the election. It has squandered two precious years without doing anything meaningful in terms of election preparations. It simply used the Corona virus pandemic as a plausible excuse to cancel it altogether. The federal government has lost all political credibility in this regard.

TPLF has been patient in the face of flagrant violations of the constitution, discrimination against the equal right of its people as citizens and the many criminalization and stigmatization campaigns against the organization and its leaders. As indicated above, it has also, on many occasions expressed its concerns and solutions thereof in public. But the federal government has contemptuously turned a deaf ear to its many appeals.

Tigray Regional State fully understands the danger the Corona virus pandemic can potentially cause to our people and we are by no means saying that elections should be held regardless of the danger of the COVID-19. For that matter the Tigray Regional State Government was the first, even before the Federal



government, to put in place measures to halt the spread of the Pandemic including declaring state of emergency. What we are saying is the Pandemic should not be used as an excuse to deconstruct the constitutional and democratic process. Neither are we pushing for the formation of unelected transitional government which we believe has the potential to create more problems than it resolves and irreversibly derail the constitutional and democratic order. What we are proposing is,

1. If there is enough political will on the part of the federal government, we believe that it is possible to hold the national election within the remaining months before the expiry of the term limit of the current government. However, given its record and proven manipulative behavior, we strongly believe that the government cannot organize and lead free and credible elections. The election process should, therefore, be managed by some kind of platform where all stakeholders meaningfully participate.
2. If all stakeholders believe that the remaining time is not enough to organize the election, we believe that political solution, within the framework of the constitution, is the only way out of the constitutional crisis. In the absence of a constitutional provision that allows the current administration to govern beyond its term limit, political parties , civic organizations and the public at large , should in an inclusive and transparent fashion, deliberate and agree on the way forward to governing the country, protecting its sovereignty and conducting the election.

The Tigray Regional State Government would like to assure the international community that, in coordination with all stake holders, including the PP, it will play its part to rescue the country from a constitutional and political crisis, But in the absence of such an agreed road map reached through a meaningful political dialogue, it has decided to start preparations for regional election in Tigray. The regional elections will be undertaken in the context of the constitution and in such a way that the fight against COVID-19 pandemic underway in the region is not in any way compromised.



Article 52(4), of the Constitution of the National Regional State of Tigray unequivocally states that, **members of the regional council are elected for a five year term.** Article 57 (2) of the same constitution stipulates also that **the term of the Executive branch, unless and otherwise enacted by the constitution, is limited by the term of the National Regional State Council.** The decision of the National Regional State of Tigray to hold regional election is, therefore, a matter of constitutional obligation. The spirit of the decision is informed by the firm belief that the National Regional State of Tigray is loyal to the federal constitution and to its own constitution rather than to the political whims of leaders in the federal government.

The right of the Tigray people to be administered by elected and constitutionally legitimate leaders is an inalienable right, secured not only by its long and arduous struggle but also is enshrined in its Regional constitution. Its right for self-administration is also supported both by Ethiopian constitution and international law. Article 1 of the International Convention on Civil and Political Rights states that,

**All peoples have the right to self-determination.
By virtue of that right they freely determine
their political status and freely pursue their
economic, social and cultural development**

Upon the expiry of the term of the current government on 5 October 2020, Ethiopia will find itself in serious constitutional and political crisis. No political group, including the incumbent party, will have the constitutional mandate to govern the country. The PP will lose both domestic and international legitimacy if it was to prolong its stay in power through unconstitutional means. Among other international conventions, the Constitutive Act of the African Union underscores as its governing principle **“Condemnation and rejection of unconstitutional changes of governments “.**

It would be unprecedented, for a host of the African Union, to be led by an illegitimate government that would fly in the face of the Constitutive Act of the African Union. This will have far reaching implications on the already precarious



security situation in the country but also to peace and security in Africa as a whole.

In this regard, therefore, we call upon the international community especially the African Union to play its leading role in averting the looming danger hovering over our country. We also would like to appeal to the rest of the International community to coordinate its efforts with the African Union in resolving an impending political crisis that have the potential to be a threat to both regional and international peace and security.

We would like, once again, to underline that the government's belligerent statements and its intentions to address a political and constitutional crisis through military force will not be helpful, it will in fact exacerbate the already volatile situation. If the government is allowed to pursue this dangerous path, not only Ethiopia but also the Horn of Africa will surely be immersed in political, security and humanitarian chaos. We would like also to emphasize that the federal government will be solely responsible for any unwelcome development in the country as a result of its intransigence and failure to heed the wise advice of Ethiopians and partners alike. It is, therefore, our sincere belief that our international partners who have been part of the development and democratization story of Ethiopia in the last three decades, would not seat idly by while the country and eventually the region is falling apart.

