

## **Could Force Measure or Act of God save PM Abiy's Government come September?**

Various actors – politicians and lawyers alike – have written and talked about the “four constitutional scenarios” under which the incumbent government can continue to govern Ethiopia: 1) Constitutional interpretation by House of Federation, 2) Dissolving parliament and establishing a caretaker government led by the PM, 3) Governing by emergency decree, and 4) Amending the constitution particularly altering the terms of the service of the government. I will not go into elaborating or critiquing these four scenarios because it has been in the public domain and extensively discussed by various experts. In my ordinary view, none of these four scenarios is reason to extend the power of the incumbent beyond the 5-year term. There is no legal reasoning buried in the constitution to stretch and interpret for the sake of extending the life of a government that should come to power through an election because extending the power of the incumbent through crunching of articles in the constitution is not in the spirit of the framers of the constitution. The other three scenarios have no adequate explanation to extend the mandate of the current government that is at the very end of its term. In the USA for instance Senate hardly approves assignment of a judge to the Supreme Court at a time when a new president is to be elected, or the introduction of a fundamental new law is not supported.

The answer for the first criteria - the constitutional interpretation - is not encouraging by all means and also neither is true for the rest of the alternatives. The strongest argument for the absence of constitutional reasoning to extend the terms of the incumbent government is found embedded in Article 93. In this article, the framers of the constitution clearly recommended emergency decree in time of the natural disaster, war, public unrest and pandemic diseases. While recognizing the circumstances under which a state of Emergency can be called, they never recommended for the postponing of an election during these events because they found them no good reasons to do so. Above all the framers of the constitution clearly read the experience of other countries' election dates and circumstances under which elections are held. In this regard, it is also very likely to assume that they read the Ethiopian [People's Democratic Republic of Ethiopia](#) (PDRE) constitution formulated by the workers' party of Ethiopia (Derg) in 1987. That constitution clearly gives power to the parliament the right to extend its own terms in time of problems. So there is no constitutional basis to extend the power of the incumbent government even by one day.

The answerer to extend the mandate of the government to govern the country until the next election is found in our reasoning and everyday life. I see two scenarios the incumbent government can extend its power grip. 1) Force measure or Act of God 2) Anticipation of Possible Emergence of Security Failure. Under the first scenario, we can bring a case where a contractor fails to deliver promised agreements to its clients on time due to unforeseen situations; it can invoke Force Measure or Act of God for its inability to fulfil agreed terms. Similarly, we can see the presence of an agreement between the people and the government - a five-year contractual agreement to administer, govern the nation and then undertake/facilitate an election one month before the end of its terms. The government could not deliver the said promises due to COVID-19 which can be taken as an Act of God or Force Measure. This virus in all situations is in direct conflict with the spirit of democratic elections. No party can call its supporters and explain what it can do if elected. The Election Board cannot do its tasks without risking their life due to COVID-19. It will be in an absolute mess to run the country. Moreover, there is a national consensus to move the election date. The second reason for the need of extending the power of incumbent, perhaps with some degree of involvement of technocrats and representatives of political parties registered under the Election Board, is the state of the country. Ethiopia has been under misrule for over 50 years and under the worst form of governance that divided its citizens for 27 years. Because of this, there have been divided views on governance and the fate of the country. Public disturbances are very likely to occur in the country if there is a power vacuum or untested new government. The best approach that grants peace and stability until the next election is the continuation of the current government, perhaps with the participation of new faces in order to monitor its sometimes autocratic approach toward opposition parties. Censoring the actions of Prime Minister Abiy's undisciplined police force and militia is a necessary evil. I think these are the two scenarios the House of Federation (HoF) or any other organ of the Federal government should seriously consider extending the incumbent's role in governing Ethiopia until the next election.

Defying the recommendations of the nation's only Election Board, and throwing out the decisions of Ethiopia's Parliament to postpone the election, the TPLF (a rebel team in Tigray) is determined to hold the election in Tigray. It is clear that the Election Board cannot execute its role in the would-be election in Tigray; there is no other legally constituted commission to conduct a fair and free election in Tigray. Even if the state carries out the election, at the very end, the election is going to be contested by the parties in Tigray. The results of the election lack legitimacy by the Election Board. This means the Federal Government will not recognize the government in Tigray and will restrain itself from sending a budget to an illegitimate governing body. Tigrayans should find out a way on how to overcome this deficit. Perhaps the Federal Government, in consultation with the people of Tigray, has to establish a caretaker

government that will govern Tigray until the next election. That may require dissolving the TPLF government if they do not agree to certain terms proposed by the Federal Government.

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