

Constitutional Impasse in Ethiopia

Jalale Getachew Birru

2020-05-18T16:40:53

Covid-19 makes elections hard to hold – and forced Ethiopia to reschedule its general election for the House of Representatives (HoR) which was scheduled in August 2020. On April 30, 2020, the HoR approved the postponement of the elections, after the National Electoral Board of Ethiopia (NEBE) announced that due to Covid-19 related restrictions, it was unable to implement planned pre-election activities such as training the election officers, voter registration and education, and dissemination of electoral materials. Unclear, however, is how and when the election will be held instead – a pressing issue as the canceled election was to take place only a month before the current HoR term of office ends in the final week of the Ethiopian month of Meskerem (October 3-10). Who will have the mandate to govern after this date until the Ethiopians are able to go to the polls to elect the next HoR?

[The Ethiopian government put forward four possible solutions](#): (1) to dissolve the HoR (as stated under Article 60 of the [Federal Democratic Republic of Ethiopia \(FDRE\) Constitution](#)); (2) to amend the constitution (based on Article 104 and Article 105 (2) of the constitution) in order to extend the term of office of the HoR; (3) to govern the country under a state of emergency until the election is held (based on Article 93 of the constitution); (4) to ask the House of Federation to interpret the constitution. The House of Federation is the Upper House and its members are elected by the State Councils. Among other things, the House of Federation is in charge of interpreting the constitution and to organize the Council of Constitutional Inquiry. However, some the opposition parties argued that these four solutions are unconstitutional. In their opinion, Article 60, proposing the dissolution of the HoR, could only be applied within the term of office of the current government. Hence, the government cannot dissolve the HoR and hold election within six months, as specified on Article 60(3) because its term ends in the final week of the Ethiopian month of Meskerem (October 3-10). Some opposition parties also disagreed with solution (2), which suggest amending the constitution, as they argue that it will give unlimited power to the current government, which controls all seats in the HoR. Furthermore, they dismiss the third solution, declaring a state of emergency under Article 93, because this article does not give power to the government to declare a state of emergency for holding an election after its term of office ends. Regarding solution (4), interpreting the constitution, some opposition parties argued that there is [no need to ask for the interpretation of the constitution because if you are literate and can read, it is clear to understand the articles](#). Therefore, some opposition parties argued that the only way to resolve the constitutional impasse is establishing a transitional government, stating that the current government would lose its legitimacy in the end of the first month of Ethiopia (October 10, 2020).

The Objective of the 1995 Constitution Concerning Elections

The 1995 constitution is the supreme law of the country: “Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect” (FDRE Constitution, Article 9 (1)). In [Ethiopia](#), the highest state authority is vested in the people, and these people exercise authority through elections (Article 8). Consequently, the Ethiopian constitution gives power to the people to elect the government every five years. A government that assumes power in any other way will be considered illegitimate according to Article 9 (3) of the constitution. Therefore, the solution for the constitutional impasse which is for the NEBE to hold election one month before the end term of office of the HoR must be searched based on the aspiration of the established rules of the game – the 1995 constitution of Ethiopia – not on the political aspirations of the players, i.e. the politicians.

The Opposition Parties’ Proposal: Transitional Government

One of the proposed options by some opposition parties is to establish a transitional government after the official term of the current government ends (solution 5). According to this proposal, the transitional government is supposed to be established among the current registered political parties who should ["deliberate, debate and bargain to reach at an agreement that serves during the interim period"](#). From the current political atmosphere, it is easy to predict that it is impossible to reach such kind of agreement among the existing ethnic-based political parties which frequently use the argument of fear of domination to gain support from their respective ethnic groups. It is therefore highly unlikely that the parties could even agree on the leader of such a transitional government. And how could the political parties work together when some of them believe that there is no shared history among the different ethnic groups in Ethiopia? Such unanswered questions would open a box of Pandora that has the potential to create a power vacuum in the country and overturn the democratization process, which [only started two years ago](#). Furthermore, the constitution allows a transitional government/caretaker government only in the case that the Council of Ministers of a previous coalition is dissolved due to the loss of its majority in the House, thereby making it necessary to hold a new election (Article 60 (2)(5)). Thus, this option does not only have a tendency to put in place an ineffective government – but it is also unconstitutional.

The Governmental Proposal: Dissolution, State of Emergency, Amendment, and Interpretation

The first proposed solution to dissolve the parliament is put forward by the State Minister of the Attorney General’s Office. According to Article 60, the parliament can be dissolved for two reasons: (1) to hold an election before the expiry of the

parliamentary term, or (2) if the Council of Ministers of a previous coalition is dissolved because of the loss of its majority in the House. For the current situation, the second reason is not applicable. Regarding the first reason, the current term of office ends on September 30, 2020, and it is impossible to predict how long the pandemic will last. Hence, it is impossible to dissolve the parliament and hold an election before the expiry of its terms.

When analyzing the option of amending the constitution (see proposal (2) by the government mentioned above), it is possible to do so based on Article 104 and Article 105 (2) of the constitution. Article 104, states that

“[a]ny proposal for constitutional amendment, if supported by [a] two-thirds majority vote in the House of Peoples’ Representatives, or by a two-thirds majority vote in the House of the Federation or when one-third of the State Councils of the member States of the Federation, by a majority vote in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the Constitution concerns.”

Amendments which are not related with fundamental human rights and freedoms (chapter 3 of the FDRE constitution) could only be accepted when approved by a two-thirds majority vote of the House of Peoples’ Representatives and the House of the Federation in a joint session, and a two-thirds majority vote of the Councils of the member States of the Federation (Article 105 (2)).

Instead of giving open access to an extension of the office term, it is possible to add an article which allows the government to postpone the election as well as the term office of the parliament under the state of emergency *solely* in the case of a pandemic recognized by the World Health Organization (WHO). The prolonged term of office should last a maximum of six months after the WHO declared the end of the threat, thereby providing enough time to hold an election and transfer power to the newly elected government. During such an extension the government’s power to change and adopt laws should be limited. Nevertheless, there is a possibility of the government to hold power for more than a year as this pandemic is novel to the world and no one knows when its threat will end. But I still believe that such an amendment would accomplish the objectives of the constitution by preventing the government to extend its term of office without any valid reason, avoiding a possible political vacuum, and putting in place an effective and legitimate government. However, it is not feasible to amend the constitution for the current impasse, as it is necessary to submit such a proposal for discussion to the general public and stakeholders which will not be possible because of the time limitation (the current government’s term of office ends within four months) and because of restriction on public gathering due to Covid-19.

The two remaining proposals are Nr. (3): governing the country under a state of emergency, and proposal Nr. (4): asking the House of Federation for interpretation. Combined they may offer a solution: Under article 93 (1) it is possible to declare a state of emergency in cases there is an epidemic. However, there is no clear provisions in the constitution when both epidemic and election period coincide at the same time. In this case, it is possible for the government to ask the House of

Federation for interpretation of the constitution based on Article 62 (1). Thereby, the House of Federation should consider the objective of the constitution to interpret the constitution and provide a solution based on the constitution. It is obvious that the constitution drafters did not predict a pandemic and an election period to occur at the same time. Based on the Objective of the constitution, the term of office of the current government should be extended under the state of emergency until the end of the pandemic plus six months, as it is highly unlikely that the government will be able to hold an election during these times. Once the threat of Covid-19 subsides, NEBE will probably need six months to resume the activities of preparing and holding an election, as it stopped implementing the activities six months before the planned election in August 30, 2020. These two options together will put in place an effective government during the pandemic crises and until the transfer of power to an elected government as the constitution envisioned is possible.

Therefore, the constitutional impasse should be resolved rather through interpreting the constitution based on the concept of jurisprudence than putting forward solutions that are not based on the constitution. In an attempt that might lead to such a solution, on May 5, 2020 the House of Peoples' Representatives decided to ask the House of the Federation for the interpretation of the constitution. What could happen to the postponed election after the interpretation remains to be determined in time.

