

In a parliamentary system the power of the head of state is merely symbolic and representational. It is not stated clearly in the Issaias' constitution whether Eritrea shall have a presidential or parliamentary form of government. Our party advocates a presidential head of state, replete with the political power of the executive presidency.

Another weakness of the Issaias' constitution lies in the lack of clear-cut separation of powers. In multi-cultural Eritrea, where questions related to kinship, language, and religion need special attention, the executive branch has to be kept at bay from interference in the legislative and judiciary functions of the Eritrean state. The present draft constitution must have stated clearly that the court system and its administration shall be sensitive to issues of justice within the context of national unity. The draft constitution can only be ratified by a democratically elected parliament. The drafters of Issaias' constitution failed to accompany it with Party Law (a law that defines the rules of the multi-party election game, a time-plan for the elections, and an Election Commission (a body that supervises the implementation of the elections)). The following is an article written in 00-12-15.

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The announcement of elections in December 2001 is an important milestone that the Eritrean people must take full advantage of. The unfurling of the democratic phase is the accumulated result of struggle by countless Eritreans. The principle of self-determination does not stop with the achievement of national independence; national sovereignty is also an encasement for good government. With the independence of our country we also earned the right to form a democratic, national, government; the time has come to exercise this right fully. So far we, in Eritrea, have not been governed constitutionally; nevertheless, the dictatorial nature of the one party state is not an excuse for taking the path of armed struggle. Every ounce of Eritrean resourcefulness must be directed at establishing a democratic system.

Towards this end I shall attempt to make some critical observations about the Eritrean Constitution as a further contribution to the democratic debate. I shall compare the contents of the text of the constitution to Dr Bereketeab Habte's

Selassie interview for the purpose of detecting similarities or inconsistencies by focusing on a limited number of questions.

A. Does the Eritrean Constitution Provide for Political Parties?

The Eritrean Constitution does not provide for political parties. The constitution has the following provisions that stand in lieu of 'political parties':

The first provision, Article 19 (6) reads: "every citizen shall have the right to form organisations for political, social, economic, and cultural ends; and to practice any profession, or engage in any occupation or trade."

The second provision located in Article 7 (1) reads: "It is a fundamental principle of the state to guarantee its citizens broad and active participation in all political, economic, social and cultural life of the country." In the same article (5) it is provided that: "The organisation and operation of all political and public associations and movements shall be guided by the principle of national unity and democracy".

The letter and spirit of constitutions are embodied in clarity of language. It is upon such clarity that the multilevel relations of the state to society, the individual to society, the individuals of society to each other, and other computations, are ordered. In none of the quoted articles is it stated beyond reasonable doubt that the constitution shall base Eritrea's political system on a multiparty democracy. The relevant articles use terms such as 'organisation', 'association', and 'movements'; it is true to say that associations, movements, and organisations, share some characteristics with political parties, but by no stretch of imagination can these be depicted as political parties.

The articulators of the ruling party retort: "this is the way we interpret the constitution; take it or leave it!" Such an attitude says more of political muscle than constitutional commitment. Those versed in dialectics attempt to imitate the illustrious tradition of American constitutional scholars (of resorting to the writings and utterances of the fathers of the American Constitution) whenever differences of interpretation arise. The only document ratified by the transitional parliament was the Eritrean constitution; other documents are a matter of historical curiosity.

It is comforting to know that the authors of the constitution and those who participated in the process of constitution making are here with us to witness the truth that the multiparty system was deliberately rejected.

Let us now examine whether the constitution was written to accommodate more than one party in the parliament. What does the centrepiece of the Eritrean constitution; namely, the national assembly have in store for us? Article 32 (8) reads: “The National Assembly shall have the power to elect, from among the members by absolute majority vote of all the members, the president who shall serve for five years.” Article 34 (1) reads: “In its first meeting the National Assembly shall elect, by an absolute majority vote of all its members, a Chairman for five years.” Sub-article (3) states: “The Chairman of the National Assembly may be replaced by an absolute majority vote of all members of the National Assembly.”

Let us also make a parallel examination of Dr. Bereketab’s article:

“... a word of explanation of the phrase ‘a majority of those present and voting’ is in order. It is sometimes called a simple, or relative, majority. It must be distinguished from the absolute majority that is required by the Constitution, for example, for the election of the President.” p13 He also states that: “An exception to the relative majority rule is, as noted before, the absolute majority rule, which requires the presence of all members.” p13

The text of the constitution and the clarification provided by Dr. Bereket, affirm beyond doubt, that the principle of absolute majority in the election of the president and the chairman of the assembly in the presence of the absolute majority of its members, means that only one party is represented in the parliament. The comparison of the quoted texts are incontrovertible evidence of the decision made by the framers of the constitution to institute a one party parliament.

Dr Bereket further elaborates the theme of one party parliament thus:

“Underscoring the primacy of social justice and the economic development that must underpin it. Eritrea’s governing party, the people’s front for Democracy and Justice (PFDJ) considers rapid economic growth to be a prerequisite for

democracy.... The PFDJ leadership is fearful that a multiparty system might adversely affect the goal of rapid growth, as well as the stability required for such growth and for good governance in general. The implication is that it would be quite a while before the country will have a multiparty, and that, consequently, parliament would be solely or predominantly composed of members of the governing party for the foreseeable future. Given Eritrea's circumstances, the logic of PFDJ's policy is irresistible." p13

B. For which Parliament is the Eritrean Constitution Written?

Article 30 (2) states: The National Assembly shall enact an electoral law, which shall prescribe for and ensure the representation and participation of the Eritrean people.

Article 31 (6) states further: the Law shall determine the qualifications and election of the members of the National Assembly and the conditions for vacating their seats. Article 57 (1) reiterates: There shall be established an Electoral Commission operating independently, without interference, which shall, on the basis of the electoral law, ensure that free and fair elections are held and manage their implementation; decide on issues raised in the course of the electoral process; and formulate and implement civic educational programmes relating to elections and other democratic procedures.

The three articles quoted above provide for future elections but not for the elections of the announced parliament. It has to be stated continuously that the 2001 elections are being prepared solely by the ruling party in the absence of a constitutional electoral law.

Dr Bereket has the following to add about this odd constitutional matter:

"The Constitutional Commission left the choice of electoral system to be determined by legislation. It nonetheless debated the issue at length. In the course of the debate, it was pointed out that PR assumes the existence of several parties, which is not the case in Eritrea at the moment. Future legislation can adjust the rules and demands, including the need to enable proper representation for small parties." p.7

The material we examined demonstrates clearly that the 'commission for the constitution of Eritrea' forfeited the right as well as the duty to stipulate electoral laws and, thus, surrendered the formation of the national parliament in the hands of the ruling party.

C. Is the Eritrean Constitution a Compromise between the Presidential and the Prime Ministerial systems?

Dr. Bereket claims that the:

“Constitutional system, which is a compromise system, uniquely combining aspects of the parliamentary approval of presidential appointment of office holders under the Eritrean presidential and parliamentary systems....” p.12

Parliamentary democracy is composed of more than one party. In a situation where one party dominates the parliament (as it is envisaged in the Eritrean parliament), parliamentary democracy is certain to die at its inception. It is equally important to point out that a parliament that elects the same person as president of the state and the chairman of the parliament, by an absolute majority, can only be described as totalitarian. What we are dealing with here is not a compromise between the parliamentary and the presidential systems, but a dictatorial parliament akin to the 'Chinese people's assembly' model.

In a parliamentary democracy the leader of the majority party becomes the prime minister and forms his government by selecting his cabinet from the parliamentary party. In the presidential system, however, the elections to the presidency and to the legislative are separate and mutually exclusive in their functions. In the presidential system the president is directly elected by the electorate with the support of the party and selects his cabinet outside the legislative body.

In the Eritrean constitution both the presidential and prime ministerial systems are non-existent. The Eritrean single party parliament is dominated by one party that is itself devoid of internal party democracy. The president of the State of Eritrea is also the chairman of the parliament; in the end, what we find is not a 'compromise' but the makings of constitutional despotism.

Dr. Bereket describes the powers of the executive president in a parliamentary system as follows:

“In Eritrea, which is a parliamentary system with an executive president, a draft law passed by Parliament cannot be questioned or returned for review but must be published as law. This is a constitutional requirement, however, in the vast majority of cases, it is the Executive that proposes laws to be enacted by the legislature.” p14

D. Is the Principle of Separation of Powers Embodied in the Eritrean Constitution?

The answer is: no! The Eritrean constitution does not provide for the separation of powers.

“The Executive branch appropriates the power of the parliament by virtue of its monopoly of expertise in drafting bills as well as greater resources and the instrumentality of delegated legislation. It is unthinkable to reject the drafts of the Executive.” p.10

“Parliament may take the initiative in passing laws on almost any subject; however, in practice the Executive branch of the government often takes such initiative.” P.11

Via an enabling clause the parliament surrenders its legislative authority to the Executive. “It is in the establishment of these details that the executive, in effect, makes law.” p.11

A brief glance at the articles which deal with the Judiciary merely confirms that the judiciary, like the legislative, is a mere appendage of the executive.

The absence of the separation of powers is in-built in the concept of the ‘executive parliament’ conceived as a governmental authority, out of which all political power is born.

F. What are the Theoretical Underpinnings of the Eritrean Constitution?

Three major currents of thought are identifiable in the mindset of the framers of the constitution. The first of these is the notion that a war devastated Eritrea is in need of strong guidance (in the form of a parliament dominated by one party). It was also presumed that this state of things would continue as long as the economy kept improving; for this reason, a powerful parliament endowed 'with governmental authority', was envisaged.

Dr Bereket argues that the addition of '... representative" to democracy...' makes members of the parliament (p.4), 'representatives of the whole nation'. (p.10) Conceived in this manner, the parliament becomes the fount of collective, political authority. The fact that the members are elected directly by the people, adduces the democratic idea to their collective or corporate personality, and thereby, vests them with 'governmental authority'.

Dr Bereket has the following to say regarding the one party parliament:

"... Eritrea's venture into constitutional government may be marked, for a few years, by the operation of a single dominant party. There will be nonetheless expectations - or even demands - for multiparty democracy. Much will depend on the operation of a number of factors, prominent among which is the performance of the Eritrean economy. If the economy's performance is satisfactory, providing optimal employment and other benefits to the people, it could induce a degree of complacency, postponing demands for multiparty representation". (p.15)

In this novel conceptualisation of the parliament and in the absence of official opposition parties, the burden of guarding civil freedoms and encouraging the country's economic growth and social progress falls on its shoulders. (p.15)

Dr Bereket, concedes, however, that even if "...a multiparty system is an obstacle to rapid economic growth in the short run, one would nonetheless need a quantum leap of faith to believe that a single-party regime will bring about prosperity." (p.3) He confirms his reservations by adding, "... whatever the circumstances that may

extenuate the postponement of multiparties, there must be a time frame within which a single-party system must give way to a multiparty system.” (p.3)

There lies the basis of the second current of thought. After two five year periods, and the present leadership surrenders to old age, the authors of the constitution envisage the single party giving way to a multi party system.

The third current of thought is lodged in the strategy of denying electoral laws to the first parliament while making these rights available (in legislative but not constitutional form) to the second one.

The observations made above are motivated by the need to cultivate an interest in our constitution and not to castigate it; let it not be forgotten that the moment the Eritrean people loses sight of its constitutional rights, the sooner it shall become the victim of personal rule.

Victory to the National Congress!

Editorial Board

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