

FOCUS

EPRDF'S CONSTITUTION: DEMOCRATIC OR STALINIST?

All opposition groups in Ethiopia have clearly rejected both the «constitutional process» and the salient features of EPRDF's constitution in which they saw a recipe for a one-party totalitarian dictatorship and a danger to peace in our country. On the other hand, western governments have given their blessing to the «successful constitutional process».

On December 14, 1994, Ambassadors representing 18 Western countries made an unprecedented intervention in our country's internal affairs by officially issuing a strange statement endorsing this controversial document which they labelled as «democratic». This «partisan interference» was, according to a statement issued by CAFPDE «a strange and unwarranted move which has promoted both dismay and surprise on the part of all Ethiopians longing for a better future».

To date the most comprehensive - and devastating - criticism of EPRDF's Constitution has come from the COEDF (the Coalition of Ethiopian Democratic Forces) in an Amharic document published under the title «EPRDF's Constitution: Stalinist and dangerous».

In a strongly worded note of introduction reflecting the bitterness felt by many Ethiopians over Western attitudes which it said «amounted at best to criminal indifference to the plight of our people» the COEDF document asks how these governments - specially the American and the British governments, who were «at the forefront in the struggle against Mengistu's Stalinist constitution» had come to the conclusion that EPRDF's Stalinist document «which is essentially the same as that of Mengistu» could be labelled as «democratic». It then sets out to show why the liberal rhetoric notwithstanding, EPRDF's constitution is based on Stalinist constitutional theory and practice and why it is dangerous to peace and stability in Ethiopia.

The salient features of COEDF's criticism and the major contradictions of Mengistu's and Meles' constitutions with the now universally accepted principles of a democratic constitution are summarized by ADDIS DIGEST as follows:

1. «SEPARATION OF POWERS» AND THE STALINIST THEORY OF «UNITY OF STATE AUTHORITY»

Article 108 of Stalin's 1936 Constitution: «In the USSR, the Supreme Soviet is the highest organ of State authority».

Article 62 of Mengistu's 1987 Constitution states «The National Shengo is the supreme organ of State power in the Peoples' Democratic Republic of Ethiopia».

Article 50 (2) of EPRDF's 1994 Constitution says: «The Council of People's Representatives is the supreme organ of State authority of the Federal government».

The first question that comes to mind here could be: «Is there such an animal called «the Supreme Organ of State Authority» in any of the constitutions of the 18 countries represented by the ambassadors who signed that infamous statement of December 1994?» What is the «Supreme Organ of State power in the USA? The President's office? the Congress? the Supreme Court? The answer is clearly no. No such «organ» exists in countries where their constitutions are based on the principle of «separation of powers» between the legislative, executive and judiciary branches of government with appropriate mechanisms of checks and balances in a manner which prevents any one of these three from acting as a «supreme organ».

Stalinist constitutional theory rejects the principle of «separation of powers» as «bourgeois hypocrisy». In opposition to this democratic principle, Soviet constitutionalists adhered to the concept of «the unity of State authority» which is essentially the constitutional terminology for the famous Leninist revolutionary call «All power to the Soviets!».

According to this Stalinist concept, State authority cannot be divided. There should be only one all-knowing «supreme organ» which Stalinist constitutions - including Mengistu's and EPRDF's - call the «Supreme Organ of State Authority».

Constitutionally, all power is concentrated in the hands of this «supreme organ» which appoints and dismisses the Executive, has supreme authority in naming and firing judges, has the final say in matters

of judicial review, etc. Being the «supreme authority», this body suffers no mechanisms of «checks and balances».

EPRDF's Constitution may look different from its Stalinist predecessors because Article 45 declares «The Federal Democratic Republic of Ethiopia shall have a parliamentary form of government». But close scrutiny shows that this is pure «liberal rhetoric» intended to confuse international opinion. To be sure, as in all parliamentary democracies, the Council of People's Representatives has the right to dismiss the executive by a vote of no confidence. But unlike other parliamentary democracies the Executive has no legal authority to dissolve the «Supreme Organ of State Authority» and call for fresh elections, unless its decision is approved by .. the Council itself!

In Stalinist constitutions, this «supreme organ» is invariably the parliament, albeit under different names, composed of «elected representatives of the people». It is not very difficult to see how such concentration of power in one branch of government invariably leads to one-party rule and in the final analysis to dictatorship by a tiny minority.

The principle of separation of powers is based on a «horizontal» distribution of responsibilities. The concept of «Unity of State Authority» on the other hand, functions on the basis of «vertical delegation» of power. In practice, this means that the people «delegate» power to their «freely elected representatives» i.e. to the Soviets, the Shengo or EPRDF's Mekir Bet. These representatives then delegate power to the ruling party which overwhelmingly controls the parliament. Operating as it does on the basis of «Democratic centralism» the so-called «ruling party» itself is forced to «delegate» its powers and prerogatives to its Central Committee which in turn surrenders authority to the Saint of Saints which is the politburo.

In practice, therefore, it is not the so-called «supreme organ of state authority» which is in control but rather the «ruling party» which in the final analysis is itself dominated and manipulated by a tiny group of individuals. This simply means that whatever power and authority is vested upon the «supreme organ» is in fact power surrendered to this handful of individuals at the head of the «ruling party». In most

Stalinist constitutions, this subservience of the so-called «supreme organ» to the ruling party is taken for granted and is not provided for by any article in the constitutions. To our knowledge only the constitution of the People's Republic of China clearly admits this by stating: «The supreme organ of State authority is the National People's Assembly under the leadership of the Communist Party of China.»

2. SUPREMACY OF THE CONSTITUTION OR THAT OF THE «SUPREME ORGAN»?

In democracy, the Constitution is the supreme law of the land. This supremacy of the Constitution is usually guaranteed by the existence of independent and apolitical mechanisms established by the Constitution itself. All Stalinist Constitutions pay lip service to this principle but they provide no serious control mechanism to guarantee the Constitutional order.

Mengistu's constitution (Article 118) stated: «The Constitution of the People's Democratic Republic of Ethiopia is the supreme law of the country. Any law or decision contrary to the Constitution shall have no effect». EPRDF's Constitution states practically the same thing: «The Constitution is the supreme law of the country. Any law, customary practice, any act of any agency of government or official which is contrary to the constitution is invalid».

Given the Stalinist constitutional arrangement which sets up a so-called «supreme organ of State authority»; any talk about «supremacy of the Constitution» is, to say the last, pure «liberal rhetoric». In practice all Stalinist Constitutions reject any idea of an independent control of the decisions and acts of the «supreme organ». In all Constitutional systems, operating on the basis of the «unity of state authority» the body which has the jurisdiction of final instance over all matters relating to the interpretation, protection and enforcement of the constitution is - directly or indirectly - the legislature.

In the former Soviet Union and some of the ex-people's republics (Poland, Hungary, etc.) the parliaments themselves were the bodies invested with the power of «judicial review». If a bill passed by the parliaments was found to be in contradiction with the Constitution, it was the constitutional provision in contradiction with the Parliament's bill - considered

as «the latest expression of the will of the people» - that was abrogated or amended!

Others, like Albania, had special parliamentary commissions appointed and controlled by the People's Assembly. Under Mengistu's constitution, the State Council - elected by the Shengo - «protected» the constitution.

Although EPRDF's constitution provides for something pompously called «the Constitutional Court», this body is, for all practical purposes, a parliamentary commission like the one which existed under Enver Hodja's 1976 Constitution.

First: the so-called «Constitutional Court» is not independent. Eight out of its eleven members are appointed by the «supreme organ». None of them have a guaranteed term of office. The remaining three are named by the Federal Council (one of the chambers in the bicameral parliament) from among its own members. This means that the legislature creates, controls and manipulates the «court» which is supposed to control decisions taken and laws enacted by the legislature.

Second: the «Constitutional Court» has no jurisdiction of final instance over matters relating to the interpretation, enforcement and protection of the constitution. According to Article 84, any decision taken by the «Constitutional court» shall not be final unless confirmed by the Federal Council! This is a far cry from judicial review but in line with Stalinist constitutional theory and practice which provides for «political» rather than judicial and independent control of laws enacted and decisions taken by the ruling party.

3. THE QUESTION OF THE INDEPENDENCE OF THE JUDICIARY

The judiciary provides one of the all-important checks and balances of government power. If, that is, it is independent. For a Constitution to be democratic, there must therefore be a whole set of CONSTITUTIONAL provisions governing the appointment, promotion and removal of judges in a manner which prohibits government interference in the judicial process.

Here again, the 18 Western diplomats seem to have mistaken rhetoric for reality and to have been

impressed by Article 79(3) of EPRDF's Constitution which provides «Judges shall exercise their functions in full independence and they shall be directed solely by the law».

Unfortunately, all Stalinist Constitutions pay lip service to the «independence of the judiciary». If these Westerners claim that Meles had made history by introducing this article in our country's constitutional arrangement, we refer them to Mengistu's constitution which said practically the same thing. The constitution of the dictator's «People's Democratic Republic of Ethiopia» proclaimed in its Article 104: «Judges and peoples assessors shall exercise their judicial function in complete independence. They shall be guided by no other authority than that of the law». Stalin's constitution said exactly the same thing: «Judges shall exercise their functions independently. They shall be guided by no other authority than that of the law.»

The fact of the matter is that Stalinist constitutional arrangements do not guarantee the independence of the judiciary by credible mechanisms entrenched in the Constitutions themselves.

Here again, it is the so-called «Supreme organ» (read the ruling party) which has the authority to appoint judges at all levels and which has the final say in their removal. To be sure, EPRDF's Constitution (Article 79) mentions something called «Judicial Administration Commission» (JAC), but this JAC is a mysterious body. No mention is made in the constitution of its composition, its terms of office, and the guarantees it needs to function independently. It has no say in the appointment of judges. The constitution provides that no judge shall be removed from office except by decision of the JAC. But no decision by the commission will be binding unless it is approved by the «supreme organ» by a majority vote. This means that appointment and removal of judges rests in the hands of the so-called «supreme organ of state authority»...

4. MENGISTU, MELES AND THE STALINIST CONCEPT OF «PROGRAMATIC POSITIVISM»

Most Constitutions have the straightforward purpose of defining state and government structures, conferring and limiting powers, and the protection of citizens' rights against abuse by those who govern.

Although they leave much to be desired in the domain of protection of citizens' rights and the enforcement of the rule of law, they go far beyond the traditional purposes of a constitution. Stalinist constitutions are also «comprehensive programmes». This break with the classical concept of constitutions is justified by what Stalinist constitutionalists call «Programatic Positivism».

According to the theory of «Programatic positivism» a constitution should be a «dynamic instrument» in the evolution of society towards an ideal determined by the ruling party. If they are to serve this purpose, constitutions should, over and above their traditional function, regulate the economic, social, cultural and even moral organization of society in line with the ideology, aspirations and interests of «the people». It is this major difference in the purpose assigned to constitutions that led the distinguished French constitutionalist, Maurice Duverger, to make a distinction between what he called «Constitution/law» (ie the ones prevailing in democratic societies) and «constitution/programme» (ie the ones imposed on society by totalitarian groups).

The concept of «Programatic positivism» is totalitarian because it leads to the imposition of the ideology, vision, aspirations and perspectives of the ruling party as the supreme law of the land. The concept leaves no room for any sort of pluralism be it in the political, economic or social domain.

Faithfully copying the Soviet constitution, Mengistu's document had entire chapters devoted to «Economic matters», the «Social and Cultural order», etc. EPRDF's constitution devotes chapters to «Economic matters», «Social objectives», «Cultural objectives», «National policy directives», etc.

The problem does not stem from the fact that these constitutions provide for «second generation rights», namely the obligation for the state to provide certain

goods, objects or services (like the right to education, equal opportunity, employment, etc.). We find these and even «third generation rights» (like the right to a healthy environment) embodied in many democratic constitutions. The problem with Mengistu and Meles is that they impose their totalitarian views and their own partisan political and economic programmes (Stalinist political structures, state ownership of land and all natural resources, etc.) as the only way of achieving these objectives.

If we limit ourselves to the economic field for example, Mengistu and Meles argue that it is only through the application of their respective parties' programmes that development and «a bright future» for the people can be guaranteed.

Indicating the path to this «bright future», Mengistu's constitution advocated collectivization as the only possible option and decreed (Article 13) that «All natural resources, in particular land, minerals, water and forest are state property». This is repeated by Article 40(3) of EPRDF's constitution which states that all rural and urban land as well as all natural resources are the «exclusive property» of the state.

The problem with such «programatic positivism» is that it renders all other economic options (say private ownership of land) anti-constitutional. If under a democratic and pluralistic constitution it is possible to struggle against the party in power within the framework of the constitution no such thing can ever be entertained under constitutions governed by the principle of «programatic positivism»; Here, the struggle against the party in power becomes synonymous with the struggle against the constitutional order, which is nothing more than the political platform of the party that imposed the constitution in the first place. (To be continued.)

POLITICS

WHO IS BEHIND HAYELOM'S ASSASSINATION

Hayelom Araya, one of the most prominent military commanders of TPLF and head of the operations department in the Ministry of Defense, was assassinated on 14 February in a bar near the Bole

International airport in Addis Abeba. Announcing the tragic incident, the government controlled mass media said the next day that TPLF's legendary leader was killed «by a shot fired by an individual». The report did not disclose the identity of the alleged killer who later turned out to be a certain Jemal