



Minister of Foreign Affairs

Ref: MO/059/2012

H.E. Dr. Jean Ping Chairperson, African Union Commission

Excellency,

I am writing you this letter because I have confidence on you that as the Chairperson of the Commission you will give the proper guidance and advise to the PSC and the Department of Peace and Security to respect and properly follow the rules and procedures of our respected Union and the PSC Protocol. I also expect you to rectify the procedural mistake the PSC is committing when dealing with issues that directly affect the interest of Eritrea.

Excellency,

As it is clearly articulated in the Protocol Establishing the PSC, Article 8 Paragraphs 9 and 10 (a and b) unambiguously reads as follows:

Paragraph 9.

"The Peace and Security Council shall hold closed meetings. Any Member of the Peace and Security Council which is party to a conflict or a situation under consideration by the Peace and Security Council shall not participate either in the discussion or in the decision making process relating to that conflict or situation. Such Member shall be invited to present its case to the Peace and Security Council as appropriate, and shall, thereafter, withdraw from the proceedings."

Paragraph 10.

"a. any Member State which is not a Member of the Peace and Security Council, if it is party to a conflict or a situation under consideration by the Peace and Security Council, shall be invited to present its case as appropriate and shall participate, without the right to vote, in the discussion;

b. any Member State which is not a Member of the Peace and Security Council may be invited to participate, without the right to vote, in the discussion of any

question brought before the Peace and Security Council whenever that Member State considers that its interests are especially affected;"

After two days of intensive and extensive sessions, when most Heads of State and Heads of Delegation had gone back to their respective countries or had left the meeting Hall to their Hotels at the late hour of the Assembly's closing session, to be precise on 30th January at 11:30 pm, when the last agenda item of the Assembly that is agenda item X "Adoption of decisions and declarations of the 18th ordinary Session of the Union" started to be discussed in violation of the procedure and normal practice of the Union, an agenda item which was not included in the draft decision and declaration of the Assembly and which was never raised and discussed by the PRC, and the Executive Council was introduced to the Assembly by the Ambassador of Djibouti.

Exploiting the violation of Article 8 Paragraphs 9 and 10 (a and b) of the PSC under the pretext of "since the PSC in its 309th Session has decided to welcome the UN Security Council resolution 2023 (2011)" the Ambassador of Djibouti requested "the insertion of UNSC resolution 2023(2011) as paragraph 7 of the decision 18/XVIII of the Assembly."

As soon as the scripted drama curtain was opened by the Djiboutian Ambassador the Ethiopian Prime Minister, the writer of the script and the producer of the drama who in violation of the UN Charter and AU Constitutive Act has continued to occupy sovereign Eritrean territory took the floor. In an attempt to misguide the Assembly and to cover-up his occupation of sovereign Eritrean territory which he should vacate without any precondition and further delay, the Prime Minister of Ethiopia went on to say that "since resolution 2023(2011) is already adopted by the UNSC and since all UN Member States are obliged to implement UNSC resolutions, there is no need for the AU Assembly to investigate the allegation against Eritrea and to deliberate on the matter. It must simply go ahead and without waste of time accept Djibouti's proposal."

Excellency,

The scripted drama that transpired in the Assembly is an issue that could have been avoided had the letter and spirit of the PSC Protocol been respected by the Djiboutian representative and the PSC itself.

It is to be recalled when similar procedural violation took place by the PSC in its 302^{nd} Session held on 2^{nd} December 2011, our Permanent Representative to the AU, Ambassador Girma Asmerom wrote a letter on the 5th of December 2011, to all Members of the PSC, with a copy to you and Ambassador Lamamra, Commissioner for Peace and Security, requesting for the violation of Article 8 Paragraphs 9 and 10 (a and b) of the PSC Protocol to be rectified and corrected.

Excellency,

To the surprise and dismay of my Government unfortunately the previous PSC's procedural mistake that our Ambassador requested in his letter of 5th December 2011 to be rectified was not only given due consideration but contrary to my Government's

expectation, as was the case in its 302^{nd} Session held on 2^{nd} December 2011, in its 309^{th} Session held on 25 January 2012 the PSC has once again violated Article 8 Paragraphs 9 and 10 (a and b) of the Protocol Establishing the PSC.

It is regrettable and unacceptable for the PSC to violate the letter and spirit of its own Protocol for the second time. No matter by whom in whatever shape or form an agenda item that is pushed outside the procedures of our Union and PSC's Protocol is illegal and unjust and must be rejected automatically by the PRC, PSC, Executive Council and the Assembly.

Excellency,

What was introduced by the Ambassador of Djibouti at the last hour of the Assembly Session was not only a violation of the procedure of the Union and PSC's Protocol but it is also a miscarriage of justice. When the issue was raised by Djibouti all relevant documents concerning the matter in all AU working languages were not distributed to the participants. Relevant documents aside, almost no body in the hall including the Chairman of the Assembly, the Legal Counsel of the Commission, the Secretary-General of the Commission and the Commissioner for Peace and Security had a copy of UNSC resolution 2023(2011).

In order to justify and cover-up this procedural mistake some quarters have tried to insinuate that "the UNSC resolution 2023(2011) was raised by PSC in its 309th session". According to the information I got from Member States of the PSC and the Department for Peace and Security UNSC resolution 2023(2011) was mentioned only as an information item by the Chair of the Month, the Kenyan Permanent Representative, when the AU-UN Strategic Partnership agenda was discussed. However, no debate or discussion had taken place on the matter. If there is any claim by any body that a discussion and debate had taken place on the matter at PSC's 309th Session, because it is not clear who in the PSC meeting raised the issue of sanctioning Eritrea and whether this Member State has conflict with Eritrea (if so according to Article 8 Paragraph 9 this Member State should have withdrawn from the proceedings) and since Eritrea the affected and interested party was not present at the Session, he/she is unwittingly admitting that Article 8 Paragraphs 9 and 10 (a and b) of the PSC's Protocol are violated. No matter what type of arguments one tries to invoke or tries to cover-up this miscarriage of justice there is no ambiguity that the PSC has violated Article 8 Paragraphs 9 and 10 (a and b) of its own Protocol. The following facts, which can easily be verified by any Member of the Union, are what transpired during the 309th PSC Session.

- Eritrea as a party to the situation under consideration and whose interest is gravely affected by resolution 2023(2011) was not given a chance to present its case as provided in Article 8 Paragraphs 9 and 10 (a and b) of the Protocol Establishing the PSC.
- The allegation against Eritrea was not supported by any documented evidence and verified beyond reasonable doubt.
- All important and relevant documents to the issue under discussion including UNSC resolution 2023(2011) were not translated into the working languages of the Union and were not distributed to the PSC Members during the 309th Session.

- The issue of Eritrea or UNSC resolution 2023(2011) was not included in the Provisional Program of Work of the PSC for the month of January 2012 as communicated to the Permanent Missions to the AU through AU Commission's note verbale PSD/106/1/6445.11, dated 27 December 2011.
- The UNSC resolution 2023(2011) was mentioned only as an information item by the Chair of the Month, the Kenyan Permanent Representative, when the AU-UN Strategic Partnership agenda was discussed.
- The Member of the PSC who accused Eritrea is not known and since this unknown accuser has not withdrawn from the proceedings it is crystal clear that Article 8 Paragraph 9 of the PSC Protocol is violated.

Excellency,

Eritrea is not asking special treatment. It is simply requesting for the rules and procedures of the Union to be respected and mistakes to be rectified. It is also asking for all Member States of the Union small or big to be treated equally in accordance to the current procedures of the Union and Protocol of the PSC.

Today in violation of AU's rules and procedures and PSC's Protocol a "welcoming" resolution is railroaded and sneaked-in to the Decision of the Assembly by Ethiopia (Djibouti is just the means) against Eritrea. Tomorrow we don't know who is going to play this dirty diplomatic and political game. We have to stop it and to rectify it before it is too late. Maintaining the integrity, unity and solidarity of our continental Organization must be our priority and must not be compromised.

Excellency,

As to the argument and assertion by some quarters, in particular by the Prime Minister of Ethiopia, that "once the UNSC passes a resolution the Member States of the UN are obliged to implement it and there is no need to investigate the allegation and it is not open for discussion" is not only wrong, it is an outright deception. It is true Member States are obliged to implement UNSC resolutions. However it is also right and absolutely true that Member States individually or collectively have the right to question, examine, and deliberate on UNSC resolutions. They have also the right to request for the revision and suspension of resolutions. Especially when resolutions deal with the issue of sanction Member States individually or collectively can and have the right to request and demand the lifting or tightening of the sanction. In short they are not obliged to simply rubber-stump any UNSC decision.

Therefore, the AU Assembly does not only have the right to question UNSC resolutions it does have the right and mandate and obligation to investigate and monitor the matter by creating its own investigation Committee and monitoring group. It does have also the right to formulate its own solutions and road maps. That is what the AU did concerning UNSC resolutions on Libya, ICC and Cote d'Ivoire. That is what Eritrea is requesting and expects the AU and the PSC to do concerning UNSC resolution 2023(2011).

Excellency,

Important issues such as sanction which has severe and negative implication to the MDGs, poverty alleviation, and other economic development agendas of a developing African State as well as peace and security of our continent in general and our regions in particular must be given due consideration and time. Sanction is a serious subject with serious ramification on the livelihood of the general public in particular the poor. It is not a simple matter where decision can be made after one hour or two hour deliberations. Serious investigation and deliberation is needed before any decision is taken. It is also a serious matter that shouldn't be allowed to be implemented blindly because the UNSC said so or for the sake of political or diplomatic expediency. It must be handled with outmost care and sensitivity.

Excellency,

I hope, in the spirit of African solidarity and maintaining the integrity of our continental Organization, you will give proper instruction and guidance to the PSC and the Department of Peace and Security to rectify their mistake concerning "the welcoming" of UNSC resolution 2023(2011) by the PSC and the Assembly. Moreover, for the sake of peace and stability of our region it is about time the AU to urge:

- a. the UNSC to lift the unjust and illegal 1907(2009) and 2023(2011) sanctions it has imposed against Eritrea. (The AU has done it in support of Cuba which is far away from Africa, it is about time to do it for Eritrea which is part and parcel of Africa.)
- b. Ethiopia to withdraw from sovereign Eritrean territory it has militarily occupied.

I kindly request Your Excellency to circulate this letter to all Ministers of Foreign Affairs of the Member States of our Union.

Accept, Your Excellency, the assurances of my highest consideration.

Osman Salel Minister 20 Feb. 2012

Asmara

cc: H.E. Ambassador Ramtane Lamamra Commissioner for Peace and Security African Union Commission



Permanent Mission of the State of Eritrea to the African Union and UN Economic Commission for Africa

Date: 05/12/11

Ref.: ERPMAU/174/11

Your Excellency,

I found out in the Communiqué of the 302nd meeting of the AUPSC held on 2nd of December 2011 that the AUPSC has endorsed the Communiqué of the 19th Extraordinary Session of IGAD Assembly in its totality. It was my understanding as the title clearly states that the PSC was meeting to discuss and adopt "the second phase of the implementation of the mandate of the AU Mission in Somalia (AMISOM)".

However, I am surprised and shocked how the Permanent Representatives to the PSC whom I highly respect and are always vigilant and meticulous failed to see paragraphs 22 and 23 of the IGAD's 25 November 2011 Communiqué that was presented to them for endorsement. These two paragraphs violate the Protocol Establishing the PSC and are not in any way related to the subject matter that was discussed and adopted by the PSC on 2nd December 2011.

- Paragraph 22 is a bilateral issue between Djibouti and Eritrea which is being handled by the Emir of Qatar in accordance to the Agreement signed by the Presidents of Eritrea and Djibouti on 6 June 2010.
- Paragraph 23 that says that "Eritrea is continuing the supply of ammunitions to the extremist group particularly Al Shabab whose intention has always been to destabilize the Region," is a baseless allegation that should been investigated and verified before it was endorsed by the PSC.

Both paragraphs are inserted in the IGAD Communiqué by Ethiopia, in the absence of Eritrea. The Member States of the PSC must take note of the fact that by abusing its privilege of Chairing IGAD and its host country status, in spite of Eritrea's reactivation of its membership, Ethiopia has blocked Eritrea's participation in all IGAD organized and sponsored meetings. Ethiopia's belligerent act violates IGAD's rules and procedures and the Vienna Convention on Diplomatic Relations. The objective of this deplorable act by Ethiopia is meant to take advantage of Eritrea's absence so that it can disseminate baseless accusations and sneak in damaging resolutions against Eritrea. (Please see the attached note verbale Eritrea sent to AU Commission concerning Eritrea's membership in IGAD.)

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Tel: 251-116624810 Fax: 251-116624810 Having sensed that Ethiopia might also sneak in or railroad paragraphs 22 and 23 of the IGAD Communiqué into the PSC Communiqué, and in the spirit of maintaining the integrity of our continental organization, I met with the competent international civil servants of the Peace and Security Department, Mr. ElGhassim Wane, Director of Peace and Security and Mr. Rodney Kiwa, Political Analyst in the Peace and Security Department, on 29th November and 1st December 2011 respectively. In these meetings, I sensitized both AU officials to be vigilant of Ethiopia's manoeuvre.

Excellency, the endorsement of paragraphs 22 and 23 of the IGAD Communiqué by the PSC unambiguously violates its own Protocol and procedure. Article 8 paragraph 10 (a) and (b) of the Protocol Establishing the Council reads as follows:

"The Peace and Security Council may decide to hold open meetings. In this regard:

- a. "any Member State which is not a Member of the Peace and Security Council, if it is party to a conflict or a situation under consideration by the Peace and Security Council, shall be invited to present its case as appropriate and shall participate, without the right to vote, in the discussion;"
- b. "any Member State which is not a Member of the Peace and Security Council may be invited to participate, without the right to vote, in the discussion of any question brought before the Peace and Security Council whenever that Member State considers that its interests are especially affected;"

It is, therefore, proper and legitimate according to the PSC Protocol that when it dealt with paragraphs 22 and 23 of the IGAD Communiqué, the PSC should and must have invited Eritrea, whose interest is affected, to participate in the deliberation to present its case and to defend itself.

As a full fledged member of the African Union, Eritrea has the right to be heard. Eritrea should be allowed and must be given a chance to respond to the baseless allegation. All Member States of the AU, big or small, are sovereign and equal. Any accusation and allegation that is levelled against Eritrea or any other Member of the Union, whoever the source is, must be verified beyond reasonable doubt. The dictum that 'one is innocent until proven guilty' must be respected by everybody, including by the PSC.

Excellency, the **PSC Protocol** must be respected and the organization's integrity must be maintained. The **PSC** should not allow any country or REC to sneak in or railroad any decision or resolution without serious deliberations. The PSC should not and cannot rubber stump any resolution or decision whether it comes from IGAD or the other African RECs or different international organizations, without adequate deliberations and discussions. The relevant documents must also be distributed timely to all Member States in all AU working languages.

Since what transpired at the 2nd December 2011 PSC meeting is a violation of Article 8 paragraph 10 (a) and (b) of the Protocol establishing the Council,

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Eritrea, therefore, humbly requests the PSC to revisit its endorsement of IGAD's 25th November 2011 Communiqué. Since **paragraphs 22 and 23** are procedurally illegal, factually baseless, and unrelated to the subject matter that was under discussion, I appeal to Your Excellency for the PSC to publicly declare that it is not bound by these two paragraphs and has only endorsed the paragraphs that are related to "the second phase of the implementation of the mandate of the AU Mission in Somalia (AMISOM)".

I also appeal to Your Excellency to invite Eritrea to participate in your deliberation whenever matters affecting or concerning my country are raised or discussed in the PSC meetings.

Accept, Excellency, the assurances of my highest consideration.



Girma Asmerom (Ambassador)

Permanent Representative of the State of Eritrea to the African Union and UN Economic Commission for Africa and National Focal Point to IGAD

To: Permanent Representatives of the Member States of the Africa Union Peace and Security Council

cc: - H.E. Dr. Jean Ping, Chairperson, African Union Commission

- H.E. Ambassador Ramtane Lamamra, A Commissioner for Peace and Security African Union Commission

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Minister of Foreign Affairs

Ref.: MO/114/2011

H.E. Dr. Jean Ping Chairperson, African Union Commission <u>Addis Ababa</u>

Excellency,

Allow me to avail of the occasion to extend to Your Excellency my warmest greetings and best wishes for the good health of Your person.

It is with utter disbelief that I have learned that Ethiopia has unilaterally and illegally obstructed Eritrea from attending IGAD's 40th Extraordinary session that convened on 24 August 2011 in Addis Ababa. This diplomatic blunder, which contravened IGAD rules and procedures as well as Vienna Convention on Diplomatic Relations, not only prevented our diplomat from performing his duties of representing his country; but also violated his person and was subjected to harassment at the hands of the Deputy Foreign Minister of Ethiopia, his security officers, and Sheraton Hotel guards.

I would like to bring to Your Excellency's kind attention the following facts pertaining to the issues at hand.

It must first be established that if and when a point of order or rules and procedures are invoked by a member state in sub-regional, regional and international organizations: it is a standard practice for the Chair to solicit the opinion of the Legal Advisor. It is also the Chair's mandate to allow the members of the organization to deliberate on the matter and to conclude the debate with a simple majority. IGAD, as a sub-regional organization, cannot and should not be an exception to these basic democratic procedures and practices.

Indeed, there are clearly spelt out methods and procedures to follow in the Agreement Establishing the Inter-Governmental Authority on Development (IGAD) signed in 1996 by the Heads of State and Government of Djibouti, Eritrea, Ethiopia, Kenya, Sudan and Uganda.

It should also be established that the existing IGAD Charter and rules and procedures stipulate that:

- All members are sovereign and equal.
- No Member State has veto power or the right to prevent or block the participation of another Member State in any IGAD organized or sponsored meetings.
- There is no clause that delegates or empowers the Council or the Assembly of Heads of State and Government, to prevent a Member State from participating in any IGAD sponsored or organized meetings.
- The Chairperson and the Executive Secretary do not have the mandate to take unilateral decision or action.
- There is no article or clause that restricts a Member State from temporarily suspending or reactivating its membership.

It should further be established that the IGAD Charter is abundantly clear on membership rules and procedures. As Your Excellency, may be aware; out of the 24 Articles of the IGAD Charter, only two articles deal with the issue of membership. Namely,

Article 1 (A) states:

- b)Membership shall be open only to African States in the sub-region which subscribe to the principles, aims, and objectives enshrined in the Agreement.
- c) New members shall be admitted by a unanimous decision of the Assembly.
- d) Application for membership shall be made by means of an official written request to the Assembly.

Article 22 states:

a)Any Member State wishing to withdraw from the Authority shall give to the Chairman of the Assembly one year's written notice of its intention to withdraw; and at the end of such year shall, if such notice is not withdrawn, cease to be a Member State of the Authority.

b) During the period of one year referred to in the preceding paragraph, a Member State wishing to withdraw from the Authority shall nevertheless observe the provisions of this agreement and shall remain liable for the discharge of its obligations under this Agreement.

Excellency,

It is in view of this fact that Eritrea had officially informed in writing to all members of IGAD through its Executive Secretary, that it has suspended its membership effective from 21 April 2007. It is to be recalled that Eritrea was coerced into taking the decision to temporarily suspend her membership from IGAD in protest to numerous IGAD resolutions. The notable ones being those that sanctioned Ethiopia's military invasion of Somalia, in outright violation of IGAD's and UN Security Council resolutions that had inhibited military involvement of frontline or neighboring countries in Somalia.

It should be underlined that Eritrea is not a new member and is not applying for readmission, as it has not withdrawn from IGAD. Therefore, article 1 (A) and Art. 22 do not apply to Eritrea's temporary suspension or reactivation of its membership. At this juncture, I must also mention, Your Excellency, that suspension of participation and withdrawal from an organization are two legally and substantially different concepts and actions.

It was out of this shared apprehension that Eritrea had not withdrawn but had only temporarily suspended its membership from IGAD. IGAD had never also ceased its engagement with Eritrea. It was out of this conviction that a year and five months after Eritrea's temporary suspension of her membership that the 12th Summit of Heads of State and Government of IGAD, which gathered in Addis Ababa on 14 June 2008, had decided to send to a Ministerial Delegation to Eritrea.

I recall that as a result of this decision, a Delegation led by the Minister of Foreign Affairs of Kenya Hon. Moses Wetangula and composed of the Minister of Foreign Affairs of the Republic of Sudan Hon. Deng Alor and the Executive Secretary of IGAD Eng. Mahboub Maalim visited Eritrea on the 14th and 15th August 2008.

I also recall quite definitely that the Delegation had an open and frank discussion with President of Eritrea, H.E. Isaias Afwerki. In this meeting the Delegation appealed to the President for Eritrea to reactivate its membership. As can be verified from IGAD's own report and Press Release, dated 16 August 2008, Eritrea's relationship and engagement with IGAD was never discontinued. IGAD's Press release states that: "President Afwerki briefed the delegation on the reasons that led to Eritrea's decision to suspend its membership in IGAD. He

reiterated Eritrea's continued commitment to the integration of the region. He emphasised the point that IGAD must be restructured so that it can be a strong vehicle for integration. He further reiterated Eritrea's commitment to continue being engaged with IGAD. He thus designated Hon. Arefaine Berhe Minister of Agriculture of Eritrea, to be the focal person to deal with IGAD matters."

According to IGAD's report on the meeting with President Isaias, the Kenyan Foreign Minister, Hon. Moses Wetangula was also clear on Eritrea's temporary suspension of its membership. The report states that "Minister Wetangula expressed to President Isaias that IGAD is not whole without Eritrea. The healing process has begun and he hoped that Eritrea will return back to the fold. He also observed that the suspension of Eritrea of its membership did not mean withdrawal."

Based on the discussions and the understanding reached between the President of Eritrea and IGAD's Ministerial Delegation, dialogue on the revitalization and consolidation of IGAD resumed between Eritrea and IGAD. Subsequently, numerous telephone and email communication took place between Eng. Mahboub Maalim, IGAD's Executive Secretary and Eritrea's Minister of Agriculture, H.E. Arefaine Berhe.

Excellency,

In recognition and appreciation of the consistent and frequent requests and appeals made by IGAD Ministerial Delegation, AU and International Development Partners such as EU; and in the spirit of reconciliation, peace and security and regional integration; as well as in recognition of the current economic and political dynamics of the world, Eritrea has finally decided to reactivate its membership to IGAD effective 25th July 2011.

Eritrea's reactivation of its membership in IGAD is not only legitimate; it is also consistent with the current rules and procedures of IGAD. It is a positive decision that should be appreciated and commended by all peace-loving people and advocates of regional cooperation and integration. It is in this spirit and adhering to the current rules and procedures of IGAD, the Executive Secretary of IGAD, Eng. Mahboub Maalim on his communication of 28 July 2011, addressed to me, commended Eritrea's reactivation decision as "Historic and Bold." This should have sufficed as a confirmation to Eritrea's automatic reactivation of its membership to the Authority, should there be any legal requirement for it after all.

Excellency

At this juncture, it is important to give critical consideration that Ethiopia has been the Chair of IGAD for the last four years and that most of the Extraordinary Meetings of IGAD are held in Addis Ababa. This has given Ethiopia free hand to commit such unwarranted, deplorable and slanderous diplomatic acts against a Member State.

It should be recalled that Eritrea's reactivation of its membership in IGAD should have been handled by the Member States of IGAD in accordance with the rules and procedures of the organization in the presence of Eritrea. It should never have been unilaterally handled by Ethiopia, the current Chair and host country, which used its security agents and Hotel guards to implement her slanderous political and diplomatic agenda of blocking Eritrea's membership to IGAD.

The Deputy Foreign Minister of Ethiopia should never have gone to the Eritrean seat, and should never have requested the Eritrean diplomat to leave the meeting hall and should never have enlisted the security apparatus, which violated his person. The Deputy Minister's actions violate Article 29 of the Vienna Convention on Diplomatic Relations, which clearly states that "the host country has full responsibility to treat a diplomatic agent with due respect and to take appropriate steps to prevent any attack on his person, freedom or dignity."

It must be understood that the flouting of the rules and procedures of IGAD as well as violations of the Vienna Convention on Diplomatic Relations by Ethiopia are motivated by her myopic political and diplomatic agenda that is meant to take advantage of Eritrea's absence in IGAD meetings and deliberations. This belligerent act must be condemned by everybody unequivocally.

Therefore, in the spirit of defending and upholding AU's regional economic integration vision and agenda and in order to maintain the integrity of our regional and continental organizations, I wish to seize this occasion for Your Excellency to urge the Government of Ethiopia to respect Eritrea's right of participation in any IGAD lead or sponsored meetings without any precondition effective 25 July 2011.

Accept, Excellency, the assurances of my highest consideration.

Osman Saleh Mohammed Minister of Foreign Affairs of the State of Eritrea Asmara, October 18, 2011