

Ethiopia: Has Meles Gone AWOL?

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An AWOL “Prime Minister”?

What happens when a “prime minister” goes AWOL? That is, absent without constitutional leave of absence. Dictator Meles Zenawi has disappeared from public view for several weeks now. He was last seen in public on June 19 at the G20 Summit in Mexico. His disappearing act has provided more grist for speculation and caused pained and grimaced official obfuscation. On July 19, in a rambling, disjointed and incoherent press statement, Zenawi’s spinmesiter and “communication minister”, Bereket Simon, stonewalled any information on Zenawi’s health and whereabouts by offering a cryptic and manifestly dubious explanation on July 19. Simon said Zenawi was receiving medical care for some undisclosed minor health problem at some undisclosed location. The cause of Zenawi’s health problem is alleged to be exhaustion resulting from long public service. Simon’s statement strangely suggested that Zenawi was simultaneously at a medical facility and a Club Med-type vacation spot. Simon assured the public that Zenawi will return to his duties shortly. “Deputy prime minister” Hailemariam Desalegn chimed in with the inane observation that “There is no serious illness at all. It’s minor only. As any human being, he has to get medication and he’ll be coming back soon.” Of course, the overwhelming majority of Ethiopian human beings get no medication whatsoever when they face “serious illness”. Anyway, what exactly is Zenawi’s “not serious illness”? What kind of medication is Zenawi getting? How soon is soon for Zenawi to return to office? Just to keep things in perspective, on July 18 an Agence France Press report citing “several diplomatic sources” reported that Zenawi “is in a critical state” at a hospital in Belgium and that “his life is in danger” and “might not survive”.

Simon put on a nice act at the press conference; but his body language betrayed his words. Simon wore a morose face as he monologued his way through his rehearsed statement. His physical gestures showed all of the forensic signs of a suspect under extreme stress fudging the truth. He was manifestly tense and visibly preoccupied. His demeanor was combative, his posture defensive and his words evasive. He was manifestly uncomfortable answering questions about Zenawi. He fidgeted and wiggled his fingers, occasionally gesturing. He squirmed and sat rigidly folding his arms. He avoided eye contact with his questioners. His responses to press questions were repetitive and robotic. He spoke softly and slowly but his words were calculated, halting, artful and guileful. He tried to project the appearance of being forthcoming while actually providing very little substantive information. In other words, Simon windbagged and sandbagged at the press conference but did not say much that was informative. It was obvious that Simon was not coming clean with the real deal about Zenawi’s situation. Was Simon hiding or covering up something? Simon and Co., may expect us to believe their cock and bull story about a vacationing Zenawi, but we know when we are lied to, deceived, duped, hoodwinked, misled and bamboozled.

In a staged interview with a member of party-controlled media on August 1, Simon continued to stonewall release of any meaningful information on Zenawi’s health or whereabouts. Simon said, “the prime minister’s health is in very good condition. The medical treatment and rest have improved his health. He is in a much better health condition than before.” Simon did not say where Zenawi is getting medical treatment, the nature of his illness and the health improvements he gained over the past couple of weeks, or when he is expected to be back in office.

Simon accused Ethiopian Satellite Television (ESAT), without naming it, of engaging in a “campaign of spreading massive lies and hearsay” about Zenawi. He alleged that ESAT had falsely cited ICJ (sic) [ICG- International Crises Group] as its source of information on the demise of Zenawi which, according to Simon, the ICG had denied. Simon, in characteristic manner, misstated the facts. What the ICG stated in its press release is quite different: “Crisis Group denies media reports about PM’s fate. International Crisis Group has no direct knowledge about the state of health of Ethiopian Prime Minister Meles Zenawi.” Any sophisticated reader knows that the phrase “no direct knowledge” is a term of art commonly used by journalists and researchers to protect their confidential sources. “No direct knowledge” simply means the

“knowledge” the ICG has on Zenawi is not based on personal observation, direct investigation or surveillance but derived from reliable informant(s). In other words, the ICG does not have direct photographic or physical evidence of Zenawi’s health or fate, but it has indirect informant-based information. This elementary journalistic technique seems to have escaped Simon.

For all his sophistry and obfuscation, Simon seems conveniently oblivious of two simple questions and the old saying that a picture (that is not photoshopped) is worth a thousand words: 1) If Zenawi is in “very good condition”, why not release a photograph of him in that condition? 2) If Zenawi is getting rest and relaxation, why not release a picture of him “vegging out” on the beach or touring the museums? The fact of the matter is that the last photograph and video of Zenawi taken in Mexico showed him to be in extremely bad condition. Instead of accusing the opposition of lying and exaggerating information about Zenawi’s health or alleged death, would it not be easier to put them all to shame by producing a one-minute video of Zenawi “in very good condition” taking a dip in the swimming pool or hanging out with four of his crew as reported in the last couple of days? Alternatively, how about one-minute audio tape of Zenawi telling the people that he is doing well and enjoying himself on vacation.

Simon warned there will be no change: “The status quo is maintained - there is no change and there will be no change in the near future.” Is the “status quo” an AWOL “prime minister”, an invisible “deputy prime minister”, a shadowy group of power brokers scheming behind the scenes, a manifest power and leadership vacuum, total confusion and cynicism in the country or the two decade old one-man, one-party dictatorship? At the end of the day, “Stonewall” Simon and Co., will have to answer two questions: Is Zenawi alive, dead, or has he simply gone AWOL? Or is Zenawi now functioning in a new capacity as “absentee prime minister”?

What Can Be Done About a “Prime Minister” Gone AWOL?

The cumulative evidence unmistakably points to the fact that Zenawi is “absent” within the meaning of Article 72(b) of the Ethiopian Constitution which provides, “The Deputy Prime Minister shall... (b) act on behalf of the Prime Minister in his absence.” Zenawi was absent from the annual parliamentary session where the country’s budget was approved. Desalegn “acted on behalf of the prime minister” during that parliamentary session. There is evidence that Desalegn has chaired “Council of Ministers” meetings, an act he can perform only in the “absence” of the “prime minister” under Article 72(b). Zenawi was absent from a scheduled NEPAD [New Partnership for Africa's Development] conference held in Addis Ababa. Senegalese President, Macky Sall chaired the meeting on Zenawi's behalf. Zenawi has completely vanished from public view for some 46 days. There is no date certain when Zenawi will be present in his office to resume his duties, a fact which points unmistakably to his “absence” from office.

The evasive, equivocating and misleading statements given by Simon and Desalegn to the public on Zenawi's diagnosis, treatment and prognosis provide clear and convincing evidence that Zenawi is not “present” in Ethiopia let alone functioning as a “prime minister”. The fact that Simon and Desalegn downplayed Zenawi’s illness as “minor” without revealing the diagnosis is not only manifestly absurd but also an admission of his “absence” due to serious illness. If Zenawi’s illness is indeed “minor” as Simon and Desalegn insist, they could simply state, for instance, that Zenawi is battling a nasty bout of the flu. The total lack of transparency, the shroud of secrecy and mystery in providing accurate and timely information on Zenawi’s health and whereabouts is compelling proof of Zenawi's “absence”.

The key constitutional question about Zenawi's “absence” is not whether he is in “good condition”, “recuperating”, “resting”, on vacation or if he plans to come back tomorrow, next week or next month. The dispositive question is whether Zenawi as “prime minister”, for whatever reason and for whatever length of time, is unable or disabled from performing the “powers and duties of the Prime Minister of the Federal Republic” under Article 74(1) (namely serving as “as head of government, chairman of the Council of Ministers and the Commander-in-Chief of the Armed Forces”) within the meaning of Article 75(b). All of the available evidence points to one, and only one, conclusion: Zenawi is not in a position to discharge his powers and duties under Article 74 and has left his office without constitutional leave of absence.

Are There Constitutional Remedies in the Case of an AWOL Prime Minister?

In light of the clear and convincing evidence that Zenawi is absent from office for purposes of Article 75 (b), can he be declared constitutionally AWOL? If such a declaration could be made, who has the constitutional power and duty to make it?

Article 72(2) prescribes, "The Prime Minister and the Council of Ministers are responsible to the House of Peoples' Representatives [HPR]." The plain meaning of this provision is that the prime minister is ultimately accountable to the HPR. That accountability imposes, first and foremost, an affirmative duty on the "prime minister" to formally notify and provide the HPR with accurate, ongoing and complete information on his health and whereabouts. The available evidence indicates that neither Zenawi nor his office has not provided such information to the HPR.

Article 55(17) provides that the "House of Peoples' Representatives has the power to call and to question the Prime Minister and other Federal officials and to investigate the Executive's conduct and discharge of its responsibilities. Article 55(18) provides, "at the request of one-third of its members, [the House of Peoples' Representatives] shall discuss any matter pertaining to the powers of the executive. It has, in such cases, the power to take decisions or measures it deems necessary." (See also Art. 76(3).) Under Article 58(4), "the Speaker of the House may call a meeting of the House when it is in recess" to take up urgent business. The Speaker of the House is also obliged to call a meeting of the House at the request of "more than one-half of the members."

Under the foregoing provisions of the Constitution, the HPR as a whole, or a subset of its members have the constitutional power to call and question the prime minister, deputy prime minister or any other federal officials to ascertain the exact whereabouts and health situation of Zenawi. The HPR has the power to investigate the actual circumstances surrounding Zenawi's absence from office and complete disappearance from public view. Launching a formal inquiry into the absence of the "prime minister" is an affirmative obligation and unavoidable constitutional duty of the HPR. Such an inquiry can be initiated at the "request of one-third of [HPR] members" when in session, "more than one-half of the members" when the HPR is in recess and/or by the "Speaker of the House" sua sponte at any time.

There could be other constitutional mechanisms to ascertain and secure a declaration of "absence" under Article 75(b). It is possible for any "concerned" or "interested parties to raise the issue of the "prime minister's" "absence" as a constitutional matter and seek adjudicatory such relief. Article 82 provides for a "Council of Constitutional Inquiry" (CI) and grants it the power to "to investigate constitutional disputes" and "submit its recommendations to the House of the Federation" pursuant to Article 83(1) which must "within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry (CI)." Article 17 of the Council of Constitutional Inquiry Proclamation No 250/2001 affirms the CI's investigatory powers and extends subject matter jurisdiction over "any law or decision given by any government organ or official which is alleged to be contradictory to the constitution..." To seek review in the CI under the Proclamation, a litigant need only be a "concerned party" (Art. 17 (3)) or an "interested party (Art. 20(1); e.g. individual, group, political party, etc.). Such a party can request "inquiry" and adjudication into the constitutionally unexcused "absence" of the "prime minister" from office under Article 75(b).

The "status quo" today, to use "Stonewall" Simon's phrase, is that the "prime minister" is "absent" and the "deputy prime minister" cannot constitutionally succeed the absent "prime minister" under Article 75(b). As a result, the country has no "head of government" (Art. 74(1)) or a functioning constitutional executive branch. Given the urgent and pressing nature of the issue, a "concerned or interested party" should be able to seek expedited review by the CI. Alternatively, a "concerned or interested party" should be able to seek declaratory relief in the "Federal Supreme Court" which has "the highest and final judicial power over Federal matters" under Article 80. Since Article 75(b) raises an indisputable "Federal matter", the "Federal Supreme Court" should properly exercise jurisdiction and determine whether the "prime minister" is "absent".

A separate two-pronged constitutional challenge could also be advanced to determine the "absence" of the "prime minister" under subsection 1 of Article 12 of the Constitution which affirmatively requires

“activities of government shall be undertaken in a manner which is open and transparent to the public.” The secrecy and shroud of mystery surrounding Zenawi’s whereabouts and health situation is contrary to the constitutional mandate of maintaining an “open and transparent” government. Transparency for purposes of Article 75(b) means providing accurate, complete, timely and ongoing information to the public on the status of the “prime minister” to discharge the duties of his office. The people are entitled to know if their “prime minister” is ill, the general nature of his illness, the general nature of the medical treatment he is receiving, where he is receiving such treatment, the general prognosis and his expected or anticipated date of his return to office and whether he is actually acting as “prime minister” under Article 74(1). For purposes of Article 72(2), transparency means providing accurate, complete, timely and ongoing information to the HPR. As a last resort, under subsection (3) of Article 12 the “people may recall any one of their representatives whenever they lose confidence in him.” A recall undertaking in Zenawi’s election district could also produce the answer to the question of whether Zenawi is “absent”.

“Simon Says...”

I have often said that talking constitutional law to Zenawi and crew is like preaching Scripture to a gathering of Heathen. All of the foregoing constitutional analysis will fall on deaf ears partly due to lack of constitutional comprehension by Zenawi and crew and mostly because they do not give a damn. They could not care less about the Constitution, the rule of law and the rest of it. Their 21-year record of trashing the principle of the rule of law proves that the Constitution to them is not worth the paper it is written on. But as someone who believes in the rule of law, I must defend the principle even in the face of seasoned and inveterate constitutional scofflaws.

Having said that, are we all ready to play the well-known children’s game called “Simon says...”? In that game, one player takes the role of “Simon” and issues instructions (usually physical actions such as “stand up” or “sit down”) to the other players. The instruction should only be followed if prefaced with the phrase “Simon says” as opposed to just making the statement. If a player follows an instruction that is not preceded with the phrase, “Simon says...”, the player is kicked out of the game. The object for the player acting as “Simon” is to get all of the other players kicked “out” of the game as quickly as possible. The winner of the game is the last player who has successfully followed all of the given commands. So “Stonewall” Simon says Zenawi will return to his office shortly.” “Zenawi is on vacation...” “Simon says Zenawi has gone AWOL...!!!”