

Roadmap for Eritrean Democracy (Part I)

As we struggle to remove the ruthless PFDJ regime, we should use this time to prepare the blueprint or roadmap for Eritrean Democracy. This roadmap shouldn't be imposed on Eritreans but will enable us to focus our future debates with those who can't engage in our debates at this time.

I will discuss the various issues that confront us within our journey towards building a democratic Eritrea. It would be fallacious for anyone to argue that there is a definitive roadmap. We can only forward our personal views.

During our struggle for independence, we were focused on the mission of independence. To the contrary, at this stage in our struggle to remove the ruthless PFDJ regime, most of us are at a loss as to which path we must pursue to achieve our ultimate aspiration of building a democratic Eritrea. The opposition camp continues to face an uphill struggle to stitch together a shared principle that would have allowed us to formulate common position on many burning issues. This apprehension has led to our apathy and the pursuit of our own personal interest. Many say, 'why should I stick my neck out for an opposition camp that can't get its acts together?'

The nagging question remains, what should the opposition camp do to attract broad grassroots support? EDA's decision to involve civic associations and other observers at its year-end meeting (congress) is a step in the right direction. In my opinion, EDA's absence at the Amsterdam meeting is a step in the wrong direction. A pre-condition should never be imposed for 'direct engagement' among the various opposition groups. A democratic process, which will be my central theme in this [and following] article, requires that democratic forces use every opportunity to propagate their views – and more importantly, at meetings participated by groups that oppose one's views. The only meetings to avoid are the ones where one's security is being threatened. Otherwise in an anticipated unfriendly meeting where one participant is ridiculing another participant, the ridiculed participant can walk out. Second, the public will act towards EDA the same way that it [EDA] acts towards others in the opposition camp. Third, engaging your opponents directly conveys the image of confidence. Hiding somewhere among the 6 Billion world population and spewing out some communiqués doesn't advance our cause one single bit, and is a negative example for transparency, open debate, and direct engagement. Having agreed to engage the PFDJ regime [and rightly so], we must also do the same for others. We must stick to certain principles.

To attract grassroots support, we should lead by example. Tolerance, direct engagement, and avoiding venomous language are some of the ways to ensure that people join our efforts in removing the regime. The second crucial element is that the opposition camp must draw up a clear roadmap on a number of burning issues. It isn't fair for the public to be asked to support an opposition camp that is apprehensive to engage in heated debate amongst itself. Whenever an issue is

raised, it is quickly sidetracked to personal attacks, thus discouraging healthy debates.

For the first part of my article on this topic, I will share my simplistic views on the Constitution. **What is a constitution?**

1. A Constitution contains broad principles used to formulate and promulgate laws,
2. A Constitution is composed of,

BILL OF RIGHTS (& FREEDOMS)
+
SYSTEM OF GOVERNMENT
=
CONSTITUTION

3. Strong judiciary system is needed to ensure that legislators don't infringe on individual rights and freedoms when enacting laws.

BILL OF RIGHTS

What is good for the Western countries and the rest of world (including UN Declaration of Human Rights) is just as good for Eritrea. The 1997 Eritrean Constitution basically (in my opinion) adopts same rights and freedoms. There isn't much one can add or take away from this section.

SYSTEM OF GOVERNMENT

There are two components to this [almost like multiple choice questions],

COMPONENT 1: THE NATURE/FORM OF THE STATE (in practice)

1. Unitary
2. Federal

COMPONENT 2: TYPES OF GOVERNMENTS (in practice)

1. Parliamentary
2. Presidential
3. Some combination of the two

Then, a. unicameral (one-chamber) legislature
b. bicameral (two-chamber) legislature

To my simple mind, any Constitution, being a basic principle for laws to be promulgated, doesn't require extensive knowledge and can be reduced to simply a multiple choice in a referendum.

The biggest challenge will be in building institutions, which requires continuous debates and the involvement of both expertise and public participation.

SNAGGING ISSUE

The biggest challenge is how to balance individual rights with collective rights, and the protection of minority rights. The choice of the above components may affect these rights. But the Constitution can only address the broader principles of the protection of minority rights, and might be self-defeating to embed laws into a broad principle. I will discuss this and the choice of form of government in my next articles.

Prof. Bereket & Nharnet Team

We are fortunate Prof. Bereket, many Meskerem.net forum participants, and Nharnet Team have given us an excellent opportunity to discuss this critical issue. It is unfortunate that some of the comments were, as Dr. Bereket stated, 'toxic'. It need not have been that way.

We should encourage Eritrean experts on various issues to engage the public. We criticize our experts for not engaging the public, and when they do, we attack them at personal level (e.g. an article on eritreana.com). That is a wrong message! Instead, better to gruel Dr. Bereket and other experts on issues that we disagree with them. Through direct debate with them, let us point out certain flaws in, for instance, the 1997 Constitution.

For example, on Meskerem.net forum, 'AZMARINO' asked if "the president of the state can also be chairman of the assembly?" Prof. Bereket answered the question but didn't quote any specific section of the Constitution that specifically prohibits the president from being also the chairman of the Assembly. Prof. Bereket hasn't yet answered 'AZMARINO's' follow up question. We should engage Prof. Bereket in this manner.

Nharnet Team raised the issue of the 'process of making constitution' is often as important to its legitimacy and to the creation of a culture of constitutionalism as is the actual text of the document itself" [by quoting a publication entitled Distrust and Democracy].

I absolutely agree with Nharnet Team that the process is as important as the text itself. In fact, my many articles focus on the process as much, if not more than the contents themselves. Although Nharnet Team will continue to publish more articles on this issue and I am being a little hasty in engaging Nharnet Team, I can probably safely say that the basic tenet of Nharnet Team's argument will remain on the 'process' itself. The topic of 'roadmap towards Eritrean Democracy' was in the

works for sometime and that the heated debates of the last few days have simply coincided with my planned articles.

Before sharing my views, I would like to thank Nharnet Team for offering an alternative view. Debates only help us address various issues and to refine our views. No one individual or group of individuals has a monopoly on truth or wisdom. Most likely and hopefully, through open and honest debates we will find an acceptable solution that takes into account different views and concerns. My distrust is only of those politicians who want to manipulate strings behind curtains, rather than engaging the public directly. Those who debate us in an open manner can only enrich all of us. The other group that I distrust is those who sidetrack us through character assassination rather than debating issues on hand. In their personal attacks, they only manage to remind us why it took 30 years to gain our independence and why the opposition camp is limping forward in its effort to remove the regime.

Before engaging Nharnet Team, let me express my concerns about delaying the implementation of the 1997 Constitution,

1. Starting from scratch and formulating a new constitution may take another three or four years in post-PFDJ Eritrea. During the first critical three or four years, we will get bogged down on the Constitution process that will only end up formulating the same 1997 Constitution. As stated above, the Constitution, being a basic principle, doesn't have much specific issues to address. It will get bogged down by the process rather than by the content itself. Instead we could use that time for promulgating critical laws.
2. At the very least, if EDA had given us confidence that it is highly organized and systematic organization able to address issues in an effective and efficient manner, we could have been cautiously receptive of the idea of readdressing the 1997 Constitution.
3. Moreover, there is an assumption that may not be valid – that EDA will takeover in post-PFDJ Eritrea. There could be many forces within Eritrea who may demand equal or more participation in the formation of the next government. In friction for power, any serious effort of revising the Constitution will be lost in the politicking – creating a vacuum. To pre-empt any possibility of future power friction further delaying the implementation of a Constitution, we must insist – without hesitation – that the 1997 Constitution must be implemented. It is our rallying point for quickly demanding that elections be held immediately. If there is no Constitution, and laws (election, multiparty, etc...) that emanate from it, on what basis can we demand that constitution based elections be held? In principle, everyone will claim to subscribe to the principles of democracy, but in reality when the public demands elections, politicians will only reply that the Constitution is still in the process and that elections will take place soon after – without any timetable or most likely with continuously shifting timetable.
4. Adopting the 1997 Constitution at this point in time may have its benefits. It puts the public at ease that the opposition is able to agree on some of the

basic issues. If we grab each other's throats every time some critical issues are raised, we are scaring away the public. This writer doesn't advocate that people refrain from debating for the sake of unity. But rather, we must always engage in constructive debate that gives the impression that there is always a middle ground. Our discussion should keep the public's apprehension in mind when debating them.

5. Yet another concern is that without implementing the 1997 Constitution immediately after the fall of the regime, the rights and freedoms of individuals won't be guaranteed for another three years, four years, or longer period. It is critical that the other pillars, and possibly the most critical components, of democracy such as the establishment of civic associations and independent free press, may not have their rights guaranteed without the implementation of the Constitution during the early and critical post-PFDJ periods. EDA hasn't yet seen it fit to enshrine these basic rights and freedoms into its platform. It is one thing to claim to adhere to democratic principles, but without enshrining it in black-and-white (in writing), it becomes academic. In fact, EDA's Charter doesn't intend to introduce Press Laws until some two or three years after post-PFDJ era. The implication of this is straight forward – the first three years will be exclusively a political process within an elite group, and thus by delaying the introduction of Press Law, it is tantamount to delaying public debate.

Personally, I like France's Declaration of the Rights of Man – 1789, including the following articles,

"4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law."

"5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law."

The whole wording of the French Declaration of the Rights of Man is just beautiful and comes across as a real declaration of principles entrenched in philosophy. Beauty as only the French can describe it.

In my opinion and in agreement with the French Declaration, every Eritrean politician and political party must declare that every Eritrean is free to do all things that is not specifically prohibited by law and doesn't injure others or infringe on other individual's rights to do the same within a society. Injury or infringement should be determined by courts – and not by politicians. Blanket declaration of adherence to democratic principles by politicians should largely be seen with suspicion. This isn't to say that politicians don't believe in democracy, but that they will get bogged down in personality clashes, attempts to escape from accountability, personal ego and ambition, and other factors that will put certain principles in the

backburner. We will hear, 'we are absolutely committed to democracy, but ...' We shouldn't give any space for 'but'.

Correct me if I am mistaken but those who oppose the 1997 Constitution refuse to even consider it as a starting point or working paper. Those who oppose the 1997 Constitution either for its content or its process have a responsibility to engage the public and offer their alternatives views, not only in terms of contents and process, but also to give us an idea of timetable and address concerns of delaying the implementation of Constitution. To claim that they don't have a position and that their effort is only to bring every Eritrean to the table might overlook thousands of other burning issues (of which I have only raised a couple above).

Nharnet Team has provided with an article by **Vivien Hart** titled "**Democratic Constitution Making**" which is very informative. Reading through the summary, one can quickly reach the conclusion that the process and ownership of Constitution doesn't have one neat formula.

Vivien Hart addresses my concern [sixth paragraph of the Summary],

"A democratic constitution cannot be written for a nation, nor can one be written in haste. "Interim" or "transitional" constitutions that include guarantees for a continuing, open, and inclusive process for the longer term offer one solution to urgent needs for a framework of governance in new, divided, or war-torn nations." [Emphasis added]

This writer can't agree more with Vivien Hart. My understanding is that even a real or perceived flawed constitution might still be desirable as long as the constitution allows for continuous amendment through continuous public involvement. It is needed for new, divided, or war-torn nations. The 1997 Constitution allows specific provisions for amending it through elected National Assembly. If it is amendable then it is workable.

[some fifteen paragraphs later]

"We used to think of a constitution as a contract, negotiated by appropriate representatives, concluded, signed, and observed. The constitution of new constitutionalism is, in contrast, a conversation, conducted by all concerned; open to new entrants and issues, seeking a workable formula that will be sustainable rather than assuredly stable."

Nharnet Team has raised a couple of points in its article that this writer disagrees with,

1. Nharnet's article states, "At this moment in time, and to say the truth, Eritrea appears to be suffering of lack of people knowledgeable in constitutional matters ..." At the same time, Nharnet Team states that the public should be allowed to participate. Following these two incongruent arguments, what will be the end result of the public made to engage in this topic without having any understanding of the process or content? Wouldn't it make more sense in

this case, with its flaws, to adopt the 1997 Constitution and then to amend it as issues arise?

2. Nharnet Team advocates for, "... that it must be deliberated and voted upon by a national parliament elected in a democratic way." [emphasized in red by Nharnet Team]. But according to Vivien Hart, "Public participation is often taken to mean voting, as for example electing a constitutional convention or ratifying a constitutional text by a referendum." When discussing democracy, in its purest form, it is the public directly engaging in the issues that affect it, i.e. through direct democracy or direct vote or referendum. Would the opposition accept referendum on the 1997 Constitution within, say, three months of post-PFDJ Eritrea? Wouldn't this be giving empowerment to the people as what happened in Zimbabwe, where the Constitution was rejected if they disagreed with it.
3. Just as the Eritrean Constitution was mentioned in Vivien's article, the examples of South Africa and Rwanda might be disputed by some of their opposition groups. Nharnet emphasizes that South Africa and Rwanda **elected** parliament and legislative assembly, respectively, to lend legitimacy to a constitution. Eritrea's Constituent Assembly consisted of 527 members, of which 75 were PFDJ CC members, i.e. publicly unelected members and minority within the Constituent Assembly. The remaining members were elected from the public. Whether the 1997 regional elections in Eritrea and those abroad were free and fair will be debatable. The fact that the regional assemblies never had any real power doesn't necessarily mean that the representatives were not elected by the public.

Another Nharnet's comment is that,

"Dr. Bereket also believes, **as many did** in the past, that Isaias and his PFDJ government "were committed to Democratic transition and to constitutional government"." [Emphasis added]

comes across as unnecessary politicking on the part of Nharnet team. Lumping Isaias and his PFDJ government in year 2002 and later period might be acceptable. But lumping them together in pre-Sept. 2001 is not correct, and the above quotation refers to pre-Sept. 2001 period.

First, there is a nagging question whether PIA sought war with Ethiopia in order to escape from the constraints of the Constitution itself, which had it been implemented would have meant the end of PIA's rule in the next couple of years. This would suggest that the Constitution wasn't PIA's.

Second, in August and September 2000, the Central Committee of PFDJ and then the National Assembly passed resolutions to hold national election by end of the year 2001. For such resolution to pass, the majority of the members must have voted for it. To state that they weren't committed is to distort the facts at that time. The unfortunate events that followed this National Assembly meeting leading

to the exposure of the few ruthless leaders doesn't retroactively blemish the brave souls that attempted to introduce constitutional democracy at a pace they felt was manageable.

Third, many PFDJ officials and other civilians chose to go to the gallows for their beliefs in constitutional government. Mr. Hassan Kekia walked out of prison and walked back into jail because of his belief in constitutional government. He could have said, 'I am an old man, let me enjoy my last few days, what good is it for me to simply sit in jail?' But he stuck to his values.

Mr. Hassan Kekia, Joshua, Mr. Bitweded Abraha, Mr. Beraki Gebreselase, and many like them are truly committed to Democratic transition and to constitutional government. They are our icons and rallying point in our journey towards establishing truly democratic Eritrea.

In conclusion

Again, although I agree with Nharnet's argument that legitimate process is as important as the content itself, we should address our concerns within the vast web of burning issues that face our country. It is better to publicize our concerns and disagreements but, at the same time, to accept real or perceived flawed processes for the sake of tackling other challenges. For instance, some may argue that EDA's (hidden) process of excluding certain opposition parties might be flawed. Accepting a workable and amendable formula even with its flawed process is the only way to move forward. **Better to judge efforts by the direction they are headed than to dig our heels over specifics. If we do, we will never get anything done.**

Allow me to add one more illustration, which may or may not apply in this instance. The Ethiopian opposition couldn't gain the majority vote during the elections of 2005. Ethiopian opposition complained that the election process was wholly flawed, and refused to engage with the winning party. This led to unfortunate events in the succeeding months. If I was Kinijit, I would have focused more on the direction of the Ethiopian national elections – that is, the opposition continues to win significantly more seats in the HPR (Ethiopian national assembly). Kinijit could have lodged its complaints and used the time until the next election to further organize itself.

Processes – for constitution, for elections, for promulgating laws, and many other issues – will always be contentious, esp. in third world countries. It is critical that those individuals and groups tasked with leading a nation be able to balance various issues, and to take into consideration the direction of the overall political processes.

I found the following reading very helpful,

<http://www.ucis.unc.edu/programs/eritrea%20journal/selassie.PDF>

Upcoming articles will cover,

- Types and foundations of democracies, form of governments
- On Debates, Free Press, and National Assemblies,
- Multiparty politics, regionalism and religious laws,

I will largely steer away from deep philosophical discussion, and instead focus on their applications in our specific situations. The underlying theme will be that tolerance and flexible processes are the only way to ensure that we continue progressing in our desired path. Moreover, potential solutions are never detached from human and cultural factors.

I would like to take this opportunity to commend the excellent efforts of Asmarino team, EMDHR, and Ms. Elsa Chyrum. Individuals do make the difference! They are inspirations to all of us.

How about those African football teams!

On June 20th, Kisenu Semaetatna, Hidrikhum Ayresaenayon!

Berhan Hagos

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