# Somaliland:
## Facing the Challenges of Free and Fair Elections


Social Research and Development Institute (SORADI).

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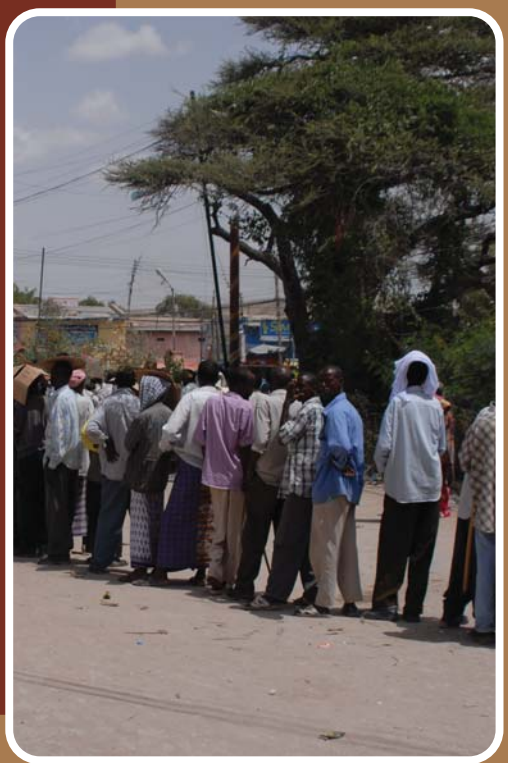



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# Somaliland: Facing the Challenges of Free and Fair Elections

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AS the Director of the Social Research and Development Institute (SORADI), which organized this Conference, I would like to express our deep appreciation for the financial and professional support we received from the Heinrich Paul Foundation to realize the Conference "Somaliland Challenges of Free and Fair Election" and the collegial relationship we developed with all the staff who worked with us. We are especially indebted to Axel Hariet-Siefers, not only for the commitment to finance the Conference, but also to fully participation in the three-day discussions, to contribute as one of authors the valuable of Kenya's bloody election experience and to have found the time to read and provide valuable insights during the editing stages. We are very grateful to Carol Lintari as our direct Counterpart from HBF, who was part of the Conference process from its formulation, have supported it through to its realization and who continued to be fully engaged to bring the final publication of the Conference product document to fruition. I would like also to fully acknowledge and thank our friend Mark Bradbury for editing the papers presented in the Conference and to bring them to shape to be published as a book. Our thanks also goes to the authors of the conference papers, who addressed current issues some of which are still part of an ongoing debate and without their contribution this book would have been wanting. Finally, we would also like to appreciate the role of different groups of people who made it possible to hold the conference, and last but not least the participants who enriched the presentations and whose ideas have been integrated into this book as the final product of the Conference.

***Dr. Mohamed Fadal***

***Director of SORADI***

***13 November, 2010***

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## LISTS OF ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| APD | Academy for Peace and Development FOPAG |
| ECK | Electoral Commission of Kenya |
| ISG | Independent Scholars Group |
| NEC | National Electoral Commission |
| SORADI | Social Research and Development Institute |
| SNM | Somali National Movement |
| SOWRAG | Somaliland Women's Research and Action Group (SOWRAG) |
| WFP | Woman's Political Forum (WPF) |

# Introduction

Since declaring independence from Somalia in May 1991, the people of Somaliland have sought to build a new state by charting a path to a competitive and democratic political system. Establishing a democratic government had been an aim of the Somali National Movement (SNM) when it fought the Siyad Barre government in the 1980s and first Somaliland government in 1991 was tasked with drafting a constitution and preparing the country for elections within two years. It took another ten years for a constitution to be drafted and approved by a plebiscite in 2001. Since 2002, however, all of Somaliland's key political institutions - district councils, the presidency and Parliament itself – have been subjected to popular vote.

The successful staging of multiple elections since 2002 is not only significant for the people of Somaliland in their endeavours to establish a democratic state, but also has important implications for the political entity (or entities) that will someday emerge from the wreckage of the Somali state, and for the region in general. The introduction of universal suffrage and the creation of political parties that are not based on clans marks a significant attempt to move away from kinship-based politics. The election of district councils helped to consolidate Somaliland as a territorially-defined political entity, with all the regions within its borders having elected representatives in government. The election of parliament in 2005 established the potential for representative and accountable politics and a more equitable balance of political authority.

The second cycle of democratic elections for district councils and the presidency became more difficult to realise. When presidential elections scheduled for April 2008 were repeatedly postponed, due to a problematic voter registration process, an incompetent National Election Commission (NEC), and intransigence among the political parties, the president's term of office was repeatedly extended by the Upper House of Elders (the *Guurti)*. Democratisation in Somaliland appeared to be stalling. As political tensions spilled over into violent street protests in September 2009, Somaliland faced its most severe political challenge since the civil war of 1994-1996. The country was prevented from slipping into further political violence by the actions of Somaliland citizens themselves and the diplomatic intervention by regional and international governments. An agreement was drawn between the parties that allowed for a new NEC to be formed and a new timetable for elections to be negotiated.

On June 2010, a second presidential election was successfully held. A peaceful transfer of power, from the incumbent president Dahir Riyale Kahin and his UDUB party to the newly elected President Mohamed Ahmed 'Silanyo' and his Kulmiye party took place in mid-July 2010.

## Reviewing the Democratization Process

In the wake of the political crisis of September 2009 and in the interregnum before new elections could be held, there was an opportunity to review the process of democratisation in Somaliland, to consider what had worked and what needed to be done to re-energise it. In November 2009 the Social Research and Development Institute (SORADI) sponsored a conference that brought key stakeholders together to debate the issues. A number of papers were commissioned for the conference and formed the basis of the discussions. Those papers have been reworked and edited and brought together for this publication.

The intention had been to produce this publication before the presidential election, in order to assist the NEC and other stakeholders in the difficult task of ensuring the election would be free and fair and above all peaceful. The pessimistic tone of some of the articles reflect some of the anxieties that existed at the time they were written, following a series of postponed elections, and controversies over the NEC and the constitutionality of the extensions of the presidential and House of Elders terms of office. Fortunately, the election took place peacefully and has been acclaimed to be relatively free and fair.

## Conference Recommendations

In addition to the papers presented here, the conference participants produced a number of actionable recommendations, some of which are highlighted here.

### *Constitutional Review*

The conference participants identified several articles in the constitution which need to be revised to bring the constitution in line with Somaliland's maturing political culture:

First, the constitutional article 83 has been used three

times in the last two years to extend the presidency's term of office and postpone the election dates. Without passing judgment on the constitutionality of the actions of the House of Elders, it clearly caused tremendous furore and controversy among the Somaliland public and political elite and therefore it needs to be clarified and perhaps strictly applied only in undisputed "Forza Majora" situations.

Second, Article 9, which limits the number of political parties to three, is based on a fear that people in Somaliland will form too many clan-based political parties that in turn will result in the fragmentation of society. But, there is a strong argument that the article infringes citizens' rights of political association and in practice many aspirants for national office feel constrained by the law. There is a growing opposition to the barring of 'independents' from running for political office. The Somaliland people have demonstrated their political maturity and therefore, need to get rid of the fear-based provisions in their constitution. This article should be reviewed and ways found to address the potential of clan-based parties, without contradicting other fundamental principles of the constitution.

Third, Article 58 on the election of members of the Upper House of Elder's needs to be applied or amended to establish the modality of change to the membership of the House. The conference participants were wary of directly elected Upper House and recommended a selection process.

### *Electoral Laws*

The conference participants discussed the need to integrate existing electoral laws and codes of conducts and to adjust them to the changing circumstances in Somaliland. Most of these laws were made under intense time pressure and need to be enriched with the experience of a decade of democratization.

Similarly, the system for electing the Parliament and district councils need to be improved and , if possible, harmonized. The election of district councils is based on a party list and First-Past-the-Post system, whereas parliamentary elections use a Proportional Party list system. In the former, voters select a political association[1] which field a list of candidates in each district. A candidate's chance of winning depended on the number of votes gained by the association and their position on the list. For the Parliamentary elections, the parties fielded a list of candidates that people voted for. Their chance of winning depended on the number of votes gained and not on their position in the list.

*1 Some 8 political associations contested the first district council elections in 2002. The three with the most votes became accredited national political parties.*

### *Voter Registration*

Voter registration for the presidential election was a highly controversial process. The strengths and weakness of the process and it use in the recent election needs to be reviewed before the next elections.

### *Institutionalising Democracy*

In 2009 the capacity of the NEC had been an issue of particular concern for the Somaliland people, as well as their regional and international friends, following the chaotic voter registration exercise and its erratic handling of the election process, which had perpetuated the political crisis for two years. Since the new NEC was installed in October 2009 many of the critical problems have been addressed, including strengthening its organisational structure; establishing an effective working partnerships with key political actors, such as political parties, the government, civil society and the international community; working with the two legislatures to address legal issues arising from the elections as well as amending exiting laws to improve their efficacy; setting an election date, accepted by all stakeholders; and establishing their independent and impartiality as mandated.

The conference participants proposed further concrete steps should be taken to ensure effective and sustainable democratic institutions. Their proposals included:

- Allocate adequate financial resources to the NEC to allow it to operate and manage elections independent of the executive, legislature and political parties.
- Similarly an effective and independent judicial system, including the Supreme or Constitutional Court, needs to be adequately resourced. To be independent and effective the Judiciary need to have an adequate income, pension and tenure security,
- Likewise, the Auditor General, the Accountant General, the Civil Service Commission and the Governor of the Central Bank need to be independent bodies in order to maintain the integrity of the public service.

## Looking Forward

The successful presidential election in June 2010 and the peaceful transfer of power stand out as a remarkable achievement for a small country with few resources

and by the standards of many other African and Middle Eastern countries. For the people in Somaliland it represents a major step forward in the democratisation process. Nevertheless, with other elections pending for district councils, for the Lower House of parliament and potentially for the Upper House of Elders we must no be complacent. We believe that the ideas and messages encapsulated in the articles in this book are useful contributions to our continuing collective efforts to build a democratic state in Somaliland.

***Mohamed Osman Fadal***
***Director, SORADI***

# *Part One:* Somaliland's Political Culture: Challenges to democracy

**Haroon A Yusuf**
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*The political crisis produced by the stalled elections in 2009 led to some soul searching about Somaliland's political culture. In this paper Haroon Ahmed Yusuf reflects on the historic and contemporary relationship between 'traditional' and 'modern' politics. His analysis suggests that the distinction is a somewhat false one, that clan politics inevitably infuses modern politics. He suggests that there is a need for a collective response by politicians, the private sector and civil society to resolve Somaliland's governance challenges, and that the progressive thinkers pushing for a democratization of the political system need to do so in way that involves the public.*

## Introduction

One of the core reasons for the disintegration of the Somali state in the 1980s and the calamity that followed is a failure of leadership. For nearly three decades after independence the Somali people had a governance framework that was characterized by the systematic abuse of state power, a lack of transparency and accountability, the mismanagement of public resources, the exclusion of people from participation in the governance process and a lack of public services. The political culture crafted by the first 'modern' Somali politicians was largely based on networks of patronage and the creation of clandestine economic channels for personal gain, divide and rule along clan lines - which was elevated to an art form by Siyad Barre - and a lack of accountability. The political and economic structures and processes of the state were perverted and transformed to serve the private interests of competing governing elite and their associates.[2] This experience led to a complete loss of public trust in government. It undermined any sense of public responsibility and ownership and produced a population ignorant of their rights and obligations as citizens. It eventually led to the collapse of the national political-economic system and the state.

Since its foundation in 1991 Somaliland has achieved political stability and in the past decade has embarked on a process of democratization. The foundations for further progress remain fragile, however, due to a high prevalence of poverty, high rates of unemployment, weak production and a depleted natural resource base, a social structure immersed in a clan system and, above all, weak governance systems and a deficient political leadership. The country is still in a difficult reconstruction stage. Successive governments have lacked the institutional capacity and financial resources needed to address the complex physical, social, and economic needs of its citizens. Many of the weaknesses of past governments have been perpetuated. Arguably, the current combination of the clan system and multi-party democracy weakens government authority, making it dependent on its management of clan relations and patronage networks.

Although widely understood to be a problem, there has been no serious national attempt to address and come to terms with the realities of clan loyalties, which have been sharpened rather than diminished by their encapsulation in government through the Upper House of Elders *(Guurti)*. Government provides an enlarged arena for clan competition and potential conflict, if not properly managed. As demonstrated by the fiasco of voter registration in 2009 and repeated election-day irregularities,[3] the clan-based political culture can limit national political cohesion and progress. The real challenge for Somaliland lies in the need to create a state, which can transcend and at the same time accommodate clan loyalties.

In the past few years an increasing disconnect between public and national institutions has seen the space for civil society reduced and leadership become more autocratic and unaccountable. This has hampered national development in Somaliland. Hence, there is a need to reverse this trend by creating the opportunities that will

*2 Simons, Anna 1996. Networks of dissolution: Somalia undone. Boulder, Colorado: Westview Press.*
*3 Abokor, A, et al (2003) 'Very much a Somaliland-run election': A report of the Somaliland local elections of December 2002, CIIR, London.*

enhance people's participation in public affairs; build credible national institutions; and sanction the behaviour of those with political or administrative authority so that they recognize that they are answerable to citizens. The results of a nation-wide governance assessment conducted by Action Aid International Somaliland (AAIS) in March, 2007, concluded that poor quality of governance is the main reason for the country's lack of development, and the continued poverty and dissatisfaction of the majority of its people. [4]

Can Somaliland society and its political leadership change the negative aspects of its political culture and learn to 'play by the rules' laid down in its constitution? How much does Somaliland have to change to come to terms with its own democratization process? Who should lead the change? Can a patriarchal clan system, with all its strengths and weaknesses, listen and respond to the voice of change coming from the young generation and women in particular? This paper seeks to respond to these critical questions.

## Traditional Society and Leadership

Prior to European colonialism Somali society was 'stateless'. Somalis were (and still are) divided into an intricate series of clans and sub-clans, without centralized political institutions or a dynastic system of rule. Anthropologists suggest that the distinctive genealogically-based kinship system is a function of the environment from which Somalis pastoralists have extracted a subsistence living, and which requires cooperation between groups and individuals for survival.[5] In the patrilineal kinship system descent is traced through the male line and political identity and loyalty are determined by genealogical closeness and remoteness.[6] Traditionally Somali clans have competed and cooperated over access to water and other pastoral resources. The segmentary nature of the lineage system allows for constant change and flexibility in relations with others, depending on the interests at hand, whether it is competition over grazing grounds for the herds, conflict over water-holes or a struggle for political office or resources. It is a feature of this system that at any time one group may stand in opposition to another and the balance of opposing groups provides the essential source of order and security (Cassanelli, 1982) in Somali society.[7] When one group gains greater access to power or resources, or outside forces intervene, the imbalances of power can generate conflict. The constantly shifting political alliances and coalitions are a common feature of contemporary Somali political struggles (Bradbury, 1997).

Traditionally, in this clan-based pastoral society, in which there is no hierarchy of political units or political and administrative offices, two key institutions help to maintain order: *diya-groups,* whose members are collectively obliged to pay and receive blood compensation *(diya);* and *xeer,* contracts and covenants between kin groups, which form the basis of customary Somali law.[8] In this egalitarian (at least for men) political system governance is traditionally decentralised and consensus based.. All adult males are, in theory, entitled to participate and be heard in a council *(shir)* where matters affecting the clan are deliberated. But, this role is usually delegated to elders, who are appointed to their position for a variety of attributes, which may include age, wealth, wisdom, religious knowledge, powers of oratory and poetry (Farah, 1993). [9]

## Post Colonial Politicians and Leadership Style

One of the main legacies of the colonial administration of the Somali region was to introduce a system of centralized governance among a pastoral people who had a highly decentralized and egalitarian political system. The impact, according to some analysts, was the erosion of their traditional system of values. Mamdani, for example, has argued that one impact of colonial policy in African societies was to elevate particular individuals above the stations they occupied in the host society's institutional arrangements.[10] In Somali society, under the colonial administration, a new small urban elite composed of merchants, bureaucrats and petty officers were elevated above their station and given a stake in the colonial state. With powers gained through the colonial administration

*4 ActionAid International Somaliland (2007) Somaliland Governance Assessment. Unpublished study.*

*5 Lewis, I.M. 1988. A Modern History of Somalia: Colorado: westview Press.*

*6 Lewis, I.M. 1961. A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa. London: Oxford University Press.*

*7 Cassanelli, Lee V. (1982 ) The Shaping of Somali Society: Reconstructing the History of a Pastoral People 1600-1900. Philadelphia, PA: University of Pennsylvania Press.*

*8 Lyons, T & Samatar, Ahmed I. (1995 October) Somalia: State Collapse, Multilateral Intervention and Strategies for Political Reconstruction (Brookings Occasional Papers) Washington: Brookings Institution*

*9 Farah, Ahmed Yusuf (1993) The Roots of Reconciliation: Peace-making endeavors of contemporary lineage leaders in North-west Somalia/Somaliland, London: ActionAid*

*10 Mamdani, Mahmood (1996) Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism. Princeton: Princeton University Press.*

they challenged the traditional leadership of clan and religious elders, and as 'modern politicians' went on to inherit the state which had trained them.

The 'National' governments and political leaders that followed the colonial administrations continued to emulate their predecessors, producing first a parliamentary democracy (1960-1969), followed by a socialist state, based on alternative 'ideology', namely Scientific Socialism (1969-1991), neither of which had much relevance to the daily challenges facing the Somali population. In the context of the cold war the leadership was not encouraged to critically examine the model of government they had inherited. In the early 19970s the Siyad Barre' regime went as far as outlawing the clan system in a drive to modernize the nation.

The post-independence economic policies were largely disastrous. The little national surplus that was produced was captured by the merchants and the state officials through corruption and rent-seeking, rather than being invested in the construction of new public institutions required for building the nation.[11] In absence of a productive domestic economy, the post-colonial State relied heavily on external sources to generate almost all its resources for development, leaving it vulnerable to the dictates of aid donors and a mounting debt.

The inability of the leadership to address the tension between the internal demands of a decentralized political culture, on the one hand, and the artificial, alien state and externally oriented world market system, on the other, led to a disastrous consequences. In the end, the competition between governing urban elites for state offices and for access state and aid resources became the central focus of national politics. These self-styled leaders basically hijacked clan identity to perpetuate their own personal power, in the process undermining national institutions that could have reduced the risk of fragmentation and state collapse.

## The Impact of the Clan System on 'Modern' Democratic Politics

Since the creation of the Somali state and the introduction of centralized government, Somalia's politics has always been a balancing act involving the major clan-families. For many Somalis clan allegiance is more important than national interest. Many modern thinking Somalis, however, view the clan system as the root cause of backwardness. Placing clan interests above the state, they argue hampers national economic, social and political development, prompts individuals to behave irrationally, and it prevents the public from holding politicians accountable. The Somaliland politician mobilizes support from his sub-clan or clan, which is less costly than campaigning for support from the public at large. It is safe to say that each elected member of the Somaliland House of Representatives can rely on receiving 70% of voters from his or her own clan and sub-clan. Politicians therefore need no political programme or progressive political ideas to inspire and carry people with them because they can rely on their clan to support them.

Every clan also has an exaggerated perception of their numbers and strength. In the pastoral environment it is quite common for Somali herdsmen to inflate the size of their sub-clan and livestock in order to signal their power and /or to scare off potential adversaries. Similarly in politics clan leaders exaggerate their numbers to justify their claim to bigger share of the national pie. The Somaliland voter registration fiasco in Oct, 2008 is a good example of this. At the time politicians and elders mobilized as many of their clan members as possible for the registration in order to demonstrate their numerical supremacy and to enhance clan prestige. Rivalry between the clans led to multiple and under-age registration. This not only wasted national resources but raised political tensions between the opposition and government, which eventually took Somaliland to the brink of collapse in September 2009.

The public attitude toward politicians reveals more irrational behaviour. By and large, most of people in Somaliland condemn most politicians for being self-serving crooks, but at the same time give them a hero's welcome when they visit their home constituencies. The same is true in the case in the diaspora, where aspiring or fading politicians find it easy to raise funds on the basis of dubious claims about clan politics at home. Criticism is intended to change his behaviour, that is to fulfil his pledge to serve the community and bring about positive change. When parties are thrown in their honour, they are congratulated for doing a good job and are encouraged to continue what they have been doing all along; that is, misappropriating national resources, creating discord and disturbing community harmony for political expediency. Everyone is reluctant to hold a politician or government official to account, due to unease about offending his clan, who are expected to support him right or wrong.

*11 Samatar, Abdi I. (1989) The State and Rural Transformation in Northern Somalia, 1884-1986. Wisconsin/London: University of Wisconsin Press.*

Craftiness is another highly-valued cultural attribute among Somalis and their politicians. It is regarded as highly cunning to break a contractual agreement at an opportune moment, whether it is based on *xeer* or modern agreements. This practice has been exacerbated by the experience gained during the SNM struggle, when political scheming, deviousness and Machiavellian practices were common place. Some SNM veterans assert that the spoiler strategy *(ku-jiqsi)* that bedeviled Somaliland's political atmosphere in the early years was learned in Ethiopia during the years of exile. It persists in the elections which continue to be marred by fraud and irregularities.

## 'Modern' Politicians and the Character of their Politics

Somaliland's democratization process has faced a number of challenges since 2005 which slowed the pace of reform. These have included a lack of political resolve and technical competence in resolving key institutional and procedural matters, the most important of which was how elections should be organized and administered. While acknowledging Somaliland's democratic institutions are in their infancy, the political leadership have been accused of failing to move the democratic process forward and to consult with the citizens, build consensus and bring the people together around a common national cause. This resulted in a serious crisis of legitimacy and credibility with Somaliland's political system in 2009.

The contemporary political class in Somaliland is made up of a mixture of remnants of the 'old guard' politicians (1960-1991), members of the business class, those who emerged through the SNM struggle, particularly the military class, and various political opportunists and romantics, particularly from the diaspora. However, they all have one thing in common, and that is to be serious contenders they must secure the support and endorsement of their sub-clans and clans. This is perhaps the easiest and least expensive way for any politician anywhere in the modern world to build his political constituency, aside from being born to be king. It does not require much knowledge, experience, skills or resources. Very few of these politicians have received training or formal education in political science. This raises the question of whether the Somalis are born politicians, and the family home a nursery for political training, or they have a uniquely different concept and practice of politics which allows anyone to become a politician. That is perhaps rooted in Somalis egalitarian culture.

Fifteen years of stability, political consensus and relative democracy is not matched by progress in Somaliland's development indicators. The majority of people are dissatisfied with the performance of their elected officials in both the government and the opposition parties. The results of a nation-wide governance assessment conducted by AAIS in March, 2007, revealed a public demand for transparency, better representation and improvement in the quality of governance and leadership.[12] The majority of professionals and experts taking part in the assessment argued that a gap between citizens and representatives perpetuates a situation, where the public's views very rarely become part of the administration's agenda. They also believe there is a crisis of representation due to the lack of capacity and accountability of elected public officials. This survey conveys the disappointment of the Somaliland public after the first democratic elections had raised the hope of an improvement in governance.

Nationally, the political leadership have assumed an ineffectual and personalised management style. There is continued dependence on and influence of clan-based system of governance, a lack of transparency and accountability in the party political system, a deficit of qualified human resources, a disregard for the equality and rights of women, and a limited interest in civil society. Almost nine years after they were created none of Somaliland's three political parties have built a formal membership base. In the absence of subscription membership, the institutionalization of the party structure, procedures and realization of its mission shall always remain abstract and adhoc.[13] In local government, the limited participation of the public is compounded by the inadequate devolution of power, their own lack of knowledge about their rights and obligations, and the absence of effective auditing and mismanagement of resources.

Cabinet ministers and senior civil servants are hand-picked by the President (and his clique) and enjoy his protection and political patronage. Such impunity from a justice promotes rent-seeking behavior among government officials and civil servants, most of whom regard their offices as personal realms to be milked, with impunity, for their own or their sub-clan's gain. Their

*12 ActionAid International Somaliland (2007) Somaliland Governance Assessment. Unpublished study.*
*13 Fadal, M.O (2009) Institutionalizing Democracy in Somaliland. Hargeisa, Somaliland. Social Research and Development Institute (SORADI)*

behavior is supported by sub-clan members who hold the same outlook and expect him to set their needs as his main priority. For the majority of Somaliland's public this is one of life's realities. In the absence of any different experience, the behavior of politicians seems normal. If a member of the public needs some legitimate service from one of these public servants, his instincts tell him to solicit the support of an acquaintance or friend who belongs to the same sub-clan of the civil servant in office, to plead his case.

Among the opposition parties there are also many individuals who have never pursued a private career, but have spent all their life seeking government positions. These individuals are infamously known to join the opposition if they are not offered positions in the government (and vice-a versa). Unfortunately, the majority of this group are former cabinet members in previous administrations including those who served in Barre's regime. The easy switch from one party to another indicates a fundamental lack of ideology or principle among politicians, as well as the political parties.

Since the parliamentary elections of 2005, there has been frequent political disagreement and confrontation between the key state institutions, particularly the legislature and the executive, which occasionally brought day-to-day governance to a stop. Most observers attribute this to the failures of the leadership to work together to resolve their differences through compromise and concession.[14]

Many studies have shown poor governance and leadership as one of the reason why many developing countries, particularly in Africa, continue to fail in their efforts at poverty reduction and in their quest for economic and human development.[15] These studies argue that weak governance of public institutions, for example, imposes particular costs on the poor, while institutional dysfunction deters governments from undertaking actions that benefit the poor.[16] Backward politicians and leaders make for backward societies and corruption thrives where laws are weak. Somaliland's politicians and political system therefore, need reform in order to win the battle against under-development and consolidate democracy and socio-economic progress.

## The Way Forward

The hallmark of Somaliland's recent political culture has been an effective tradition of skilled negotiation, compromise, consensus and pragmatism. While this approach has served Somaliland well in solving some fundamental governance problems, it may also have contributed to the lack of progress in institution-building and application of constitutional law.

Most people in Somaliland recognize the need for a political class devoted to democracy and not simply to the accumulation of power. Some may feel that when structures of political representation become dysfunctional – as they did in the early nineties - strong but accountable leadership or even benign dictatorship may be desirable. But Somaliland's political culture needs to evolve with the times and build on the accumulated experience of the last twenty years. A whole series of traits need to change if the country is to become a member of the 21st Century community of nations.

Good governance is the joint responsibility of players in the public sector, the private sector, and civil society at local, regional and at national levels. As such, a collective effort is needed to create an environment conducive to building partnerships between civil society, the state and the private sector. Democracy and good governance need constant vigilance and real checks and balances on the power of any individual or entity. Somaliland's institutions need to develop and improve in order to perform their constitutional functions. This requires intensive capacity building of its human resources, including, massive public educational programmes.

The role of the national elites in this social transformation is to understand the need and desire for change that is coming from the public and to commit themselves to organize a renewal of democratic politics. It is also crucial to this collective effort that progressive elements within Somaliland society who are committed to fundamental change, should show solidarity with the people and help crystallize their aspirations towards a positive nationalism.

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# Kenya's Post-election Conflict: Some Lessons for Somaliland

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*The multiple postponements of Somaliland's presidential elections, had begun to erode the legitimacy of Somaliland's political institutions and created an environment of distrust that boiled over into violent demonstrations in September. Unlike in neighbouring Kenya, however, major violence was avoided and within a year the people of Somaliland held peaceful elections. Nevertheless, as this paper on post-election violence in Kenya by Axel Harneit-Sievers reflects, the experience of successfully organising elections is no guarantee that things will go well next time. The experience of Kenya, therefore, has lessons for the democratisation process in Somaliland.*

## Introduction

The violence that followed Kenya's presidential and parliamentary elections in 27th December 2007 was very much unexpected by most Kenyans and international observers alike. Despite the fact that Kenya had experienced instances of violence in elections since the re-introduction of multi-party politics in 1991, few people imagined that violence would erupt on the scale that occurred. An estimated 1,133 people were killed[17] following the announcement of the disputed results on 30th December, several hundred thousand people were displaced, and the violence had major political and economic repercussions throughout the region.

With political protest degenerating into outright "ethnic cleansing" and inter-ethnic warfare, the crisis raged until the end of January 2008. By then, former UN General Secretary Kofi Annan, supported by Kenyan civil society, neighbouring countries and the international community, had begun a mediation process between the two main presidential candidates and their parties - President Mwai Kibaki (Party of National Unity – PNU) and his challenger, Raila Odinga (Orange Democratic Movement – ODM). It took until 28th February 2008 before a "National Accord" was struck, which terminated the slide into outright civil war. This provided the foundation for a power-sharing arrangement between the opponents, known as the "Grand Coalition Government", with Kibaki as President and Odinga as Prime Minister, that continues in power today.

The Kenyan experience before, during and after the 2007 elections contains some important warnings and lessons to consider when preparing elections in countries that are characterized by long-standing ethnic-regional divisions, a political culture based on ethnic or "tribal" loyalties, and weak institutions. Somaliland has some of these characteristics, but since 2002 the people of Somaliland and its political parties have demonstrated an admirable capacity to hold peaceful elections and avoid the levels of violence experienced in Kenya and elsewhere in the region. Nevertheless this paper identifies lessons from the Kenyan experience that may be relevant for Somaliland in the future.

## Relevance of the Kenyan experience

The Kenyan experience surely shows one thing: a long experience in successfully organising elections by no means guarantees that things will go well next time.

Kenya has been holding elections regularly since independence in 1963. It even conducted parliamentary elections under one-party rule in the 1980s, when different candidates competed for seats under the Kenya African National Union (KANU) umbrella. Kenyan elections have often been accompanied by fraud and rigging, but before the 2007 crisis such malpractices had never fundamentally undermined the legitimacy of the overall electoral result. The same can be said about the instances of violence that accompanied the 1992 and 1997 elections after the return to multi-party democracy. The successful and largely peaceful transition from Moi to Kibaki in 2002 was, and still is, widely regarded as the single most important success of electoral democracy in Kenya. Despite all these experiences, and despite the fact that institutional mechanisms (like an electoral

*17 According to the figures of the Commission of Inquiry into Post-Election Violence, popularly known as the "Waki Commission". Relevant documents on Kenya's "National Accord", including the reports of the Waki and Kriegler Commissions of Inquiry, can be found at http://www.dialoguekenya.org/.*

commission and a judicial system to take care of dispute resolution) were in place for a long time, things went terribly wrong in 2007. This happened for specific reasons that I will turn to below.

In contrast, Somaliland has shown since the 1990s that having little to no experience in institutionalized democracy does not preclude the possibility of establishing democratic institutions. Indeed in the Somaliland case, just the opposite may be true. Since its foundation Somaliland has been growing democratic institutions afresh, and has constantly nurtured them with local knowledge and traditions on how to create peace and organise legitimate political representation. This has produced some of the unique features of the political system in Somaliland, such as the guurti and the three-party system. These "home-grown" processes may actually provide a more solid foundation for democracy than simply a formally-institutionalized system. In the Somaliland case, this worked reasonably well for over a decade, although it was put at risk by the repeated delay of presidential elections from 2008.

The successful outcome of the elections in Somaliland underlines the viability of electoral democracies in Africa. Still, the negative experience of the 2007 elections in Kenya is worth taking note of. The Kenyan crisis did not arise as an earthquake "out of the blue". It had identifiable reasons which, if understood correctly, provide some lessons about how to prepare for elections in other difficult situations. I will now discuss the electoral commission in Kenya and the technical conduct of the electoral process, examine the reasons behind the outbreak of violence, comment on the role of election observation, by formal observers and by the media, and finally consider the need for strong mechanisms for dispute resolution and mediation.

## Capability and credibility of the electoral commission

It is by now generally acknowledged that a major cause of the crisis in the 2007 Kenyan general election was the credibility of the electoral commission – or rather the lack of it.

For about a decade, the Electoral Commission of Kenya (ECK) had appeared to be a well-established institution, successfully overseeing critical voting processes such as the 2002 general elections and the 2005 constitutional referendum. The foundation for this had been laid in 1997 by a cross-party agreement negotiated by the Inter-Party Parliamentary Group (IPPG) which established rules for the nomination of ECK councillors. ECK chairman Samuel Kivuitu was widely regarded as a capable and trustworthy personality. Doubts about the credibility of the ECK began to arise when, in autumn 2007, President Kibaki appointed a number of new councillors to the ECK without the consultation process prescribed by the IPPG agreement. Still, many people hoped that the widely-respected Kivuitu would safeguard the situation. This was not to be.

Technically, the 2007 general elections in Kenya went well, up to the point of vote counting. On 27th December, more than 8 million Kenyans queued up and voted peacefully. The overall mood was optimistic, and the first results coming in the following day strengthened that optimism. The fact that more than a dozen ministers lost their seats seemed to prove that the peoples' vote was having an impact. In fact, in contrast to the presidential vote, the parliamentary results were generally regarded not to have been affected by large scale rigging, and only a few of them were later disputed.

The crisis began during the counting of the presidential results, especially on the second day (29th December).[18] Communications between ECK headquarters and its officers up-country did not always work, making it difficult to address and clarify emerging problems (such as incomplete result forms). From a certain point in time, the ECK seems to have lost control over the process, as party agents and ECK officials debated the validity of returns from dozens of constituencies. The resulting delay in the announcement of the results led to tensions in ODM majority areas, as fears grew that the election was about to be rigged in favour of the incumbent. The eviction of party agents and journalists from the ECK counting centre in Nairobi only worsened the situation. When the ECK announced a victory for Kibaki on the evening of 30th December, with a margin of about 230,000 votes, and Kibaki was hastily sworn in as president, many Kenyans felt betrayed. The violence started within hours. Pursued by the media, the visibly exhausted ECK chairman declared on the evening of 1st January 2008: "I do not know whether Kibaki won the election." This put the last nail in the coffin of the ECK's credibility and legitimacy. Following the recommendations of

*18 An independent account of events during the critical phase of vote counting is the report by the civil society group "Kenyans for Peace with Truth and Justice" titled "Countdown to Deception: 30 Hours that Destroyed Kenya", available, among others, at http://www.africog.org/reports/KPTJ-%20Countdown%20to%20Deception.pdf.*

an independent review by the Kriegler Commission, the ECK was dissolved in late 2008 and replaced by a reformed body with entirely new personnel.

To have a credible and capable electoral commission is not merely a technical necessity, but is of critical importance for successful and peaceful elections. The electoral commission's function is not only to prepare and hold elections, but is also to ensure that the counting and collation process is conducted in an orderly and transparent manner. The Kenyan experience shows how important (and how difficult) it may be for an electoral commission to withstand pressure from politicians and parties, and to keep control of the process, especially if difficulties emerge and tensions rise during and after the vote.

Somaliland's first three elections were overseen by an national electoral commission (NEC) that is generally acknowledged to have been capable and credible. This was replaced by one that proved to be incapable and far from credible, which contributed to the postponement of the 2008 elections. A new electoral commission was formed after the crisis in September 2009, that proved to be more capable and restored the NEC's legitimacy. The commission needs on-going support and training. Kenya's experience in 2007-08 and the report by the Kriegler Commission and by civil society observer groups provide useful in-depth analysis of what can go wrong and how to avoid mistakes.

## Reasons for the outbreak of violence

An important underlying reason for the outbreak of large-scale violence in Kenya in 2008 was the fact that political competition in the election reproduced and intensified the major ethno-political fault line in Kenya by pitching a Kikuyu and a Luo candidate (and their respective allies) against each other. This "bifurcation" of the political landscape distinguished the 2007 elections from earlier ones, where important politicians of the same ethnic group had often found themselves on different sides. Political mobilization and voting patterns in Kenya have always had strong ethnic dimensions, but in the political configuration of 2007 (a result of the break-up of the 2002 coalition over the 2005 constitutional referendum) ethnic competition was particularly strong.

The immediate reason for the outbreak of violence was the widespread belief among Kenyans, and especially among ODM supporters, that the elections had been rigged in favour of President Kibaki. This perception was strengthened by the partial results published on the first day of the vote-counting which had indicated a strong lead for the challenger, Raila Odinga (more on this below). This seemed to reaffirm numerous opinion polls conducted since September 2007 which had placed Odinga in the lead. Although this was much reduced by December, the margin of lead may have been narrow, but if there was any recognizable trend, it favoured Odinga. In this context and, and whilst the ECK was unable to produce final results in time, opposition supporters took it for granted that rigging on a massive scale had taken place.

So far for the background, but how did the violence actually evolve? Certainly, there was a degree of "spontaneous" protest that quickly degenerated into violence, accompanied by what may be called "opportunistic crime" (looting, rape) encouraged by the general climate of tension, insecurity and lawlessness.
The government reacted to this with "violence from above", employing its security agencies which at times exerted disproportionate levels of violence and firearms against protesters, looters and bystanders who were unarmed or armed with only primitive weapons. This was most marked in ODM strongholds, especially in Kisumu. But beyond "spontaneous" violence and heavy-handed action by the security forces, it is important to note that various political actors were prepared to use violence – or the threat of it – as a political strategy, leading to an escalation of violence that went far beyond any "spontaneous" action.

- Immediately after the announcement of the results, ODM resorted to mass protest. While its senior party officials called for peaceful demonstrations, it was obvious that such protest would, in all likelihood, be accompanied by violence. The de facto threat of violence was part of ODM's strategy. While unsuccessful in bringing down the government, it caused a degree of destabilization in Kenya that quickly brought about rapid international diplomatic engagement and thus forced the Kibaki government to the negotiation table.
- In parts of Rift Valley Province, evictions, attacks and "ethnic cleansing" directed against Kikuyu "settlers" (regarded as being Kibaki supporters) erupted right after the announcement of the election results. These events repeated patterns of violence from the 1990s, and they seem to have been organised by local (and perhaps even some national) political leaders.

- In the course of January 2008, violence escalated with attacks and counterattacks by ethnic militias which, again, are generally believed to have been steered by political actors. By the end of January, militia warfare had brought the country to the brink of a civil war that was only averted by the beginning of Kofi Annan's mediation process. While details about the operation and dynamics of these militias are not yet publicly documented in detail, it is clear that political actors willing to use them could draw on the capacity for violence of existing underground structures that had existed for years, with the Kikuyu-based Mungiki being the most notable among them.

Thus, it was not so much a 'spontaneous reaction' to alleged vote rigging, but the readiness and ability of various political actors in Kenya to employ violence that played a fundamental role in escalating the post-election crisis. Today, it is widely acknowledged that the use of violence had been encouraged by the fact that earlier instances of violence – especially during the 1992 and 1997 elections in the Rift Valley and in Coast Province – have never led to any prosecution of those responsible for it. Combating this "culture of impunity" (for acts of violence, as well as for corruption) should be at the heart of Kenya's drive to reduce the risk of future electoral violence. As attempts to establish local tribunals for this purpose have failed so far, the International Criminal Court has begun investigations that are expected to lead to the prosecution of a number of perpetrators.

Somaliland, by contrast, appears to be in a far better position than Kenya as regards to risks of violence. Somaliland does not have long-standing deep ethno-regional cleavages that have fuelled frustration and anger, such as between the Kikuyu and Luo ethnic groups in Kenya. Instead, Somaliland nationalism has been a strong integrating force since the 1994-1996 civil war and has been integral to building peace and democracy since the 1990s. In Somaliland there are no conflicts over land (between pastoralists, or between "indigenous" and "settler" groups) on the scale and historical depth as in Kenya's Rift Valley. By contrast to Kenya's political culture, which has put a premium on violence by providing immunity from prosecution for masterminds of violence, Somaliland's political culture is integrative and has defined itself by consensus-building and the de-escalation of violence.

Still, the September 2009 crisis illustrated that peace cannot be taken for granted even in Somaliland politics. Opposition political actors demonstrated great restraint by not retaliating violently against the shooting of demonstrators by police, and by not resorting to the use of arms that are readily available in the country (although preparations to actually use them may well have been under way). Instead, the negotiations that followed proved constructive. A repetition of this tragic course of events has to be avoided in the future at all cost, because the reactions of those who feel their rights have been violated and view themselves under attack may be different another time.

## Election Monitoring and the Media

Independent media are a critical element of any democracy worth its name, and have an important role to play during elections, by monitoring and reporting events from a variety of localities and perspectives that are independent of government and any political party. Formal election monitoring by national and international observer groups has also become a standard procedure in many countries.

Independent media and national as well as international observers were present in the 2007 Kenyan elections. Both of them played a largely constructive role in the monitoring and transparency of the electoral process. A number of vernacular radio stations were an exception to this, as they allegedly transmitted what amounted to "hate speech" against members of other ethnic groups before the elections and during the crisis. But this seems to have been limited to certain regions where ethno-political conflict has a history. Overall, the national electronic and print media (and especially the private stations and papers) deserve much credit for having consistently tried to play a de-escalating and constructive role during the post-election crisis, by reporting fairly, calling for peace and dialogue, and conducting campaigns to support the victims of violence and displacement.

Still, there was a problem with the Kenyan media during the elections, arising from the delayed results. In the first two days after the voting, Kenya's media published results from polling stations and collection centres, as well as the constituency-based results declared by the ECK. At times, it was unclear whether the results published were officially-declared, or just based on journalists' observations and reports from up-country districts. The results published (and added-up) by major news stations on the day after the elections seemed to

suggest a clear ODM victory, but on day two Odinga's lead reduced. While this "reversal of trends" seems to have been due (at least partly) to the fact that results from ODM's strongholds came in earlier than those of the PNU, ODM supporters took it as an indication that the elections were in the process of being rigged.

The problem was, of course, first caused by the fact that the ECK was unable to produce the election results in time, resulting in rapidly rising tension during the counting exercise on day two. However, the media, by simply fulfilling their reporting duty, carried a degree of responsibility for the rising tension as well, by publishing incomplete results. They also missed the opportunity (and so perhaps neglected their duty) of carefully interpreting the preliminary data and warning their audience that the apparent "trends" may be misleading.

Similarly, an interview with the head of the EU observation mission was transmitted by a radio station on 29th December, as counting was still going on. In the interview, he hinted at irregularities in two particular constituencies (the results of which, later on, indeed turned out to be very much disputed). While he may have been trying to bring transparency to the process, he contributed to the public uneasiness about the process, and the resulting tension. Thus, the Kenyan experience shows that media and observers' reporting on an election process that is still going on may increase tension and lead to undesirable public perceptions.

The Kenya media is strong and independent and forms a marked contrast to the situation in Somaliland, where independent media are restricted to newspapers, and where private radio stations are not licensed. Still, the Kenyan experience may provide some helpful lessons. Still, the Kenyan experience may provide some helpful lessons

Media and observers have a fundamental role to play in instilling transparency in an election. Instituting "rules of engagement" for observers and the media during an election, would help to avoid the pitfalls experienced in Kenya in late December 2007. These "rules of engagement" have to provide, of course, for the free access of observers and journalists to all stages of the election and counting process, but should also place limitations on reporting and publishing the observations while vote counting is still going on especially as regards the publication of preliminary results. Of course, there has to be a time limit on this embargo. It should only be applicable for a day or two, until such time as the electoral commission can be reasonably expected to deliver results. Similarly, formal election monitors should be restrained from making public statements on the conduct and the results of the election process until the election is completed, when they deliver their official report.

These "rules of engagement" should not be legislated upon, as this may also be misused or understood as intended to suppress press freedom. Instead, they should be based on a consensus among stakeholders, the details of which could be negotiated between media and election observers on the one hand, and the electoral commission on the other. The results of these negotiations can be brought into a voluntary agreement (such as a "code of conduct"), based on the joint understanding that these rules were agreed in order to safeguard the transparency, sound and peaceful conduct of the election, and in order to ensure that the transparency required for a successful election does not become a source of tension and possibly violence.

## Institutions for conflict resolution and mediation

The post-election crisis in Kenya escalated because mechanisms of conflict resolution available within the country failed, despite well-established institutions and a vibrant civil society.

Right after the announcement of the election results, ODM refused to take legal action, professing it had no trust in Kenya's judicial system to deal with what they saw as a large-scale political fraud. PNU argued that ODM should contest the ECK results in the courts. Given the balance of power, with the security forces under governmental control and killing opposition supporters in the streets, such an argument appeared hollow, if not cynical. However, outside the legal system, there were no other institutions or personalities in the country able to play a mediating role. Splits along party lines were visible even within churches and civil society, which were rendered them largely ineffectual as potential mediators. It became nearly impossible for any local actor to play a role that would be recognized as truly non-partisan by either side.

External mediation became a necessity. Kenya, as the regional hub housing international organisations and media, could count itself lucky to attract immediate international attention. Exploratory visits by potential mediators from other African countries started a few days after New Year. It is hard to see how the crisis could have

been resolved without massive international engagement and pressure, and without consistent international support for a negotiated end to the crisis. Even with that support, the mediation process took several weeks to start in earnest and four more weeks to reach a conclusion.

In case of a political crisis Somaliland cannot expect to generate comparable international interest. Still, during the September 2009 crisis in Somaliland, the *Guurti,* local civil society, neighbouring Ethiopia and actors of the international community did intervene and exerted pressure on Somaliland's political parties to resolve the crisis. This resulted in the Memorandum of Understanding signed on 25th September that agreed a change in the leadership and members of the electoral commission. However, as the International Crisis Group noted, "the parties only stepped back from the precipice when confronted by the likelihood that the alternative was indeed return to armed conflict."[19] This experience should serve as a warning to have dispute resolution and (if necessary) mediation mechanisms in place that are as strong as possible and can be activated in the event of a major crisis during or after the election. In doing so, Somaliland can build upon its traditions of consensus-building and involve local actors such as the Guurti and respected civil society leaders.

Somaliland could also consider inviting the country's trusted partners and friends in the international community to be on stand-by and to act, from the start of the election process, not only in an election monitoring role, but perhaps also as part of a dispute resolution and mediation mechanisms, just in case advice and pressure from outside should become necessary. Both the Kenyan 2007-08 experience and that of Somaliland in autumn 2009 point to the fact that in times of crisis, the presence of outsiders (and pressure by them, if necessary) can play a very constructive role in conflict resolution; so why not build on it right from the beginning?

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Relevant documents on Kenya's "National Accord", including the reports of the Waki and Kriegler Commissions of Inquiry, can be found at http://www.dialoguekenya.org/.

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The International Crisis Group's report "Somaliland: A Way out of the Electoral Crisis" (Policy Briefing No. 7, Nairobi / Brussels, 7th December 2009) is available at http://www.crisisgroup.org/library/documents/africa/horn_of_africa/b67_somaliland___a_way_out_of_the_electoral_crisis.pdf

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# Somaliland Elections: A Growing Ownership and Experience

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*The process of democratisation requires the full participation and commitment of people from all walks of society. In this article, Mohamed Fadal reflects on the history of elections in the Somali region, starting from the first elections in newly independent Somalia. One of the differences he highlights between the elections in Somalia in the 1960s and the series of elections in Somaliland since 2002, is that the particular democratic model emerging in Somaliland is one that has not been imposed from outside but has been nurtured by people in Somaliland. This, he believes provides grounds for optimism for the future of democracy in Somaliland.*

## A Brief History of Somali Elections

Elections are the clearest sign of Somaliland's advancing democratization. Holding, peacefully, a series of elections is a testament to the maturing political culture of people in Somaliland. Election campaigns often involve personal attacks on otherwise respected people that in ordinary situations would have been considered as slander could cause conflict between clans or demands for compensations to avoid retaliation. In Somaliland people are becoming more tolerant about what is considered to be part of the game.

The elections in Somalia in the 1960s were chaotic, violent and lacked any sense of the rules of the game as we know them today in Somaliland. Usually, they were organized and run by the government of the day and the opposition often suffered heavy-handed treatment from both the judiciary and the security forces. It was a kind of law of the jungle. That was why in the aftermath of elections, there was usually an air of bitterness in many sectors of society and a feeling that they were usurped of their rightful seats. These elections often left a legacy of conflict between clans, sometimes resulting in bloodshed or lingering animosities among communities, that otherwise had no problem living together side by side for centuries.

Some of the difficulties encountered with these elections were: direct fraud, where the elections are rigged through ballot stuffing, multiple voting and the intimidation of party supporters, usually by the ruling party. Electoral laws were manipulated in favour of the ruling party, by adjusting district boundaries in its favour or altering the locations of polling stations. District Commissioners and the judges were invariably co-opted to deny the registration of political parties and credible opponents and to facilitate fraudulent acts during the polling day, the count and the declaration of results.

Another feature of those early elections is that the constituencies were not meaningfully involved in the selection of the candidates and so did not feel represented by the outcome of the elections. The voting system used was a combination of a party list and first–past-the-post winner-takes-all majority. The ruling party and incumbent government to manipulated the party list in their favour and the winner-takes-all was naturally their system of choice. For instance in Burco in 1968 all the seats were taken by Somali Youth League (SYL) ruling party. In Togdheer, the incumbent Prime Minister ensured the parliamentary seats of a group of candidates who were hand-picked by him without the consent of the constituency they were purported to represent. Such rampant abuse of power by the government and the consequent disillusionment of the public with the political system enabled the cunning military chief Siyad Barre to take power in a bloodless coup in 1969 without any resistance.

The leadership elections within the Somali National Movement (SNM) when it was fighting an insurgency against the Siyad Barre regime moved away from the predatory nature of elections that people had experienced to a more locally grounded system. Despite the fact that the SNM was heavily influenced by the socialist model of party structures predominant at the time in the Horn of Africa region, and despite the rudimentary nature of the movement, its leadership was democratically elected. The elections introduced a high level of accountability in the SNM leadership, to both the rank and file of the

organization and to its general constituency. Unlike other Somali armed movements that later emerged and unlike the three regional governments, the SNM democratically changed its leadership at least three times in ten years. It was here where the hybridization of Somali tradition and modern political practices was incubated. The formalized role of elders in Somaliland's post-war government as the *Guurti*, or House of Elders, was patented by the SNM.

In the Somali society the notion of representation is an ad hoc and event-based concept, whereby a group selects some capable people among themselves to represent them in a meeting or to negotiate their interests with other groups. It is not the norm for a member of the group to campaign to be selected for such missions; individuals are usually appointed by elders ensuring that each sub-group is represented. There are also no hard and fast rules of accountability. Representation is based on trust, giving leeway for the trusted emissaries to perform their duty. It is not expected that the group will scrutinize and evaluate the performance of their representatives, but rather that they will automatically accept the outcome of their work. More significantly there is no expectation of individual remuneration for the job to be done, rather it is conceived as a duty with general expenses to operate sometimes, but not always, furnished.

Such a culture, while still having some influence, is changing because of the way in which representation is organised in the modern state institutions. The formation of the Somaliland state is transforming the concept and culture of representation. Elections are becoming the norm by which a person is chosen to perform official functions, especially in the higher offices of the state. The peace conferences in Burco (1991), Borame (1993) and Hargeysa (1997)[20] established a way of combining the traditional practice of choosing a representative with the modern method of elections. In the Burco Conference the election procedures were rudimentary. The subsequent two conferences raised the standard of the election procedures and had a far-reaching impact on the practice and idea of representation in Somaliland society. The delegates were chosen in a more structured manner, and debates were conducted more formally than was the case in the previous conference. Proceedings were recorded and resolutions meticulously worked out. In the Hargeysa Conference, the procedure to elect one of three competing candidates was done more orderly and transparently and hence did not result in a controversy, as happened in the 1993 Borame Conference. Therefore conferences were powerful learning experiences for the Somaliland people.

In the conferences, the skills of campaigning improved and election procedures were progressively formalised. Candidates campaigned to represent different clans, while the *Shir-Guddoon* (chairing committee of six distinguished elders) acted as a *de facto* 'Electoral Commission'. The clan factor was omnipresent in all these conference elections and clans are not known to concede without a fight. In all these conferences, the traditional methods of negotiating a deal behind the scenes often overshadowed the modern practice of elections that took place in the conference halls. Yet, despite the shortcomings, the highest political office was filled through an election. There was no public vote and there were no political parties at the time, but delegates voted with a show of hands to elect a president and a vice-president from several candidates each running as independents.

## The Constitutional Era: tipping the balance towards the modern systems of elections

Although Somaliland society has a strong tradition of consultative and collective decision-making especially through the *shir* (a meeting of elders), the method of selecting delegates to these important meetings has never been codified. The standard approach is to include representation from as many of the sub-clans as possible, which becomes difficult when the number of delegates is limited. This is further complicated by the fact that delegates may subsequently gain, financially or through employment from the engagement, which raises the level of interest and competition for membership, especially in recent times when state power sharing is involved.

The same was true in the clan power-sharing system of government that emerged in 1991 when the membership of the two of Houses of Elders and Representatives were first selected. The Guurti presidium transformed itself into an approval committee for screening parliamentary delegates, which did not go down well with the powerful leadership of many clans who wanted to assert their right to choose members of their own clan to represent them in the legislature. They did not look for approval of their choices from a group who, in their eyes, came from a competitor clan. The traditional system is not designed to accommodate the organizational needs of a state,

*20 See Mohamed Fadal (2009) Institutionalizing Democracy in Somaliland. ww.soradi.org, pp 3; Mohamoud Ali; Koss. Mohamed, Michael Walls (2008) The Search for Peace: An Indigenous Approach to State-building, APD/Interpeace, pp 35.*

but rather that of a clan and its relationship with other clans. Such contradictions would have reached a critical level and frustrated the evolving system of governance, if the shift towards constitutional-based government in Somaliland had not occurred.

The process of drafting of the constitution was itself a positive learning experience and an important contribution to Somaliland's growing political maturity. At one point the two highest organs of the state each drafted their own version of the constitution; the Presidency drafted a presidential-style constitution and the House of Representatives a parliamentary-style one. A compromise draft constitution was produced from these competing drafts at the Hargeysa National Conference of 1997. However, the final version which was adopted by an overwhelming majority in a national referendum in May 2001 ended up giving the President sweeping powers and relegated the House of Representatives to third position in terms of the powers of legislation.

The passing of the constitution provided the legal framework for the democratization of Somaliland's political system, and established the route by which the traditional institutions that had dominated the political developments in Somaliland thus far gave way to the formation of an array of modern institutions to accommodate the unfolding state-building process. The passing of Law No 14/2000, the Regulation of Political Associations and Parties Law,[21] was a landmark development signifying the political maturity of Somaliland. This law typically illustrates how Somaliland society and government have not merely adopted international political structures, as was the case was in the early 1960s, but are taking ownership of it and adapting it to their own needs and visions. This Law, for example, provides for the democratic practice of free political association, but to avoid the past experience where clan fragmentation reproduced itself in the modern political party system, Constitutional Article 9/2 limits the number of national political parties to three. However, that provision can be construed as limiting people's freedom of association, as granted by the constitutional Article 23/3. Hence there is a growing constituency that views it as incompatible with the current level of political maturity demonstrated by people in Somaliland and demands its reform.

The establishment in 2001 of the Committee for the Registration of Political Associations and Approval of Political Parties opened the gates for the formation political associations. Over a dozen registered with the Committee and formed branches in different regions and districts of the country. This was not an easy transition, because there were various political tendencies among the public, some of whom favoured the continued primacy of traditional institutions for Somaliland's political development. There were also SNM veterans who felt that the SNM was the mother party that needed no registration. However, the tide was turning against those that stood in the way of democratization and political plurality. Deadlines to conclude the registration passed and extensions were made to accommodate dissenting voices, but in the end the national energy turned to follow the unfolding constitutional path.

A regime of Electoral Laws was introduced to facilitate the elections. The first law introduced in 2001 (Law #20/2000) was composed of 66 Articles, which set the tone for the conduct of democratic elections in Somaliland. It specifically established the rules and regulations for the election of Local Councils and the offices of the President and Vice-President. The House of Representatives Election Law (Law No 20-2/2005) further consolidated the democratization process by facilitating the first popularly elected parliament in Somaliland. The House Elders' election/selection law is still pending.

Furthermore, the setting up of an independent National Electoral Commission (NEC) expanded the institutional base of the unfolding democratization process. It is worth acknowledging here, that the collective decision-making culture of Somali people had a clear influence in the modality for nominating the membership of the NEC. Most of the key political actors have a say in it: the President nominates three members, the House of Elders nominates two, the opposition political parties each nominate one member, and the House of Representatives has the final approval of each member. This method may look cumbersome, but it accommodates different clan and political group interests and hence enhances the legitimacy of the National Electoral Commission and its independence. This does mean that it is difficult to expel one member of the Commission or to disband it altogether before its term ends. However, the precedent was set in November 2010 when strong public action and responsible actors forced the sitting NEC to disband because of its alleged corruption and incompetence. This

*21 Ibrahim Hashi Jama, The Somaliland Constitution. www.Somalilandlaw.com*

demonstrated how, despite their clan-based divisions, the Somaliland people are prepared to hold public office holders to account, to safeguard their hard won democratic gains and state-building achievements. In the same spirit, the Law governing NEC recruitment has also been amended to make it more effective and relevant to the ongoing democratization process.[22]

## The First Elections

The Somaliland people went through three high-profile elections within a four-year period (2002-2005). The first election process combined the establishment of District Councils in the six regions of the Republic and the formation of national political parties. Both endeavours involved intense competition among the candidates and among the six political associations who fought the elections. The objectives were fully achieved in that first election – District Councils were established and three national political parties were certified.

The second election in April 2002 for offices of the President and Vice-President produced one of the greatest political challenges Somaliland has faced. The election went smoothly and peacefully. However, with the candidates of UDUB and KULMIYE separated by a narrow margin of 80 votes, Somaliland was put on the spot. Many observers thought that the Somaliland state was too fragile to face such a challenge. Again the Somaliland people demonstrated their resilience and capacity for conflict resolution. The backgrounds of the two candidates were also significant. Somaliland is a young nation and therefore a person's role in the struggle for independence is respected. The fact that the people accepted the presidential candidate who has no liberation credentials against a long term SNM leader further attested to the political maturity of the Somaliland people. The election of the House of Representatives in September 2005 was a landmark event boosting the confidence of the Somaliland people in the democratic culture. First, a compromise law was adopted to overcome the impasse on the allocation of number of parliamentary seats to each region, which had arisen in the absence of a census or voter registration. When Somalilanders are negotiating such issues, the traditional and the modern cultures ethos clash. The clan interest comes to the fore and allocating numbers to different groups becomes problematic. In the intricate negotiation process, the key actors had to marry two formulas together: the clan and sub-sub-clan constituency interests with the modern national institutional laws and regulations.

## The Second Cycle of Elections and the Consolidation of Democratic Achievements

In Somaliland the realization is slowly but firmly sinking in that building a democratic society is not a goal to be achieved with a few successful of elections, but rather is a work in progress. It might have been easy to start democratic institutions from scratch, but nurturing them to ensure their effectiveness and internal cooperation and to operate in the spirit of the constitution and democratic principles is becoming a challenging experience. In the last few years the Executive branch, the House of Elders, the House of Representatives and the Judiciary, have acted as standalone institutions with no interest to work together and in disregard of the constitutional spirit from which they all draw their mandate.

The way their roles are generally perceived by the citizens is for the House of Representatives to produce laws and to oversee the way the Executive is running the country; the House of Elders is expected to play a less politically charged, back seat role to accommodate the tradition and to uphold the peace and play the role of mediator in government affairs; the Executive is mandated to run the affairs of the Government, but needs to work closely with all other three branches. The Judiciary need to play a proactive role in the democratization process, and should not create a gap for other non-mandated actors to do the job it is mandated for. For instance the mediation roles played by civil society and even the international community during periods of political crisis is seen as a consequence of the Judiciary neglecting its national responsibility to lead in mediating the legislature and in interpreting and upholding the Constitution.

## The Role of the Civil Society

Civil society in the context of Somaliland can be defined as the non-state, privately organized social groups, which include formally structured NGO, umbrellas, academic and research institutions. In addition there is also a wider community of civic activists, which organizes itself in response to critical events, so as to mediate in political crisis, or to fundraise for public projects.

Civil society political activism in Somaliland swells and ebbs, depending, at least in recent years, on the tolerance levels of the incumbent government and the leeway it is

*22 See Ibrahim Hashi Jama, SomalilandLaw.com. Electoral Laws; 2009, 2010 Amendments to Presidential and Election Law 2002.*

prepared to give to civil society. Government cracking down on the human rights organisation - Shuronet in 2007 - signalled a period of tense relations between the authorities and organized civil society in Somaliland. However, since early 2009, civil society's space for participation in the national political process has been growing. The impetus came from the Independent Scholars Group (ISG) think-tank forum. This is a loosely organized forum which analyses the current burning political issues, the roles and relationships of different key actors and the emerging political trends and monthly meetings sponsored by the Social Research and Development Institute (SORADI).

The group issues a 'situation paper' which provides a reliable objective analysis and recommendations for the Somaliland public and other internal and external actors who are engaged in the Somaliland democratization process. The paper has been widely covered in the local and international Somaliland media in both Somali and English. Through the ISG civil society is gaining opportunities to have its voice heard. This was demonstrated in the proactive stance it took in unseating the incompetent NEC, the support and fruitful partnership with the NEC,' ,and the support to ensure the success of the Voter List Display and Card Replacement initiatives, and the efforts to hold the second free, fair and peaceful presidential election on June 26, 2010 in Somaliland.

Somaliland civil society has always worked closely and in partnership with the NEC.. Two advisory bodies from civil society support the NEC to implement election related activities, such as Voter Education, and the training and deployment of conflict resolution units, local monitors and international observers. The conflict resolution component is a new initiative undertaken jointly by NEC and the civil society advisory group. The main purpose of this programme would be to supplement and support the security forces with special conflict resolution skills. A core of 60 people was recruited to be trained in Hargeysa, who later trained another 540 people in all regions of Somaliland giving a total of 600 people trained in conflict resolution persons. The group were recruited from a wide spectrum of society including professionals, youth, women and non-titled elders. The conflict resolution teams were active in the card collection and display centres, attending to conflicts arising in the queues and vicinities of these centres. They are identifiable by their distinctive dress of a white cap, tea-shirt and a jacket bearing the insignia of the NEC and Mediators. The conflict resolution units will be deployed to the polling stations on election days.

## The Voter Registration as a Process

Voter registration has been an controversial issue since 2005, when the outgoing parliament passed a law, with a strong majority, that set conditions for a national voter registration to be created before the first parliamentary election. This move was interpreted at the time as a devious ploy by the sitting parliament to block the election, given the time needed to implement such a demand. However, specific articles of that Law No. 20-2/2005 mandating voter registration were waived by the Supreme Court and the election took place in 2005. From that day on voter registration became an issue. The second presidential election was postponed several times in 2008 and 2009 due to problems arising from the voter registration process. The first attempt at voter registration was botched by an incompetent NEC and overzealous political parties, and incited clan competition.

After two years of senseless political turmoil, the newly installed NEC took control of the situation, and in partnership with all key political actors, devised a system of replacing the VR cards in an attempt to weed out cases of multiple registration. The NEC resorted to this method after various efforts to clean the voter registration list using the latest available technology failed. However, this new initiative can only work when all key actors are prepared to acknowledge the illegal nature of multiple registrations and to stamp it out and help the NEC to produce a clean voter registration list. If that commitment is not there, then it is obvious people will claim fraudulent cards in whichever way possible and for as long as the political parties aid and abet such illegal practices. The result of the display and replacement process held on 13-30 May, 2010, was mixed and can only be judged after the election takes place. State building in a post-conflict country is not any easy process and Somaliland has enough experience of imperfect first trials. Populating the two Houses of Parliament after the Borame conference in 1993 was an imperfect disorganized process, which resulted in certain major clans completely boycotting it. Today, less than two decades later, Somaliland can boast to have one of the most vibrant democratically elected parliaments in Africa and the Middle East. The process of selecting the President in Borame in 1993 as well as in Hargeisa in 1997 both had shortcomings. However, by 2003 the people of

Somaliland successfully held a presidential election.

Somaliland efforts to overcome the problems of the voter registrations are no different from the above. We need to continue improving them as we go along. Somaliland state-building is a process of learning by doing, and we are learning fast and we will learn how to fix the imperfections of our voter registration system.

## Conclusion

This article was an attempt to put into perspective the shortcomings of state-building and democratization in Somaliland and to highlight the fact that Somaliland has come a long way since May 18, 1991. It was not an easy process, because it involved, as expected, dealing with serious challenges of trust-building among communities and spending tremendous energies to quell violent conflict situations that inevitably arose from a decade of civil war. It also involved a single-mindedness to build a Somaliland state which is democratic and excellent negotiating skills to steer a process in a country where individual allegiances are often focussed on clan instead of the evolving national institutions. It was remarkable for the elders to have succeeded in establishing a government based on a clan power-sharing formula, something that had never happened before. But it was even more important to succeed in convincing clans and elite interests to give up their power and transfer their allegiance to a national constitution. The rest has been a learning process on how to build a democratic society and the Somaliland people and elites have been good students at that considering what they have achieved so far. Somalilanders are not simply adopting systems and institutions, but are adding value to them to make them their own and to be able to mend the system when it cracks, without expecting others to fix it for them. With all their imperfections, the peace-building, the state-building and the democratization processes all have their own local trade mark, made by the Somaliland people.[23]

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# *Part Two:* Organizing Elections in Somaliland

**Shukri Haji Bandere**
*Candlelight*

*Since 2002, people in Somaliland have held a succession of elections that have been conducted peacefully and have been judged by international and domestic observers as generally 'free and fair'. Much credit for the success of the elections must go to the National Electoral Commission, the body charged with organizing and overseeing the conduct of the elections. In this article Shukri Haji Bandere, a Commissioner in Somaliland's first Electoral Commission, describes some of the challenges of managing the elections and identifies some lessons that need to be absorbed for the conduct of future elections.*

## Introduction

The Somaliland National Electoral Commission (NEC) is the body charged with the organization of Somaliland elections. According to the Electoral Law No20/2001 (article II), the Commission consists of seven members three of which are to be nominated by the President of the Republic of Somaliland, two by the House of Elders and the remaining two nominated by thepolitical parties. All the nominations are also affirmed by parliament. The objective of the NEC is to manage the conduct of free and fair elections. Its statutory duty is to organize and manage all activities related to the election of district councils, the president and the parliament. The main functions of the NEC are to:

- Undertake the registration of voters;
- Set the dates of elections and set the number and the locations of polling stations;
- Appoint the staff of central NEC office and those of the regional, district offices and polling stations;
- Conduct and oversee the elections;
- Conduct research into voting and elections.

This paper is derived from a meeting of members of the first NEC who oversaw the running of the district, presidential and parliamentary elections in Somaliland between 2002 and 2005. The meeting was convened to elicit lessons from their experience of planning and organizing elections in Somaliland, with a particular emphasis on voter operations.

## Operational Plan and Budget

According to the former Commissioners of the first NEC, their first task was to draft a plan of operations in order to determine the time span for the election process and the resources required. After establishing these facts an operational budget was prepared. With this budget the next step was to identify what financial resources could be obtained from the government and from external donors. According to the Commissioners, obtaining external assistance for the election budget was time consuming, because of the need to develop proposals and the lengthy communications between the NEC and donors.

Once the operational and financial analysis was done, detailed plans with strict timelines were drawn up for the implementation of activities. The team used to discuss and brainstorm what needed to be done each day and activities were defined, assigned and executed accordingly. Decisions were never easy to make, but there was a good team spirit and decisions were usually made by a consensus.

In setting timelines for the implementation of activities, various factors were considered. For instance, if drought affected certain geographical areas or communities leading to a mass migration, then the timing of NEC activities would be adjusted. Similarly, hot weather in coastal areas would affect the communities and the NEC's work. Such factors needed to be kept in mind while developing operational plans.

Election budgets (especially external assistance) were rarely delivered on time due to the need to develop proposals and respond to the tedious and time consuming comments from donors. Likewise, the Somaliland government often did not approve the budgets proposed by NEC, but used to cut them. These constraints affected the efficiency and quality of their work and the election timelines. For the future elections, it is important to ensure the following:

- Donors have to be conscious of the importance of resourcing the budget on time, because the activity

plans and timelines cannot be observed if the required financial resources are not in place.

- To avoid under funding, the Somaliland government, and especially the Ministry of Finance, must commit adequate resources for election activities.

## Election Security

Various stakeholders were involved in election security: the Police Commander, Ministry of Interior and the Commander of the armed forces. In collaboration with these stakeholders, the NEC established a detailed security plan for the elections. This included the presence of members of the police force in all NEC offices around the country as well as at the polling stations. They were responsible for ensuring that electoral materials were delivered in a safe and timely manner to all polling stations throughout the country and that there was a police presence during the receipt, storage and delivery of electoral materials. They also provided the security escorts for international observers. These tasks proved to be huge and complex and required meticulous planning with the security forces.

From experience, the Commissioners learned that the provision of security for elections is a huge task that requires tremendous effort. The initial number of security forces provided in the elections was insufficient and additional reinforcements were needed. Adequate risk management plans were not in place for areas that needed the special attention of security forces and funds allocated for security personnel were insufficient. In order to avoid the problems in the future, the following practical suggestions are made:

- Boundaries must be delineated before the elections, especially in areas disputed by clans as well as those districts disputed by Somaliland and Puntland. These areas need security management plans. If delineation is not done before the elections, it may be impossible to hold elections in those areas. In the parliamentary elections, polling in three districts was suspended because of security concerns.
- The numbers of security personnel must be increased in order for them to be more effective and meet expectations.
- Funds allocated for security forces must be provided on time.
- Vehicle movement during Election Day should be strictly controlled. But the arrangements for this must be prepared in advance because none of the parties adhere to the rule.
- It is important that presiding NEC officers should work closely with the security forces.

## Staff Recruitment and Training

The first NEC hired thousands of election staff who were a crucial factor in the success of elections. The NEC organized and contracted the universities of Hargeysa, Amoud and Buroa and local NGOs to deliver a comprehensive training program for these staff, at the region and district offices as well as polling stations staff. The regional and district trainings were conducted in Hargeysa, Berbera, Erigavo and Borame, while trainings of staff from Togdheer and Sool regions were carried out in Burco. In addition, the political parties, candidates, local observers, and the police forces were also given training and the mayors and governors were sensitized about the importance of ensuring security for the elections. The NEC provided the training.

Overall, the level of competency of election staff was found to be satisfactory, especially as the entire electoral process was new to the country. Due to the difficulties in examining and checking the background of all election staff, there were tangible problems encountered, such as last minute absenteeism and the disappearance of some staff on the Election Day.

Furthermore, the recruitment process turned out to be gender insensitive leading to low female involvement in the process. Over the past three elections, the best election staff proved to be university students. To learn from past experience and ensure that potential setbacks are avoided, the following lessons should be considered:

- Since sufficient and qualified election staff is the backbone of voting operations, adequate time and resources should be allocated for their recruitment and training. In addition to this, the provisions for staff incentives, especially at the polling stations, should be revised since it is too low.
- On staff recruitment, priority should be given to those already trained for previous elections and with a good track record. Some of them did a very good job and having the service of those individuals will definitely enhance the management of elections.
- In order for the training to be fresh in the minds of polling stations staff, it should be conducted just before the election. That will also restrict the hiring of new people with limited experience.
- Swapping staff between regions, as done during

the 2003 presidential elections, was very helpful, although it is time consuming and costly and requires additional logistics.

## Election Equipment and Materials

The materials and equipment required for an election generally fall into two categories: sensitive and non-sensitive materials. The non-sensitive materials, which include stationeries, were procured locally through competitive bidding by local contractors. The sensitive materials, which include ink, ballot papers and ballot boxes, were purchased from abroad. Unlike non-sensitive election materials, the procurement of the sensitive materials required much thought.

The planning, design, acquisition, and distribution of sensitive election materials and equipment proved to be a major focus of the first NEC. In procuring the equipment, the NEC had to consider:

- Whether they were appropriate for the Somaliland environment;
- Whether they met the security and transparency standards required ;
- Whether they were cost-effective;
- Whether they were easy to use and understood by voters.

The NEC has experienced several challenges in relation to the election materials. Local suppliers had difficulty in understanding the specifications and usually failed to deliver materials on time. Local suppliers were not familiar with the bidding process which created problems for the Commission as local suppliers claimed they lost money and demanded extra money. Designing ballot papers was time consuming because of the need to verify candidates and party symbols. At the same time, voter education about the ballot papers was limited. Therefore, in order to avoid similar challenges in the future, the following issues should be considered:

- Clear specifications (such as the required size, colour, and in-built security features etc.) must be given to international suppliers. Constant checking should be made of printed materials, such as summary forms and tallying books. In addition, enough time should be allocated for proofreading of ballot paper samples.
- Separate warehouses must be prepared for the sensitive and non-sensitive equipment. Although both require attention from the NEC, sensitive materials require more.
- Comprehensive safety and control guidelines must be prepared for warehouses and NEC staff and security personnel must be adequately trained on such guidelines. The safety guidelines must be strictly adhered to by all relevant parties and any violations must be accounted for.
- The planning, design, acquisition, and distribution of sensitive election materials must be given serious attention. In order to avoid any unplanned setbacks to the electoral process, all materials (sensitive and non-sensitive) must be procured well before election date. Sensitive materials should be in place at least three weeks before the scheduled election.

## Logistics and Transportation

Logistics planning is a critical role of the NEC.[24] The aim is to ensure that equipment, staff, and communications are all in place in time for the election day. Logistics planning has to be both flexible and thorough and consider all possible contingency arrangements. Logistics involves a juggle between an immovable polling day, on one side, and delivery constraints from suppliers on the other.

Managing election logistics and transportation was an enormous task which had many constraints and challenges. The main challenges were to do with warehouse operations and transportation. The absence of good local transportation companies, inadequate planning for inaccessible districts, poor communication facilities and poor road infrastructure were the main challenges the NEC faced during first three elections. The following issues should be given special attention in order to minimize logistics problems in the future:

- The use of old vehicles or vehicles that are not in good condition for transporting election materials and equipments should be avoided. Such vehicles break down and fail to make deliveries as planned and therefore undermine logistical operations.
- Transport should be organized in convoys and be escorted. This is important because in previous elections, the NEC found that when a vehicle broke down, it took some time before the election authorities became aware of it. It is equally important to have a contingency plan in place.
- In planning logistical operations, special attention must be given to certain inaccessible polling stations,

*24 Source: ACE project - Administration and cost of elections, voting operations index and Bridge project/Building Resources in Democracy, Governance and Elections.*

such as on the Makhir coast. In addition, vehicles transporting materials to polling stations in coastal areas must be carefully and appropriately selected.

## Polling Stations

The focus of all the planning, recruitment, training, materials production and equipment acquisition, system testing, and the other preparatory activities is to ensure that operations on voting day run effectively. No matter how good the planning and the pre-testing efforts are, efficient implementation on polling day is the critical to the success of the election. In the days leading upto the polling day, and on the morning of the day itself, the final preparations are put into place. Wherever happens, on the night before the election, the polling stations and the following personnel, should be in a state of total readiness: NEC employees, party agents, local observers, police officers, subordinate staff and the Integrity Watch Committee members.

The set up, level of security and quality of polling stations as well as the competence and integrity of the station staff who are managing them are a key factor in the success or failure of the entire election processes. If, at the end of the day, things run smoothly at the polling stations, then the whole election process will be in good health. On the other hand, if the opposite is the case, it means the whole process is tainted. In the first elections, the NEC encountered numerous constraints and conflicts in relation to the management of polling stations. In order to improve on this for future elections, the following steps must be considered:

- Necessary preparations must be made well in advance. Polling stations should meet the correct standard in terms of polling station capacity, location and accessibility, and facilities as required by the electoral law.
- The polling stations staff have to ensure that voters strictly follow voting procedures. This can only be realized if tremendous efforts are made in voter education before elections. Voters must be educated on the consequences of violating voting procedures.
- The environment around the polling stations must be calm in order to avoid distracting of voters and election staff. The physical security of the polling premises and election materials as well as the personal security of voters and staff must be ensured.
- The integrity of voting must be maintained and election-related fraud must be prevented. For example, the illegal extension of polling time (open-ended voting) must be avoided. This requires commitment from NEC staff on the ground and security forces. From past experience, it is important that individuals assigned as the polling station manager demonstrate integrity and credibility in relation to his or her duties.

## Counting the Votes

Vote counting is one of the most crucial stages in the election process. Failure to complete the count and transmit results in a quick, transparent, and accurate manner can jeopardize public confidence in the elections and will directly affect whether candidates and political parties accept the final results. Frequently, the importance of detailed planning, training, and organization of counting is overlooked or considered to be of secondary importance.

The process of counting votes needs accuracy, speed and security in order to maintain public confidence in the process. In past elections many challenges emerged in relation to counting. In fact, the most serious challenges to the elections occurred when party agents, the polling station manager and the secretary had complete the tallying. To learn from past experience and ensure this last and crucial stage of election process passes peacefully, the following issues should be addressed:

- The counting process should be given serious attention by relevant stakeholders, especially party agents. This is necessary because the electoral law clearly demands that all party agents and heads of polling stations sign their endorsement of the final results. In some polling stations, the NEC found that one or two party agents deliberately left the station before signing the results and thereby sabotaged the process.
- The national electoral law also demands that if any party agent declines to sign the final result, he or she must fill in a complaint form at the polling station, a rule ignored in the past by parties and which led the cancellation of some boxes. If a party agent does have complaints regarding the final count, he/she must write a complaint immediately and sign it. In doing so, he/she complies with the law and the court settles the dispute. If that does not happen, the procedure of having the signatures of all party agents should be revised to avoid future abuse.

## Conclusions and Recommendations

Somaliland is a new nation and new to the process of democratization, including the organization and management of democratic elections. Despite technical and financial constraints, the country has managed to set up government institutions, write its laws and constitution and hold a referendum and three successful and credible elections since 2002., These were held without any significant security incidents.

This does not mean things were perfect or everything went as planned. In fact, according to former election Commissioners, there were numerous challenges and constraints. As explained, the challenges were enormous and had technical, logistical and resources dimensions, from which important lessons can be drawn. According to first Commissioners, attention needs to be given to the following issues in relation to upcoming elections:

- *Institutionalization of NEC:* The organizational capacity of the Commission as an institution must be strengthened in order to make it more effective, viable and independent. To achieve this, comprehensive internal rules and regulations must be established and maintained. The regular and technical employees of the Commission have to be empowered as they are the permanent and future resources of the institution. Building an electoral culture within NEC is critical. This essentially means making everybody aware of the importance of elections within the general context of institution building and the promotion of democracy, so that everybody acts to defend the electoral process whenever it is threatened.[25]
- *Political parties:* Similarly, the national political parties need to be developed institutionally. Once the legal framework is developed and adhered to there is no doubt that the entire election process of the country, including voter operations, will improve. In turn this will contribute strengthen democratization of Somaliland.
- *Trust building:* Building trust among major actors is key to the success of the elections. The government, political parties, and all other stakeholders must have confidence in the role and work of the Commission and recognize its authority.
- *Neutrality:* Once relevant players (government as well as political parties) have trust in NEC and deal with it as a neutral, independent institution, the work of the Commission will be much easier.
- *Staff recruitment:* Priority should be given to those people already trained for previous elections and who have a good track record. Having the service of those individuals will definitely enhance the proper management of elections.
- *Election security:* Delineation of boundaries and increased presence of security forces are the key for ensuring election security and should be given top priority. In past elections, the elections were cancelled in three districts because of clan disputes and because there was no electoral boundary delineations done in advance.
- *Stakeholder relations:* Throughout the election process, the NEC should maintain a close working relationship with all relevant stakeholders, including the government and political parties. Issues related to security, budget, and delineation of borders as well as addressing complaints need to be coordinated with the government.
- *Electoral law:* From experience, the former Commissioners have identified several deficiencies in the electoral laws. These must be immediately addressed and the different electoral laws need to be harmonized.
- *Moral authority:* The political parties and government both do things that can damage the election process. The commission must have the moral authority to challenge the actions and behaviors of the political parties and the government that may undermine the election process. The NEC cannot be indifferent to any action that may harm the public trust and confidence in the elections.

*25 source: Bridge project, building resources in democracy, governance and elections*

# Civic and Voter Education

**Abdi Ahmed Nour (Gurey) FOPAG**

*For democratization to take root in Somaliland, its citizens need to be empowerment to understand their rights and responsibilities. In this paper Abdi Ahmed describes how civic and voter education are vital to democracy and good governance and institutionalizing free and fair elections.*

## What is Civic Education?

In order to ensure that elections in Somaliland are free, fair, transparent and peaceful, the public need to be prepared through civic and voter education. This will ensure the majority of the people can participate in elections as citizens who are well informed about the electoral system and the prevailing circumstances and challenges in the country.

The term '*civic*' means the people, citizen and community at large. Civic education is a broader concept that involves conveying knowledge of the country's political system and context to the public. This might include information on the system of government; the nature and powers of the offices to be filled in an election; the principal economic, social and political issues facing the country; democratic values; the equal rights of women and men; and the importance of peace and national reconciliation.

Voter education is a component of civic education. It aims to motivate people to fully participate in elections, by informing them about their political rights and responsibilities within a democracy, including casting one's vote.

In the post-conflict situation of Somaliland, civic and voter education are especially important because the system of government and electoral processes are new and unfamiliar to many voters.

Through civic and voter education people learn about:

- The roles and responsibilities of citizens, government, political parties, interest groups and mass media.
- The importance of citizen participation in all aspects of a democratic society.
- The necessary conditions for democratic, free and fair elections.

The people of Somaliland are enthusiastic about democratizing all aspects of their life, and civic and voter education links voting to broader democratization issues and gives democracy a chance to take root. Civic education provides non-partisan information to people interested in improving their civic knowledge and skills and helps citizens to understand the relationships between themselves and their government.

One of the goals of civic education is to inform and empower citizens to make informed choices on issues that affect them in their day-today lives, be they social, economic or political. The importance of civic education develops in parallel with the freedom in political expression and participation. Greater understanding of the political system and awareness of the purpose of elections increases public participation and decreases the likelihood of invalid ballots.

Civic education takes several forms, including:

- Legal Rights Education, which focuses on citizen knowledge of legal rights so that he or she can enforce them or guard against their violation.
- Human Rights Education, which focuses on individual human rights, the core values and rights that define a human being and that must be guaranteed to preserve a person's human dignity and allow the individual to develop and progress in his or her political, economic and socio-cultural endeavors.
- Voter Education, which educates citizens on electoral laws and processes, and enables them to effectively exercise their right to vote.
- Democracy and Governance Education, which focuses on various aspects of democratization and governance.
- Citizenship Education, which is concerned with informing people about the rights and responsibilities of citizenship.
- Political Education, which aims to increase political literacy and understanding of the fundamentals of the political processes.

Since the democratization process began in Somaliland, some uncoordinated civic and voter education activities were carried out by different organizations in the urban centres, but no comprehensive civic and voter education

plans and programmes have been implemented.
The challenges facing civic education in Somaliland include:

- A lack of coordination among organizations carrying out civic education
- Lack of cooperation among the stakeholders
- Clan sentiments
- Corruption and mismanagement
- Insufficient public knowledge about civic education
- Poor conceptualization and planning
- Limited funding
- A short timeframe for delivering education
- Inadequate coordination among implementing initiatives
- Maintaining a capable electoral management body that is credible, impartial and neutral.

The challenges can be addressed by:

- Establishing a plan for awareness raising
- The provision of sufficient funds.
- Training as many staff as possible.
- Ensuring cooperation among stakeholders especially NGOs.
- Improving management skills.
- Creating mobile teams of educators.
- Make effective use of the media.
- Use respected people in the community.
- Prepare civic education material preparations.

A comprehensive civic and voter education program should start early, prior to the election, and continue through the election process covering all the constituencies in the country. The media has a vital role to play in disseminating civic and voter education. The international community for its part can also make a constructive contribution to civic and voter education and encourage full participation.

# Free and Fair Elections and the Role of International Civil Society Observers

**Adan Yusuf Abokor & Steve Kibble**
*Progressio*

*Since Somaliland's first district elections in 2002, the international NGO Progressio has played an important supportive role by organising and facilitating international election observers. In this article Dr Adan Abokor and Steve Kibble reflect on the role and contribution of international observers to the elections in Somaliland. The authors also comment on some of the political challenges that Somaliland faces in establishing a democratic system that draws on indigenous and modern practices of governance.*

## A Track Record of Free and Fair Elections

Free and fair elections are not just what happens on polling day, when foreign observers jet in for a few days. At the same time, the presence of observers makes polling day the worst possible time for elites who wish to steal elections; someone is bound to notice ballot boxes being stuffed or lost on route to or from a count. In this chapter we describe the long and short term processes that lead to free and fair elections. These general observations are derived from decades of experience in observing elections in Africa, Europe and Asia and Somaliland. In this paper we do not confine ourselves to the technical aspects of elections, such as registration, equal treatment of parties, unrestricted access to voters, training of electoral support staff, voter education and the like, but consider these technical elements in the context of the broader struggle for democracy and the obstacles to its achievement.

People in Somaliland have been engaged in building systems of legitimate and accountable governance since 1991. The proclamation of independence meant that

there was an opportunity to break with past corrupt, military and unrepresentative forms of government. While the lack of international recognition has meant a lack of governance support on the scale granted many post-conflict countries, it gave people in Somaliland the opportunity to build a system suitable for their needs.[26]For the first twelve years this was a hybrid system, combining traditional institutions of clan governance with formal Western-style government institutions. In May 1999 the Hargeysa government approved a draft constitution that would move the country from the clan-based system to a multiparty political system. Parties were to be restricted to three, were not to be based on tribal or religious lines and had to demonstrate support from all regions of Somaliland. Women were to be given the right to vote, although no women were consulted in drawing up the draft.

With the constitutional referendum in 2001, local elections in 2002, presidential ones in 2003 and the parliamentary elections in 2005, people in Somaliland are still assessing how these democratic gains and intentions are working out against the background of patriarchal clan and business interests and indeed some tensions emanating from political Islam. The multiple delays in the presidential elections since 2008 were also creating tensions.

## Progressio and International Observers

Progressio has observed - with varying numbers of observers - Somaliland's string of elections. To-date our biggest mission was coordinating a 76-strong team of international election observers (IEOs) that the National Electoral Commission (NEC) officially asked us to invite and help organise for the September 2005 elections to the House of Representatives. In addition to IEOs from four continents, there were a number of Somalilanders from the diaspora and expatriate staff of international non-governmental organisations (INGOs) who made up the team.

In the 2005 elections, some 800,000 Somaliland voters queued for up to six hours in the heat to vote, having spent hours walking to the polling stations.[27] Despite some major problems of resources, time and organisation the NEC ran a good election, assisted by experienced consultants. International NGOs lent vehicles and radios to the international observer mission, which enabled us to visit over a third of the 900 polling stations. There were some problems observed, related to the lack of a census and hence a registration process, a largely illiterate population and very complicated ballot papers with a multiplicity of symbols for the candidates, the use of official cars by government officers, and attempts at multiple voting. Transparency was rated more highly than the secrecy of the ballot. The one issue that especially concerned IEOs as well as the Somalilanders we worked with, was the small number of female candidates in the parliamentary election (see the chapter in this book by Amina Mohamoud, writing on women and elections) .

The 2005 elections were carried out peacefully, which contrasted with those in neighbouring Ethiopia; the diaspora played a visible role and contributed extensive experience. The parties although combative and unequally privileged were disciplined. We declared the elections 'reasonably free and fair', but stressed throughout that this was not the end of the democratisation process but in many ways its start.

## The Practice of Government

Whilst the structures for consultation and consensus building and participation exist in Somaliland, the democratic nature of the government and respect for civil liberties and the rule of law have been called into question since 2002 by some high profile legal cases, creeping corruption and an increasing investment in internal security structures. The security mindset of the Siyad Barre era (and the presence in government of personnel from that period) means the use of due legal process rather than arbitrary political action, such as use of security committees, has not been understood by all ministers and parts of the government. The same attitude has applied to the government's relationship with the media.

Iqbal Jhazbhay has argued that, "Somaliland illustrates the efficacy of internally-driven, culturally-rooted, 'bottom-up' approaches to post-war nation building: the success of this approach in reconciling indigenous cultures and traditions and modernity; and its success at achieving relative stability."[28] This, he argues, challenges the assumptions elsewhere in Africa of the need for strong, centralised post-colonial states; a model that is influencing choices of state architecture in Eritrea and

*26 Bradbury, Mark (2008) Becoming Somaliland. James Currey in association with Progressio, African Issues.*

*27 Adan Yusuf Abokor, Kibble, Steve et al. Further Steps to Democracy: The Somaliland Parliamentary Elections, September 2005 (London: Progressio, 2006).*

*28 IJ p 19.*

South Sudan.

Kibble and Walls, have argued that the process of democratisation in Somaliland has been facilitated "by an overwhelming public desire to avoid a return to conflict and an accompanying urge to win international recognition...".[29] They acknowledge, like Jhazbhay, that the process of state building in Somaliland has not followed a simple template, and needs to be understood in terms of local specificities and the dynamic interplay between a variety of historic and contemporary international and local forces. They argue, like Jhazbhay, that the resilience of Somaliland has been built on pragmatic accommodations between tradition and modernity. However, they suggest that it has become increasingly difficult to maintain a model of governance "that combines elements of traditional[30] 'pastoral' male democracy in the context of the Westphalian[31] and Weberian[32] nation-state[33]." They question whether this interplay between tradition and modernity has sufficient capacity to resolve present and forthcoming problems where elders, for example, once a key element in the hybrid form of state have become incorporated into state structures. People in Somaliland they suggest must face up to fundamental questions about how traditional institutions can fit in with the norms of modern democratic state. Clan, for example, continues to play a significant role in the political party-based system of democracy, and a decision is increasingly urgent on the system of election or selection for membership of the House of Elders or Guurti.

Given these extremely delicate and complex internal dynamics, poorly considered external interventions are, not surprisingly, sometimes perceived as malign. However, the importance of outsiders in providing technical electoral assistance, and especially observation, has frequently been stressed by people in Somaliland, including the government. We now move to what this entails.

## Civil Society Election Observing

Election observation can broadly be defined as: ongoing, organised action which is impartial, non-partisan and aimed at ensuring adherence to the ethics, laws, regulations and codes of conduct governing the electoral process. The mandate of observers is derived from both domestic law and international human rights law. Observing differs from monitoring in that it is limited to noting and reporting matters of concern to an internal or external authority. Civil society observing is also different from monitoring by political party agents, electoral authorities, or representatives of foreign governments or multilateral institutions, such as the United Nations and African Union. It also differs from other kinds of technical assistance. IEOs need to understand the purpose and broad principles of elections and their role as observers.

### *Elections:*

Elections are a legitimate means of changing power in a democracy. The lack of a participatory system of government lies at the heart of many intrastate conflicts. Elections *can* enable members of society, without discrimination, to participate fully in political, economic, cultural and social life. They can provide a mechanism for reconciliation and for preventing or mitigating violent conflict in polarised societies. But, there are no guarantees that elections solve problems. Indeed, elections can exacerbate tensions and encourage uncompromising attitudes, including the 'tyranny of the majority'. Normally, however, holding elections is much better than no elections, although given the violence that often accompanies elections, such as in Zimbabwe, Ethiopia or Kenya this assertion can certainly be challenged.

International human rights conventions support electoral laws by upholding the right of all citizens to participate in their government, as expressed in the Universal Declaration of Human Rights (Article 21 (3)), the International Covenant on Civil and Political Rights (CCPR) (Article 25b), plus regional protocols including the Banjul African Charter on Human and Peoples' Rights 13 (1). International human rights standards protect basic human rights crucial to the electoral process, such as freedom of expression, opinion, peaceful assembly, association, movement, and organising trade unions. Conventions against gender discrimination such

*29 Steve Kibble & Walls, Michael,'Tradition and Modernity in Somaliland:Beyond polarity: negotiating a hybrid state' for the conference on Democratisation in Africa University of Leeds 4-5 December 2009.*

*30 We are also aware that 'tradition' can be an invented modern concept used by government to divide and rule with the British Empire and contemporary Zimbabwe providing examples.*

*31 The Westphalian state emerged as a seventeenth century European concept of nation-state sovereignty based on two principles: territoriality and the exclusion of external actors from domestic authority structures.*

*32 Max Weber examined the rationalisation and bureaucratisation of the (European and indeed Protestant) state which he defined as an entity which claims a monopoly on the legitimate use of violence.*

*33 Mahmood Mamdani in his book, 'Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism', has talked of the bifurcated state under one hegemony that is organised differently in rural and urban areas.*

as the Convention on ending all forms of Discrimination against Women (CEDAW) also uphold women's rights to political participation.

It is possible to have elections that are free but not fair (which is why phrases like "generally acceptable" have come into use). Free is a broad concept involving freedoms being observed in general, but also involving the freedom to register, vote, stand as a candidate, have access to information, be elected. Fair refers, more narrowly, to the process of the election, including the impartiality of the government and its officials, equal resources and equal access to media for the parties before and during the actual polling day.

### *The roles of IEOs:*

There are various reasons for having international observers a presence at the presentation. International election observing can help prevent or mitigate conflict by providing unbiased observers to work with others to ensure that domestic electoral laws are respected.

IEOs should aim to be present throughout the pre- and post-election period and ensure process is transparent from registration through to the counting and the announcement of the results. In order to carry out their work the observers need freedom of movement and access to all parts of country.

In the pre-election period observers should assess whether appropriate structures are in place for the government to organise free and fair elections and for political parties to be able to contest elections. They need assurance that there is an effective and objective electoral administration in place, with qualified staff, that is insulated from political pressure. Observers need to assess whether legal norms exist that approximate to international standards and are accepted by the public, and whether there is adequate judicial independence and ability to adjudicate on electoral matters. They need to assess whether there is equal suffrage, in gender terms, but also that constituencies are of equitable size and there is equality of access to polling stations. They need to be assured of the fairness of voter registration and that there are adequate provisions to prevent double voting.

They need to assess whether there are unreasonable restrictions on participation or campaigning and whether there is agreement among the parties in terms of the form of ballots, design of ballot boxes, voting booths, manner of voting, proxy voting, and whether adequate procedures are in place to handle cases of disputed voting rights.

Observers can also assess the extent of civic and voter education and seek assurance that it is objective and non-partisan.

Monitoring the media is also an important role that observers can play, to assess whether there is equal access to the media and an absence of government censorship.
A key role of election observers should be to assess whether constitutional rights, international human rights standards, and civil liberties have been respected, including freedom of expression and association; that the political parties have operated within the law; the parties have not faced arbitrary restrictions on public campaigning or access to the media;, that government is not misusing public resources; that all parties and supporters have been ensured equal security; that the public have been able to vote without fear or intimidation; the secrecy of the ballot has been maintained and fraud and illegality avoided.

Some key questions for observers to ask to elicit this information include questions of citizenship, the eligibility of candidates, the ability to challenge procedures, freedom to campaign (especially in strongholds of opposing parties), accessibility of polling stations, adequate security, and whether voting and counting procedures being followed by all.

Observers should interact with as wide a variety of organisations as possible both those directly concerned with elections and with wider issues. They should liaise with the Electoral Commission on the management of the elections, including civic and voter education activities, media activities and domestic and international observation. Election observers also need to consult with local stakeholders - political parties, NGOs, CBOs, religious leaders, lawyers, etc. - about their concerns regarding the political process, the role and freedom of the mass media, and whether all parties have agreed to abide by the outcome of the elections. They should consult local organisations being trained as domestic observers and others. Observers also need to liaise with influential donor governments who are sponsoring the elections.

The legitimacy of an election will, in the end, depend on the local population's views of the proceedings. Election observers need to elicit a consensus rather than unanimity in making judgements about the outcome, answer to answer questions such as whether the outcome reflected "the will of the people".

The observers should report their findings to the voting public as well as influential governments and to the international media.

## Reasons for election observing

- It provides an independent, impartial evaluation of the whole process
- It encourages acceptance of election results
- It builds voter confidence
- It ensures integrity of process
- It encourages observance of international electoral standards
- It assists with the protection of human rights and strengthening of democracy
- It can help resolve electoral and other disputes
- It indirectly supports voter and civic education
- It can help to give voice to all parts of the population
- It can enable weak domestic institutions to gain confidence

Capacity-building for domestic observers groups should be an important part of preparation for elections. This builds structures that by virtue of being in-country can observe the entire electoral process. It can help build civil society confidence, mitigate against electoral fraud, and ensure local knowledge of elections is retained and that lessons learned can be carried forward to subsequent elections. Domestic observers can also provide a link to external observers.

Observing the vote is a key role of observers. This should involve the widest possible coverage of polling stations. Observers should be present at the opening of polling stations, check whether sufficient quantities of voting materials are available, whether there are checks on double-voting. Observers should not interfere with the polling process unless their assistance is requested by the authorities. Serious problems should be reported to election authorities.

Observers should also witness a sample of counts. This requires them to be present at the closing of the polls, and ensure that counting is open to official observers and representatives of political parties, that all issued ballot papers are accounted for and that there is a free and fair process for counting, verification, reporting of results, and retention of official materials.

After the count the main role of observers is to determine as quickly as possible to determine the freedom and fairness of the poll. This may require liaising with other observers. The observers should feedback their observations to public fora. But no premature statements should be made to media on freedom and fairness until all procedures have been completed. They should avoid passing judgement on the outcome of the elections and restrict their reporting to observations and suggestions for improvement.

## Key actors

Elections involve multiple actors who can all influence the outcome and all have a role in ensuring the legitimacy of the elections.

- NEC: The National Electoral Commission has the most important role in administering an election. The legitimacy of the election largely rests on the NEC being a neutral, independent, transparent and accountable body.
- Government: The government is responsible for using its authority fairly and ensuring the political parties have equal access to public funds, the media and transport during the campaign and preparation for elections. The government has responsibility to ensure the rights of its citizens and politicians are secure in competing in the elections. It is the government after all which will take credit for organising free and fair elections.
- Political parties: Political parties must compete freely and fairly and educate their supporters about their civic duty to vote in order to ensure the country has the right leadership to achieve prosperity and development
- Media: The media has a key role in achieving fair and free elections. It has a role in monitoring the distribution of public funds, and in ensuring proper campaigning by the political parties. It also has an important role to play in civic education and the participation of marginalised constituencies, like women, youth, the disabled and minority groups.
- Independent monitoring bodies: An independent monitoring board, comprising elders, religious scholars, and women and other respected figures, has an important independent monitoring and mediation role prior to, during and in the post-elections period.
- Donors: Donors should attach conditions on free and fair process of the elections. Besides providing financial support, they can also provide technical

assistance to support and advise the NEC and political parties, including exposure visits to other countries.

- Security forces: Security forces are crucial to protect the public from terrorists threats and enemies of Somaliland, peace and stability
- Traditional structures: The role of the traditional structures, notably through the House of Elders *(Guurti),* has been highly visible and effective in maintaining stability and reconciliation since independence and during the elections. The *Guurti,* however is an unelected legislative institution. As people in Somaliland experiment with multi-party politics, they will be challenged to maintain and incorporate those positive attributes of a pastoral democracy - consensus building, mediation, arbitration - within the system of government, while minimising its negative influences.
- Parliament's Upper House is a unique institution that has been at the heart of clan-based power sharing and consensual politics in Somaliland, linking modern political institutions to the traditional political organisation and, by extension, inter-communal politics to national politics. The public recognises the role that it played in mobilising the population in the war against Siyad Barre and in shepherding Somaliland through the minefields of post-war politics and state-building. There are many sources of legitimacy and authority in societies and although the authority of the Guurti is not based on a popular vote it is no less legitimate for that.[34] That said, the Guurti has been criticised for becoming too institutionalised and reliant on government to be able to act as the objective mediator in national politics that it was supposed to be.
- Civil society: Civil society has been busy organising itself in terms of gender representation, provision of social services, tracking budgets, and human rights practices. It is also the main source of domestic election observers.
- Women: Women in Somaliland can claim to be making progress in the representation of women in politics, albeit slowly.

## Conclusions

The declaration of Somaliland's independence occurred during the second wave of democratisation in Africa in the early 1990s. Arguably Somaliland has been more successful than others in legitimising the state in the eyes of its citizens, because its system of governance was based on a well understood and historically strong social contract between pastoral kinship groups. Somaliland's approach to rebuilding society and the state from communities upwards, gradually widening the arena of political agreement and political consensus, works, according to Ioan Lewis, in societies that are highly fragmented and decentralised, and do not conform to assumptions about the universality of civil society and Western multiparty democracy.[35]

How well does this model fit with the ideas emanating from civil society which are often influenced by their time in the diaspora and other (more Western) forms of democracy? It appears that some of the key actors are beginning to favour a change from the hybrid form of government in order to reflect more clearly developments in Somaliland, such as in women's groups, urban youth, and the business sector. How will the more traditional elements react to such movement after the elections? There is unlikely to be a linear path or indeed binary opposition between 'so-called progress' and 'tradition'. But, we believe that how the elections integrate with the wider democratisation process will be vital to the next phase of Somaliland's development. The key challenges will involve how to negotiate the difficult relationship between traditions of consensus-building politics with traditions of centralised, rational states. We have also pointed to other worrying authoritarian possibilities. It is our hope, as democrats, that best practice can be followed and that both domestic and international observation can help in this. However, as ever, the task remains one for Somalilanders themselves to achieve.

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# *Swimming Against the Current:* A Women's Experience in running for the First Somaliland Parliament Elections in 2005

**Amina Mohamoud Warsame ('Milgo')**

*Somaliland's parliamentary election in 2005 was an historic event twice over, being the first parliamentary elections in Somaliland and the first time for women to stand as parliamentary candidates. Amina 'Milgo' was one of seven women candidates who stood in the election, as a parliamentary candidate in Sahil region. In this paper she discusses some of the challenges that woman face in participating in Somaliland's parliamentary democracy.*

## Introduction and Background

The Somali speaking people living in Somaliland, Somalia, large parts of Djibouti, Region Five of Ethiopia and the Northern Frontier District of Kenya share a patriarchal clan social system in which decision-making tends to be regarded as the sole right of men. Even today, the clan system has a significant role to play in the politics of these areas.

After proclaiming independence in 1991, Somaliland's emerging institutions all reflected the strong influence of the clan system. For example, the first nominated House of Representatives and House of Elders (or the *Guurti*, as it is commonly known) were exclusively composed of men. No woman participated as decision-makers in the reconciliation conferences that took place in the early

1990s in Somaliland, be they local or national. The major reason for the exclusion of women was the selection of delegates on a clan basis. This practice of viewing men as solely suitable and having the right to participate in public affairs greatly influenced these conferences and the participation of women in political decision-making. Only in the National Reconciliation Conferences held in Borame in 1993 and in Hargeysa in 1997, were women granted an observer status, with two women at the first and twelve at the latter.

This was a typical example of how traditional political systems influence modern ones. This was to change slightly when Somaliland embarked on the road to democracy and adopted a multiparty system. In the first local government election conducted in 2003, two women were elected as councilors in 332 contested seats. That election used a system of proportional representation system, where the candidates whose names were placed towards the top of their party's list had a greater chance of winning seats.

Three years later, in September 2005, history was made when women stood as parliamentary candidates in their own right for the first time in Somaliland (and for that matter the former-Somali Republic). From 239 candidates the three national political parties put forward seven women – two from Kulmiye (Unity and Peace), three from UCID (Justice and Welfare Party) and two for UDUB (United Peoples Democratic Party). The two women candidates of UDUB did not participate directly in the elections due to insecurity in the areas they were contesting, but gained seats on the basis of proportional representation. The inclusion of women candidates on the party lists was a historic move, but was not without problems, as I will now discuss.

## Choice of Candidates

Since, as I noted earlier, Somali politics is greatly influenced by the clan system, the number of candidates in each region was based proportionately on the estimated size of clans in the region. This means that the larger clan would have proportionately more candidates. But no census has ever been conducted in Somaliland, so the allocation of parliamentary seats in each region was based on the number of candidates that won in Somaliland's only previous elections in 1960, multiplied by 2.6 to take account of the population growth since that time.

This being the case, clan elders and traditional leaders had an influential role to play in choosing candidates for the parties of their choice. Traditionally, and even today, clans thought of as more numerous wield power over less numerous and thus 'less fortunate' clans. Political parties were challenged to go along with the wishes of clan leaders. There were cases in which a certain clan, through its traditional leaders, would put pressure on a specific party to drop a candidate from its list and instead add the candidate of their choice. To go against the clan leadership risked losing the support of that clan, which no party could afford to do.

In some cases a candidate would be told by the party leadership to bring "his clan leaders" in order to demonstrate that he had their support. The candidate who was unable to bring along supporters "with weight" – that is traditional elders who have a good number of its people behind them - would face trouble. However, due to the proliferation of traditional leaders in recent times, there was always the possibility of the clans splitting and splitting their clan supporters. In such cases the parties would choose the candidate that they thought could command the support of the majority of the clan. In assessing the level of support a leader has one would take into account the level of the traditional leader[36] and the respect he has among his people.

Throughout history clans have been represented by their male members. Women's loyalty to their clan of birth *(reer kaan kadhashay)* is always questioned by people because those who are married are seen as belonging to their clan of marriage *(reer kaan u dhaxay)*. It was therefore difficult to include a large number of women on the party lists simply because women are not seen by their clans of birth as representing their interest. This 'dual clan identity", as well as the mindset of the Somali people - that women cannot and should not become leaders and run the affairs of the country - was the major obstacle for women who wanted to get into politics in general and onto the party lists.

The following anecdote sheds some light on the perceived roles of men and women and how men relate to and see women's participation in politics. As tradition goes, when a married woman visits her kin people, she is entitled to receive *xeedho* (a traditional container used for holding ghee-clarified butter or *muqmad*-deep fried minced meat). During the election campaign whenever I had a discussion with men from "my clan of birth", they would say, "You have a right to receive a *xeedho* from us

*36 The 'Sultan' ,'Ugaas' , 'Boqor' or "Garaad" is the highest in the rank of traditional leadership followed by chief Aqil and Aqil. Others carrying the title of an elder are also recognized by the clans.*

but not a seat in parliament." Or "you should be given a *xeedho*, not votes." These men were reiterating this tradition to remind me of my responsibility as a wife and that I should not meddle with politics, a sphere for the male members of the clan.

Some clans openly refused women to be put in the party lists thinking that their clan's chance of winning a seat would be jeopardized. The clan I was born into knew that UCID, on whose ticket I was running, had made the decision to put me in the candidacy list regardless of whether I had their support or not. So the clan did not bother to contact the party. UCID was "gambling" on the votes that I could get from women.

The small number of women candidates in the 2005 elections reflected the general uncertainty among the parties and clans about women candidates. The parties were unsure about the support that women candidates would get from their clans of birth, their husband's clan or women voters in general. The seven women candidates were therefore a litmus test for women's political inclusion. The general thinking among the leadership of the parties was that if women could secure significant votes, then they would become a force to be reckoned with. If on the other hand, they were not able to raise large number of votes, then the parties would know that in future elections, they would get away with fewer women candidates.

## A brief political career and experiences in fitting into a male-dominated institution

In the beginning, I did not have political ambitions myself, but women's absence from the political scene of Somaliland always bothered me, as it bothered many others like me. Women's absence from leadership positions had been a norm within the Somali National Movement (SNM) before the reemergence of Somaliland as a sovereign state in 1991. Although women played a strong role in supporting the SNM fighters and there were even some women who took part in the fighting itself, women never participated in the SNM congresses. An exception was the third congress held by the SNM in 1983 where there was one woman delegate among 151 men.[37] Women were also absent from the central committee of the SNM.

I remember that in the latter years of the struggle for liberation (in the late 1980s), I used to ask the leaders of the SNM when they were touring Europe where I lived as a refugee in Sweden, why women were absent from the central committee of the SNM. I never received an adequate answer. It was obvious that the SNM leadership either ignored or did not realize that women had the same rights as men to participate in the decisions that affect their lives. This continued to affect women's political participation after Somaliland's independence.

After I returned to Somaliland from Sweden in early 1997, I became part of the group of women who founded Nagaad Women's Umbrella Organization (a network of women organizations). The main reason behind the formation of Nagaad was a concern by the women's organizations at that time about the absence of women from the decision making processes in their country. In fact, Nagaad's establishment coincided with the conclusion of the second National Reconciliation Conference in Hargeysa at which the late President Egal was re-nominated for a second term of five years term. It was during that all-male conference that the 12 women observers experienced the real difficulties women would face to realize their right to political participation. Soon after the conference Nagaad was established by 25, mostly women's, organizations, to promote a united voice for women's rights in general and their political participation in particular.

In 2002, as part of a series of studies on women's position within society, the Somaliland Women's Research and Action Group (SOWRAG), which I was heading at that time, did some research on women's political participation. The study[38] sought to find out people's views on women's political participation and the readiness of potential women leaders to participate in politics. Many respondents saw the political arena as the preserve of men and "a woman's proper place" as the home. However, from a workshop held to discuss the findings of the research, came a recommendation to create a Woman's Political Forum (WPF) to promote women's political participation. Part of the activities of the WPF, which I became a member of, was to train and encourage women to vie for political office. Some of the women, especially the younger ones, regularly confronted us with the question of why we, elderly women, were not taking the lead. I decided to get into politics by becoming active in UCID Party, which I was closely involved with when it was being formed. I was later elected to the position

*37 Interview with Abdurrahman Yussuf Duale (Boobe). 17th December 2009 in Hargeysa*

*38 The study was funded by Progressio, formerly known as ICD. "Assesment of Potential Women Leaders in Somaliland" was conducted by SOWRAG in 2000*

of 3rd Vice-chair at the party's 2nd Central Committee meeting in 2004. In 2005, I became a candidate for UCID in the parliamentary elections in Sahil Region. During my short time within the leadership of the party, I had firsthand experience of being the only woman among all-male leadership.

Although political parties in Somaliland receive substantial support from women, their presence in the decision-making organs of the party is minimal. Moreover, there is a tendency within parties to see the major function of women among their ranks to be to deal with the women 'wings' of the party, organizing campaigns and mobilizing women voters on the party's behalf. Often, therefore, women in the decision-making bodies of their respective party do not participate in the party meetings as much as they should do.

Working with a party whose leadership was male dominated had its positive and negative aspects. Among my positive experiences was the respect that my male colleagues in the Executive Committee showed to me. As the only woman, I was always given an ample chance to give my views and most of the time my colleagues would make extra efforts to make me comfortable.

On the other hand, though, it is tough to fit into a political outfit made for men. A case in point is the environment in which political meetings and decision making is reached within parties. Since most men chew "khat",[39] they prefer to conduct meetings and discussions in these chewing sessions. Sitting in these sessions can be very uncomfortable and intimidating for a lone woman. Although there were many men participating in the meetings who did not chew, they never felt the uneasiness that I felt as a woman. When I chose to stay and participate in such meetings, I would sit on a chair in some corner. At other times, I opted to stay away from the meeting altogether. There were also times when our party members would "chew" with others who were not party members and in these cases my colleagues preferred that I stay away.

The most embarrassing moments I could remember were those instances in which important traditional leaders visited the party headquarters to meet with the leaders. Some of these visitors would greet the men but skip me. I could see that these elders felt uneasy in my presence and did not know how to relate to me. They had never saw a woman amidst men discussing politics and felt that I was in the wrong place. They would ignore me and act as if I was not there. I would look them in the eyes, but they would still ignore me and avoid any eye contacts, perhaps wishing that I would leave so that they could speak about the issues they came to discuss. On these occasions I would usually not leave the room, but there were some occasions when I made an excuse to leave.

*39 Catha edulis, whose leaves are chewed for its stimulating effect, in these chewing sessions, the men sit in a relaxing mood facing each other on mats on the floor wearing loose fitting cloths.*

## Numerous challenges with my candidacy

The seven women who were running as parliamentary candidates for the first time in their country's history faced many challenges. While some were common to all the women candidates, others were peculiar to one or other woman candidate. In the following section I will concentrate on the specific challenges that faced me personally and explain the common challenges, as I see them.

The initial challenge that I faced was the slim chance that I had in winning a seat. First, there were three candidates (two men and I) from the same sub-clan, running for different parties. This diminished the chances of any of us securing a seat and as a woman candidate I had the least chance. Second, my husband and I were born into two different clans. As I was running in the region of my "clan of birth", they viewed me as an outsider who had no right to run in what the clan saw as "their territory". And third, since "my clan of birth" overwhelmingly supported the ruling party of UDUB, they agreed to endorse the candidate of their choice who was running for UDUB and give him the resources that he needed.

Third, as a woman with no clan support, my resources to run the campaign were limited.[40] Whatever resources I did manage to raise could not cover all the travelling and other campaign costs. Furthermore, unlike the male candidates, I needed to travel outside the "traditional clan territory" in the hope that I might get some votes from other women. This meant that while a man could focus his resources and energy in the limited areas where his clan is concentrated, I needed to cover all the major towns and villages of the whole of Sahil region as I was not sure where my votes would come from. This involved many costs that could not be secured from any source other than a limited number of institutions.

Nagaad and friends of Nagaad organized a fundraising campaign for women candidates and contacted private companies, international and local organizations and

*40 Businesspeople and others with the means usually support men candidates from their clan. Contributions are even collected from ordinary members of the clan to support male candidates.*

individuals. The funds secured were minimal and were spent on campaigning material such as stickers and crucial training such as campaigning, communication, leadership and principles of democracy.[41] In addition to these organizations, a number of individuals also gave their support to the seven women candidates. I received some money from friends and family as well as a diaspora organization called *Gaaroodiga.*

A problem that all the women candidates confronted was the confusion caused by the cryptogram that some men candidates chose as their election symbol. Due to the high illiteracy rates of the voters, each of the candidates running in a specific region has to have a unique election symbol. A wide variety of signs such as work tools, traditional utensils, and sports items were chosen by the different candidates. Six men from UDUB Party, each running in a different region, chose the picture of a woman as their election symbol. This confused some illiterate women voters, who thought that the picture of the woman in the ballot paper naturally symbolized the women candidates. Many cases have been reported of rural women voting for the women candidates by marking the picture of the woman in the ballot paper. It is not clear however, whether some of the votes intended for the women candidates went to these men or whether this was the real motive behind the choice of a woman's picture as an election symbol by these men candidates.

Another challenge that I faced was the difficulty of publicizing my campaign through stickers. It was the custom among the candidates to put their election stickers with their photos and election symbol on cars owned by their clan members or friends. Since cars were a quick way of giving publicity to a candidate, they were the best sought method for campaigning. For men there was no problem to find as many cars as possible. But for me this proved very difficult. All the cars I approached were already publicizing a candidate from their clan. Even close relatives who happened to belong to a different clan than the one I was born into were reluctant to put the sticker with my photo and election symbol on their car. Their justification for refusing to do this was that they were campaigning for some candidate from their sub clan, it would be difficult for them to put mine beside the other candidate.

The most damaging problem that I faced concerned the rumours. These came to my attention only one day before the election date. It was unclear how widespread the rumours were or whether this was calculated propaganda to divert voters away from me, but many women supporters came to me to clarify what they had heard. Word of mouth and oral messages can spread like wild fire among the Somali people, being an oral society. The essence of the messages in the rumours was: "Unlike the men candidates, the woman candidate needs only a small number of votes to secure a seat". "Do not waste the votes on her, as she will come out anyway". It was too late for me to counter that propaganda and I did not know what to do. I immediately called the National Election Commission Chair to contact the BBC Somali service which is popular among Somali speaking people in the hope that when people listened to the news, they would know the truth. I guessed the Chairman was busy with the burden of election preparations and could not make the announcement.

Another area that posed a challenge for me was the media. The presence of the media was limited in Sahil region where that I was a candidate. TV and national radio coverage were limited to Hargeysa, the Capital and all major newspapers are published in Hargeysa with only a few copies reaching Berbera. Furthermore, it was the hot season in Berbera which restricts peoples' movement and made campaigning difficult. In other cooler areas with better media coverage the situation improved, but the media was biased against me as a woman candidate.

One example in Sheikh town illustrates how women were depicted in the media. When I was campaigning there were two men from my party who were also campaigning on the same day in the same town. So we joined forces and addressed a crowd in a square. I spoke, among other things, about the economy, the environment, health and education. To my surprise, when the newspaper came out, there were three columns allocated to each of the men candidates' speeches whereas my speech was reduced to four lines or so. Moreover, the reporter who seemed to be biased against women depicted me in the four lines as speaking "about some women issues".

Another problem I faced was the hostility shown me by some men in the area were I was conducting my campaign. On at least three occasions, I was faced with open hostility from men who share with me the same clan of birth. On two occasions I was sitting with some

*41 Among the organizations who responded to the request for support to the women candidates are SILC, UNDP, Star Airlines, TELESOM, Action Aid, COSONGO, Progressio; Nagaad members such as Candlelight, Havayoco, ADO, BVO, CCS, Hawo Group, SOWDA, and WORDA; and the British Embassy through East African Human Rights. Our donors such as Novib, HBF and ISF also supported us in many different ways.*

village women discussing the importance of women's participation in the decision making process and taking their views and concerns to the negotiating table. Since most of the women that I was interacting with saw political posts as a men's affair, I focused my campaign on making the women understand that a woman has as much right as a man to run for a political position.

On one occasion, an elderly man approached me and said an angry voice, "Are you the woman who is running for Parliament?" I confirmed in a calm voice that I was the woman candidate. The old man then started to shout at me saying that I had no right to stand for elections in this region and that I should go back to the area where my husband came from. He further accused me of taking "their woman's votes" from the clan. I told the elderly man in a dignified and respectful way that I had also a right to campaign in this region and that the women I was speaking to had a right to vote for who they want to. Upon saying this, the women and a crowd who came to see what was happening all laughed and clapped their hands. The old man walked away more angry than before.

On another occasion, a man entered a hut where I was sitting with some women including his wife. He pulled off the curtains and told me to leave "their women" alone. I told the man that these women were not his property and that they were free to discuss and sit with whoever they wanted to. His wife looked at him, turned to me and told me to ignore him. I later found out that my cousin who lived in the village went straight to the man after he heard the news about my encounter with him and beat him up. They were both put in the police station for the night.

In a third incident, as we were driving along a road some men who were standing a short distance away took off their shoes, raised them above their heads and pointed the shoes at me. According to Somali tradition, this gesture is very rude and had I informed on these men, they could have been penalized for this kind of behavior. It was their way of showing me that I was not welcome to campaign in what they saw as their territory.

The incidents indicate several things. First, men regard their wives, the women from their clan or the women who married into their clan as being under their control, including even their right to vote. This is especially true when the women involved are illiterate and are not economically independent. Second, as I noted earlier, a woman's clan identity is not as evident and clear as a man's. This is the reason that both the men I encountered told me to leave their women alone. They were suggesting that I do not belong here even though my father was from this territory. They would never have told a male candidate to leave the area as they would regard him as having a right to campaign as he so pleased. And third, the men were angry because since the "clan" endorsed a male candidate, they saw me as threatening to steal "their women's" vote.

Although I did not experience religion being used to undermine my candidacy, some preachers did talk about the issue of women in politics in the Friday prayers. Religious men discussing current issues during Friday sermons is a routine practice and that is perhaps why they raised the issue of women's candidacy. Some allegedly spoke negatively about women wanting to take part in politics. And certainly, many men and women use Islam to curb women's advancement, including their political participation and portray it as un-Islamic. This is despite the fact that there is nothing in the Quran which bars women from participating in political decision-making. On several occasions, women came to me and related how they were told by "religious" people that it is a sin to vote for a woman. I tried to convince these women that it is not a sin to cast their votes for women. I am not sure whether these women were really convinced since they would have preferred to hear this from a religious leader rather than a woman standing for a political position.

## Some Positive Outcomes

Despite all the challenges and obstacles that faced me as a female candidate, there were nevertheless quite a number of positive outcomes that need to be mentioned. During the campaigning period, I had the chance to sit with, talk to and learn from so many women that I would not have reached otherwise. On my part, I took the opportunity to raise their awareness of the importance of women's political participation and the relationship between politics and the day-to-day lives of people. For many of these women, it was their first time to learn about these rights and why it is important to raise their voices in support of them.

The confidence of many women, especially the younger generation, has been built by seeing women campaigning and running for parliament. Young women came to me and asked me shyly why, being a woman was running for parliament? I took the chance to explain to them that both women and men have the right to run for political office and that they can also run if they wanted to. By interacting with these young woman, I could feel and see how their understanding and their confidence about

women's aspirations for leadership was growing.

At the beginning of my campaign, I was not sure how the general public would react to my wanting to run for a parliamentary seat. Despite my initial fear of open opposition, I did not experience any major threat or violence, apart from my encounter with the few men in some villages that I was campaigning in. I was especially fearful that some elements in society would use religion as a tool to discourage people from voting for a woman. Although some of these elements did use religion to manipulate women voters, they did so sporadically and privately but did not systematically reach a large public.

Most importantly, a wall has been broken. Women are now represented in both Houses of the Parliament. This was unthinkable in a strong patriarchal, clan based society where leadership positions are still seen as strictly the prerogative of men. The number in parliament is minimal (i.e. three women out of 164 members in both the House of Elders and the House of Representatives), but to the women who have been struggling to improve women's political representation for the past decade, this is a significant move which has raised the hopes of many women across Somaliland.

## Recommendations

In order to further increase the above successes, I conclude this short paper on my election experiences with the following recommendations:

- There is a need to build both the institutional capacity of the parties and the capacity of political party members to fully understand democracy, gender and human rights.
- Political parties should come up with a transparent, democratic candidate selection and nomination process.
- A support fund for women candidates should be set up.
- There is a need for continuous intensive civic education for people, and especially women, so that they can participate properly in the elections and understand democracy and their civic rights.
- More men should support the promotion of women's political participation.
- Political parties should make room for women in their decision-making organs.
- An alternative setting is needed for reaching major party decisions outside the 'khat' sessions. This would be good both for non-chewing men and women.
- The Government of Somaliland and political parties should demonstrate a willingness to adopt affirmative action to increase women's political participation. This will enhance and increase the credibility of democracy in Somaliland, for a democracy in which half the population is missing is questionable.

# *Part Three:* Local Council Elections: Somaliland's Experience

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*Elections alone do not make a democracy. A measure of Somaliland's democracy will be the way its elected institutions function. Highly localised democratic practices have been a characteristic of Somali pastoralist society and balancing the centralising forces of the state with the demand for a measure of localised political autonomy has been a challenge for all Somali governments. The creation of a decentralised democratic government was integral to the SNM's vision for the country. Somaliland's first district council elections in 2002 created an opportunity to establish a decentralised democracy. In this article Suad Ibrahim examines the extent to which this has been realised, and suggests ways in which local democracy and public participation in government can be enhanced.*

## Introduction

This paper begins with a brief background to political decentralisation in Somaliland's and how it has evolved over the last two decades. It then examines the challenges facing the process of local democracy since the 2002 district council elections and recommends how political decentralization in Somaliland can move forward. [42]

## Decentralization and local Governance in Somaliland

The experience of living under a highly centralized authoritarian rule during the regime of Mohamed Siyad Barre, has generated widespread public interest in Somaliland in a decentralized system of governance more suited to the political culture of Somali pastoralists society (APD/WSP 2005). Decentralisation was also a key element of the political programme and constitution of the Somali National Movement (SNM) during its struggle against the dictatorial regime.[43]

On May 18, 1991, three months after the government of Somalia was overthrown, Somaliland declared its independence from the rest of Somalia. A two year interim government headed by SNM Chairman Abdirahman Ahmed Ali 'Tuur' was established. But, it never functioned because factional fighting within the SNM broke out in Burao and Berbera. Hostilities were eventually brought under control and a meaningful peace was restored at the 1993 Borame peace conference where a new system of government was agreed upon (APD/ Interpeace 2006). The conference produced a National Charter which described the system of governance as a beel system, in which the power was shared along clan lines.

The Charter also identified decentralization as a key system of governance for the new administration.[44] Regions and districts were given the right to nominate their own councillors. This was later challenged by the Ministry of Interior which issued a decree stating that, if the regions and districts should not nominate their councillors within 45 days, then the Ministry would take the responsibility to nominate the local administrations officials at a request to the parliament (Apd/WSP 2005). The Ministerial decree also defined clearly the structures of the region and district councils and their duties and responsibilities. This was passed to parliament to pass into law. However, it created debate within the House of Parliament as to what should be the nature and the form of decentralization (ibid). According to a former MP who was also member of Central Committee of SNM, the whole issue was deliberately polarized by the Ministry of Interior in order to prevent the transfer of power to the local communities.

Although the general principles were reaffirmed by parliament,[45] amendments were made to Article 21 of National Charter, which gave the central Government the authority to nominate Local councillors until the people were able to do so through elections (APD/WSP 2005).

*42 This paper is taken from a report of APD/Interpeace's work which will be published in the near future.*

*43 It mentioned in the constitution of SNM as well as its political program*

*44 Article 21 of the National Charter underlines the importance of a decentralized system of governance.*

*45 The previous parliament reaffirmed the general principals of decentralization in the constitution.*

Council nominations continued until the constitution was completed and passed by the parliament in 2000. The 2001 constitutional referendum then set in motion the process towards a new electoral system. This began with the formation of political organizations, followed by district council elections in 2002.

Until now, the consensus on the need for a decentralized system of local governance remains unchallenged. Many people, particularly those in the regions believe that decentralization is essential to fulfil their rights to political participation and that it enables communities to have better access to essential social services.

## Somaliland's Experience of Local Elections

In December 2002 the people of Somaliland went to the polls and exercised their right to elect their local leaders for the first time in more than 30 years. Around 300 local councillors were elected in 16 out of 23 electoral districts.[46] This was in itself a major achievement. However, the development of functional local government has become a struggle between the central and local governments. Seven years after the local elections, the challenges of decentralization are numerous. According to earlier studies and research, these include a weak tradition of decentralized governance, a lack of clear laws and policies to guide the implementation, inexperienced councillors and the lack of organized civic associations. Some of the major obstacles confronting the local governments and their institutions are as follows.

## Administrative authority

Decentralization in theory involves the transfer of political, administrative and financial authority to locally elected leaders. In practice in Somaliland the local councillors have limited autonomy in decision-making. One of the major obstacles to political decentralisation is the absence of a legal framework that defines the relationship between the central and local government.

The constitution of Somaliland clearly defines the political, administrative and fiscal independence of the local governments.[47] In addition to that, law no 23 of Regions and Districts serves as the administrative law of local governments. But the implementation of these laws is problematic at the local and central level and does not facilitate the development of a strong local government. Local government is granted only limited authority to pass local laws, regulations and by-laws, as everything, including the by-laws, have to be approved by the Ministry of Interior. According to the elected councillors, the government has limited their authority to the level of day-to-day activities. More often, it is the central government or the head offices of ministries in the regions that are responsible for leading the general policy of the region, implementing projects funded by central government and liaising with the other regions and districts.

## Fiscal Autonomy of Local Councils

### Local revenue

The fiscal autonomy of the local government has been an area of major contention between the local and central government. Law no 23 of Regions and Districts confers on local governments the authority to raise their own resources to support local services, such as health, education, security and water. But in practice none of these so far fall under the responsibility of the municipalities, with the exception of sanitation.

District councils have only limited authority to raise local revenues, which affects their ability to develop the fiscal capacity to provide and manage local public services. The absence of a legal framework that clearly defines tax jurisdiction between the central and local government means that central government collects taxes which could provide local government revenue. Many local authorities are therefore opposed to the way in which tax collection responsibilities are assigned. Some have attempted to introduce a taxation bill to correct this, but this was quickly dismissed by the central government on the grounds that it violated Law no 12 that Unified Taxation (APD/Interpeace, 2006).

The government does transfer money to all district councils in accordance with Law No 12,[48] but there is a lot of uncertainty surrounding this payment. One major problem is that it never arrives in time and when it does, it is not the amount mentioned in the law. There were also times when the central government diverts this money to other national needs, such as the elections of 2005 and the rebuilding of Sool region. This move and others have frustrated the councillors who think that the central government is not serious about the development of strong local government.

In spite of these problems, local governments have established their own - relatively small-revenue base

*46 No elections took place in 7 districts which were awaiting approval by parliament.*

*47 Please refer to Arts 110,111 and 112 of Somaliland constitution*

*48 The money is called a local government subsidy and the amount allocated for the local governments in Somaliland amounts to $ 2 million per year (APDxxxxx)*

from, raising taxes on property tax, market fees, services fees, licenses and permits and rental income. Reforming the existing Taxation law would be helpful to the local governments as it would allow them to collect those revenues presently collected by the central government on their behalf. Many argue that this is a question of political willingness on the part of the central government, rather than a need to enact legal reforms.

### Poor Revenue Management

Despite the obstacles posed by Law no 12 of Unified Tax to the growth of the local government's tax base, other factors contribute to the lack local government revenue. Some of the main issues identified by the local councillors themselves include:

- Lack of data: property tax is the biggest source of income for the local governments, but there is no proper assessment or existing register of the number of homes or other building, except the recent General Information System (GIS) established in Hargeisa with the help of UN HABITAT.
- Weak tax collection system: over the past decade the system of revenue collection has remained manual. A cash book and revenue collection register is the only financial documents available and this type of system is born to corruption and mismanagement.
- Tax collectors: the majority of the staff recruited as tax collectors are unqualified and corrupted individuals. There are many stories told, particularly about the procedures used by the teams who move around the street markets on daily bases to collect local government taxes from the stalls.
- The public perceptions of tax: there is a lot of public resentment about paying their taxes. This is due to a lack of trust, of information on how the money is spent and the lack of citizens participation in budgetary planning and local government affairs.
- Poverty and weak economy: this is the major problem for most of local municipalities, particularly districts in the regions. Somaliland is still recovering from the scars of war and does not have a strong economy that supports its citizens. With the high rate of unemployment, not many people can afford to pay their taxes.
- Tax evasion: the lack of enforcement and incompetence of the local governments are also obstacles to the growth of local government revenue.

### Weak Local Councillors

The local elections gave the public the chance to elect their leaders, but there is widespread dissatisfaction among the electorate about the performance of the elected councilors. This is partly attributed to the system of local elections. In the local elections people voted for the party, as the electoral system was based on the use of a party list. Many people saw voting for the party rather than the individual as 'indirect voting' and for that reason they are unable to hold the local councillors accountable for his/her actions.

The competence and the qualifications of elected councillors is also another problem. None of the local councillors had previous experience in local government work. During the run-up to the election, insufficient time was given for the public and the political Parties to select and nominate qualified and competent individuals. In addition, the Parties and the Electoral Commission ignored the selection criteria and did not properly screen nominated candidates in the run-up of the election.

The turnover of Mayors is another problem. Within the first two years of the election, 15 mayors had been changed in five major districts causing widespread public frustration. In every district, with the exception of Erigavo and Hargeysa, mayors have been changed two to three times. Personal interest combined with unclear divisions of duties between the councillors and the mayors are believed to be the reasons of the high number of impeachments of mayors. To address the problem, the Ministry of Interior issued a decree banning the impeachment of the mayors for 18 months (APD/ Interpeace, 2006). But, a few months later the ban was lifted by the Ministry and the problems started again.

### Lack of Public Participation in Local Government Affairs

The engagement of the public in local government decisions such as the annual budgeting, revenue collections, resource distributions and land use can build trust between the local government and its citizens. It can help to improve decision making, reduces opportunities for corruption, and builds consensus on critical community issues. In Somaliland, however, the public is neither engaged nor aware of decisions made by the Local Council. This is partly due to the legacy of a highly centralized system of governance, a lack of understanding about their rights to participate in the local government affairs and the absence of open space for discussions and

consultations.

Although they are elected by the public, the Councilors have shown little commitment to interact with their constituencies. Most people say that these Councilors are not accountable to the public, to the government or to the political parties (APD/Interpeace, 2006). By contrast, the mayors have to answer to the demands of local councilors who threaten to impeach them if they do not address their needs. The lack of formal public participation in local government affairs is also rooted to local leaders' disinterest in promoting it, underdeveloped civil society groups that do not reflect the composition of the community, and uniformed and disorganized citizens that cannot mobilise themselves to hold their local leaders accountable. In recent, however, years the interaction between the local councilors and the public has improved through the establishment of districts development committees, and because some of the community development issues addressed require collaboration and community contribution.

Although it is not widespread, some organised neighbourhoods and communities and local NGOs do work with the local governments on specific projects. In some regions there have been several neighbourhood-driven initiatives in which the city officials and committees representing these communities have collaborated in building or repairing roads and further activities are planned to build on these successes. Elsewhere, local governments have established ad hoc committees representing different communities and regularly consult with them about municipalities' services. These developments are positive steps in terms of promoting public participation, but there is a need to broaden the approaches and institutionalise them. And, importantly, public participation in local government budgeting and planning has to become established practice.

## Conclusion and Recommendations

The 2002 local elections was Somaliland's first opportunity to introduce meaningful decentralization. It is now widely accepted that these local elections did not fulfill the promise of decentralization because the accompanying legal and administrative reforms required establishing the proper structures, relationships and responsibilities among central and local government, were not put in place. A high degree of control is still being exercised by central government over local governments. Overcoming these challenges will require comprehensive legal and administrative reforms and long term capacity building for and the local government staff to ensure that they are more transparent, accountable and responsive to those who elected them.

Elements of the reforms that are needed include developing a national policy on decentralization, a review of the law on regions and districts, and of secondary laws. It is also essential to expand local revenue generating capacity. This similarly requires comprehensive legal reform that clearly defines the local government tax base and the authority to levy tax, as well as building the capacity of local municipalities for the collection of local revenue and raising public awareness of the importance of taxation and what it can do for their respective communities. Local government financial systems also need to be improved. This requires a thorough review of local government financial policies and systems, improved financial control mechanisms and long-term training for local government staff in financial management. Finally, public participation can be enhanced by taking steps to institutionalize it, by establishing organized structures such as specialized committees, and through civic education.

# Traditional Institutions in modern governance: the House of Elders

**Sadia Musse Ahmed**

*Since 2002 all of Somaliland's governing institutions have been subjected to public elections, with the exception of the Upper House of the parliament – the House of Elders (Guurti). The Somaliland's elders have been commended for their role in establishing peace and stability in Somaliland in the early 1990s. Their incorporation into government was an innovative fusion of traditional and modern government that increased public representation and participation in government and contributed to the stabilization. In recent years criticism of the role that the Guurti has played in Somaliland has been growing and there have been calls for a fundamental review of how the Guurti is selected and its function. In this article Sadia Musse considers the relationship between traditional and modern governance institutions in Somaliland.*[49]

## A Historical Perspective on Traditional Institutions

In Somali pastoral society 'customary law' *(xeer)* and the leadership of elders *(odayo)* are two key governance institutions. All adult males could, in theory be elders, with the right to speak in council *(shir)*. In practice not everyone is selected as an elder. There are no formal institutional hierarchies, but certain lineages have titled elders or senior elders, known by different names in different Somali speaking territories: *Imam, Boqor, Sultan, Garad, Malaaq, Wabar and Ugaas* in different parts of the Somali nation. Traditionally religious leaders did not have a political role, but were consulted and gave religious advice. Shari'a law was practiced, but customary law usually took precedence over religious codes and directives.

An elder is a delegate and representative of his clan and is selected according to certain procedures and criteria, as is attested to in poems and proverbs. A family or lineage may claim the position of the elder or Sultan by descent, but the final selection lies with the clan *(Qoysna boqorku leeyahay qabiilkuna xulashada)*. An elder is chosen for certain attributes, among them being, wisdom and age, wealth, generosity, patience, courage, decisive decision-making, fairness and oratorical skills. These are underlined in proverbs, for example:

> *A leader must control anger equivalent to the amount of hard water a camel can drink at a time. (Inta calool geel ceel dhanaan ka qaado waa inuu cadhada ka qaada.)*
> *A leader can accept blame equivalent to the amount a raw meat can take from dragging on a soil. (Inta cad la jiida camuud ka qaadana waa inuu canaanta ka qaada.)*

Until the 1970s, Somali society was considered an oral society, with not written Somali language. Proverbs were therefore important as a medium of logic and understanding, and poetry was used as means of communication among different communities and.

Once selected, an elder is expected to represent the interest of his clan and to work with other clan elders for welfare of his community. Negotiation skills are important attribute of an elder who must deal with any contentious issues among his community or with neighboring clans. Decisions are best reached through consensus and it is prohibited for an elder to go back on his word, even when he was wrong, because he would lose respect. For most problems there would a precedent that could be referred to in order to provide a solution. The council of elders *(shir)* are the custodians of precedence, and according to the Somali saying *'Solutions are always found for cases that have precedents if addressed correctly.*

While lacking formal political institutions, law and order was maintained traditionally through customary law. Within the culture, a breach of rules and regulations carried sanctions and punishments. For example, in times of war and there were rules about who could not be killed. The killing of religious people, women, children,

*49 The paper draws on interviews undertaken for a research project at Pennsylvania State University called: Reconciling Africa's fragmented institutions of governance: a new approach to institution building, by The Center for Land and Community Development Studies, Pennsylvania State University. The research in Somaliland was directed by Sadia M. Ahmed of PENHA with a team of local researchers and in collaboration with Prof. Kidane Mingisteab of Pennsylvania State University, who visited Hargeysa, Somaliland in July 2009.*

disabled, wise men and orators was prohibited; they were 'spared from the spear' *(biri ma geydo)* on pain of shame and divine retribution. Women and children were spared because, in theory, they were not involved in the conflict. Elders and religious leaders, were spared for more pragmatic reasons, as the saying suggests: *'If you kill peace makers then who do you come back to make peace with?'*

## The Impact of Colonial Government

According to Musa Ali Farruur, an expert on Somali Culture and literature before the arrival of British and Italian colonialists there were only seven titled elders across the Somali speaking territories,[50] The colonialists sought to administer the territory by incorporating the indigenous social system within a formal state system. They instituted a system of salaried 'chiefs' *(aqil)* and 'chief *aqil,* who were incorporated into government as part of the system of 'indirect rule'. The wars waged by Sayid Mohamed Cabdulle Hassan[51] from 1902- 1922 against the foreign invaders and the destruction caused by war, eased the way for the colonial governments to impose their rule on the Somali people and disrupt the traditional systems to suite the purposes of the colonial administration, a pattern subsequently followed by national governments. The elders became answerable to the state and governments have used them to organize communities, forge support for government on issues of conflict and peace building and assist the government to maintain law and order. While the traditional system has remained vibrant and alive in the society and was not entirely excluded from government, the traditional leadership lost their authority in certain socio-political and economic spheres. This not only resulted in a government that was incoherent, corrupt and had little relationship with its citizens, but also had a different approach to conflict resolution and decision-making. This was neither inclusive nor based on consensus, but which was dictatorial and could deepen conflictual relationships rather than resolve them.[52]

## Current Dynamics of Traditional Institutions The Relationship Between Elders and Government

Historically traditional institutions, like elders, would have been resourced by the community they represented and who, in turn, would look to benefit from their position of influence. In poor economic conditions traditional leaders and elders depend more on business people or the government. Infact, people make use of both systems of government – the traditional and modern - 'shopping' for the best value.

As traditional institutions become dependent on the state, their relationships and their effectiveness within the community can become compromised. Some people argue that because *aqils* are salaried, there can be a conflict of interest between their loyalty towards the government and towards the clan that they represent. While they are not officially part of the government, they can have powerful affiliations and can make and break ministers and other officials.

In some cases the title of elder is bestowed by government. In other cases the title can be adopted by individuals and their close relatives and approved by the Ministry of Interior without checking their legitimacy with the represented communities. The proliferation of elders and of Sultan and Boqor, even in communities which had no history of them, has created dismay among some people and left people with little confidence in the system. Tracking the changes is difficult, but some obvious trends are:

- Titled elders are multiplying without any checks and balances. It may be justified due to population increase, but no criteria are in place to screen the new leaders and ensure their accountability.
- Titles are normally given for life.
- Those traditional institutions remain the cornerstone of peace in many parts of Somaliland, where government has little or no influence.

Due to the weak judicial systems in the country, traditional leaders have continued to play an important role in maintaining law and order and administering justice through informal mediation and dispute settlement and the application of customary law. Although not part of the formal judiciary, elders are often asked to intervene in disputes as community representatives. Courts accept their role as essential in solving problems much faster than the courts can and at less cost. There was a consensus

*50 Musa was interviewed In Hargeisa on 27 July 2009 by the research team*

*51 Sayid Mohamed Abdulle Hassan was a Somali nationalist who waged war against the British, Italians and Ethiopians who colonized the Somali territories.*

*52 Kidane Mengisteab, Reconciling Africa's fragmented institutions of governance: a new approach to institution building, Proposal by The Center for Land and Community Development Studies, Pennsylvania State University, University Park, PA 16802, Feb 2008,*

among our interviewees that at least 80% of the legal cases were settled by traditional leaders in close collaboration with the courts. However, their role is controversial and there are some areas, such as gender-based violence or rape, that some people argue they fail to address.

As the population in Somaliland becomes more settled and urbanization increases, more traditional leaders are based in urban areas, where they become involved in government and respond to demands for mediation, lobbying and security. This leads them to neglect their rural constituencies. In the process the discourse between the interest of rural population and the government diminishes.

## The House of Elders

The Somaliland success story of peace-making was mainly achieved through the mediation and decision-making of the Somaliland *Guurti,* a body of elders that had its origins in the SNM, which sought to mobilize support for the struggle through clan elders. The Guurti was formally established as part of the system of government - as the Upper House of Elders of the legislature - in the 1993 Somaliland Transitional Charter. In the Charter, the *Guurti's* role is to:

- Protect customary law and Islamic faith.
- Advise the Government on issues of security, defense, economic and social issues.
- Convene a national, clan based Somaliland elders' conference in the event that the Somaliland Government departments, stipulated in the national charter, failed to carry out its duties and responsibilities.

It originally had a membership of 75, with provisions for former presidents and vice president to become honorary members. From then until the first elections in 2002, Somaliland practiced a hybrid system of governance that combined a Somali beel (clan-based) system of political representation with modern Western-style institutions of government.[53] Before the adoption of the National Constitution in 2001, the *Guurti* was the highest institution of Government, and one that provided, in theory, a link between the wider community and government structures. However, its role is ambiguous and is criticized by some.

The Guurti was incorporated again into government by the National Constitution (article 61), 1997, as part of the parliament. Its membership was increased to 82 with the following roles and responsibilities, to:

- Initiate legislation relating to religion, culture and security.
- Review legislation (with the exception of financial legislation) to be approved by the House of Representatives.
- Advise the administration and the House of Representatives on the shortcomings of the government.
- Advise the government on issues of security, defense, economic and social issues.
- Summon members of the government and put questions to them about fulfillment of their duties.
- Bring certain proposals for debate and resolution to the House of Representatives.

Constitutionally, the *Guurti* is part of the parliament and can legislate on matters of the state. It also has a distinct role in keeping the peace through mediation, whether among the political parties and the government or among communities. They utilize existing traditional structures like the Sultans and Aqils to do this. In cases of impeachment or the death of the president there are constitutional provisions for the Guurti to take over until elections can be organized and a legal government is installed. They can also extent the tenure of the president if necessary.

## Public Perceptions of the Guurti

According to our interviews the public have mixed feelings about the *Guurti* and its role in the government. Most respondents felt that the *Guurti* is important and, with a few modifications, can serve the country well. From their point of view, the *Guurti* was wrong to extend the tenure of the government without good justifications or proper procedures. At the same time, they do maintain the peace and rightly mediate different complainants and bring them to the table for discussions and agreement.

Others are more critical. They think the elders are too old fashioned to understand modern governance and that they side with different parties, and mainly with the government, without the necessary impartiality or acumen. They depend on the government for their limited resources, which undermines their impartiality and efficiency. Many of them are old and sick beyond retirement age and might not have the energy to serve the

*53 WSP international (2005) Rebuilding Somaliland: issues and possibilities, overcoming conflict and building lasting peace. Asmara: Red Sear press Inc.*

nation properly. Some cannot hear properly in debates or are not literate enough to understand or pass legislation. They are criticized for being against social development programs especially those that assist women.

Despite these negative perceptions, both critics and supporters agree the *Guurti* is an important institution, but want the House to be reviewed and the capacity of its members upgraded to improve their ability to perform their jobs.

Another criticism is that members of the *Guurti* are unelected. Many of the respondents believe an elected house is not a good idea, because they will lose the impartiality that they need in order to serve the nation as required. From the perspective of traditional elders the *Guurti* is considered different from the existing traditional institutions, who they will depend upon for their selection. For example, the position of *Aqil* is not time bound, while the tenure of the *Guurti* is six years. When *Guurti* members were interviewed about their communication channels at the community level, the response was that they communicated through the Sultans rather than with *Aqils*. At the community level, however, it is more important to communicate with *Aqils* on most issues.

The *Guurti* are supposed to manage conflict and be peace-makers at times of high tension and step in to lead the nation when necessary. However, many blame them for not acting in a timely and serious manner to avert some of the political conflicts that have arisen in Somaliland. But, the power of the *Guurti* to respond to a problem is limited and they, therefore, need to work with the different political parties and the Electoral Commission in case of an electoral conflict.

Inspite of the diverse opinions from the respondents, the *Guurti* does link traditional institutions, culture and faith to modern government, creating a much needed balance in government. But for this institution to function properly there is a need to include women and other segments of the public, and to be properly resourced and independent of the executive.

## Recommendations

- The *Guurti* is useful and links traditional institutions with modern governance
- It should be a nominated body, with a well defined criteria for the nomination of its members
- It should be assisted on social and developmental issues
- It should be inclusive and include women and other social groups
- It must have independent resources to act impartially
- Its ability to make laws must be strengthened

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# An Analysis of the Constitutional Court of Somaliland

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*A well functioning democracy requires an independent and impartial Constitutional Court to resolve constitutional disputes that may arise in a peaceful manner. In this article Mohamed Farah examines the challenges of establishing a functional Constitutional Court in Somaliland.*

> *Law is respected and supported when it is treated as the shield of innocence and the impartial guardian of every civil liberty---- if the law be dishonestly administered, the salt has lost its flavour, if it be weakly or fitfully enforced, the guarantees of order fail—if the lamp of justice goes out in darkness, how great is the darkness.*
> *Lord James Bryce*

## Introduction

A constitution enjoys a special place in the life of any nation. It is the supreme and fundamental law that sets out the state's basic structure, including the exercise of political power and the relationship between political entities and between the state and the people. As the former Chief Justice of South Africa, Justice Ismail Mohamed, once observed, "a constitution is not simply a statute which mechanically defines the structures of the government and the relations between the government and the governed, but it is a mirror reflecting the national soul, the identification of the ideals and aspiration of a nation; the articulation of the values binding its people and disciplining its governments."[54]

This notion is reflected in many constitutions adopted in Africa in late in 1990s. Uganda's constitution, for example, is intended to lay the foundations for a better future by establishing a particular socio-economic and political order.[55] A constitution is the supreme document of the land which enhances and protects a society's values and principles. Effective and capable governance requires a well designed constitution, and a viable and durable constitution is vital for making democratic institutions effective. Theoretically, a written constitution needs a body which promotes, develops and strengthens the values and principles enshrined in it. This is the role of constitutional courts - to promote and protect constitutional principles and ensure compliance with them by the other constitutional entities. It is also a place where inter-institutional conflicts can be resolved.

The Constitutional Court of Somaliland has n important role in promoting democratic governance and protecting constitutional principles. This paper analyses the institutional capacity of the Constitutional Court of Somaliland. The paper highlights the functions, powers and mandates of the Court, assesses its effectiveness and examines its challenges and achievements since it was created.

## Institutionalization of the Constitutional Court of Somaliland

John Locke observes in his book, 'Two Treatise of Government', that there was a system of governance in Africa before European colonization.[56] The Somali people, for instance, had a system of governance very different from modern democratic governance. There was no state, no unified and centralized political authority and no written constitution guaranteeing the fundamental rights and freedoms of people.

During the colonial epoch, when Somaliland became a Protectorate of Britain, it was governed by the queen's representative - the Governor - who exercised all legislative and executive powers.[57] In 1946 an Advisory Council was established consisting of 48 members selected by the governor from different sectors of the community. But the Council had no legislative and executive power and it was not until 1955 that a Legislative Council was formed. Composed of 15 members and presided over by the governor, Somalis for the first time were given some legislative authority. However, there

*54 John Hatcherard, Muna Ndulo and Peter Slinn (2004) Comparative constitutionalism and good governance in the commonwealth: an eastern and southern African perspective. Cambridge University Press. pp 23*

*55 K.C Wheare (1966), Modern Constitutions, London: Sweet and Maxwell, pp.33-4*
*56 Laslett, Peter (ed.) (1960), Locke's Two Treatises of Government, Cambridge: Cambridge University Press.*
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was no constitutional court or other relevant institution to protect the rights and freedoms of the citizens. The independent Somali Republic was established in 1960 as a parliamentary democracy, in which there was a clear division of powers between the executive, legislative and judicial arms of government. When the military government of Mohamed Siyad Barre took power in 1969 this division was dissolved, leaving no such separation of state powers. The separation of these powers was partially restored when Somaliland was created as an independent state in 1991 and a new political system with an executive president and bicameral parliament was established. But, it was not until 1997 that a draft constitution was agreed and finally endorsed by a plebiscite in 2001. The ratified constitution defines the powers of the state and established a Constitutional Court, whose role is to protect, develop, and promote the constitution and constitutional justice.

## Structural Problems of the Supreme and Constitutional Court

Article 101 of the Somaliland constitution provides that: "The Supreme Court is the highest organ of the judiciary and is also at the same time the Constitutional Court." Article 14 of the Law of Organization of Judiciary also states that the venue of the Supreme and Constitutional courts is the same and that the Chief Justice is also the Chief Justice of the Constitutional Court. The Supreme Court of Somaliland therefore has dual legal and constitutional functions.

This system is modelled on the United States constitutional system. In most other African constitutions, the Supreme Court and the Constitutional Court are separate institutions. The main objective of separating the courts is to ensure an independent, neutral and impartial justice system. In my opinion it would be preferable to separate the two courts. There are several reasons why I favour a separation of the two courts.

First, the constitutional court is a political institution with the sole obligation to monitor and receive individual and other communications from the public. In my opinion the Constitutional Court is more important than the Supreme Court, because it has the mandate to decide on cases concerning the constitution and the constitutionality of any decision, acts and laws promulgated by the legislative and executive. It also plays a vital role in protecting the rule of law

Second, in most African constitutions the Chief Justice is nominated by the President and approved by the parliament. The Somaliland constitution is the same, with the president granted additional powers of nomination and removal of the President and judges of both the Supreme and Constitutional courts. Article 105 states:

"The president of the Republic shall, in consultation with the judicial committee, appoint the President and judges of the Supreme Court and the Constitutional Court by taking into consideration the level of their education, professional experience and good behaviour. The appointment of the president of the Supreme Court shall be approved by the two houses in a joint session that is to be held during a period that is not more than three months from the in which the appointment has been announced."[58]

In my opinion, the procedures of nomination and approval, the tenure of office and process of removal from the office of judges to the Supreme and Constitutional courts should be different to ensure greater independence of the judiciary from the other two branches of the state, specifically the executive. It is therefore, different from the other courts in terms of their nomination procedure, Justice Mohamed Omar Geele stated in an interview that the oppositions and other individuals do not have trust in the Constitution court because the same judge who decides a civil and criminal case is the same judge who sits as a constitutional judge. The dual functions undermine the independence and the integrity of the constitutional court.[59]

Third, the dual functions restrict the independence of any decisions by the court pertaining to constitutional matters. Finally, the US system of constitutional dispute settlement is culturally rooted in the US and is not necessarily compatible with judicial practice in Somaliland.

## Challenges to the Independence of the Constitutional Court

It has been argued by the opposition parties and others in Somaliland that the Supreme Court does not have sufficient independence to determine cases impartially. They argue that the court has simply been serving the executive, who has powers of nomination and removal. According to the registry of the Constitutional court, since it was formed the court has only ruled on three

*58 The Law of Organization of Judiciary under article 11 provides the same process.*

*59 Interview held at the constitutional court of Somaliland with Justice Mohamed Geele*

cases, an indication that people do not have sufficient trust to submit a petition to it. Various factors impede the independence, neutrality and impartiality of the constitutional court:

- Constitutional challenges: One of the main impediments to having an independent court is the constitution itself, which gives effective powers of nomination and removal of justices to the President. The President nominates and the House of Representative approves. In reality, parliament's opinion is always underestimated or ignored. In my view, those who drafted the constitution should have given the justices more independence, by giving powers of removal to a Judicial Commission and the House of Representatives, and taking it out of the hands of the President.
- Financial challenges: The court has no separate budget and is subject to the administration of the Ministry of Justice.

Retirement and benefits: According to one judge of the Constitutional Court, a lack of provision for "retirement and benefits is one of the sources of the lack of independence". It is evident that the lack of such benefits plays a major role in the administration of justice and the independence of the court.

## Functions of the Constitutional Court

The Somaliland constitution, unlike others, does not describe the functions of the Constitutional Court. Article 101, for example, which establishes the Constitutional Court as part of the Supreme Court does not explain its distinct functions. These had to be defined later by an act of parliament in the 2003 Law of the Organization of Judiciary,[60] which describes the hierarchy, powers and functions of all the courts (article 15). The role of the Constitutional Court includes:

- Hearing and judging decisions and laws that are contrary to the constitution
- Constitutional interpretation
- Temporarily suspending laws which are not in compliance with the constitution

## The Constitutional Court and House of Elders

The Somaliland constitution is unique in Africa in the way that it merges traditional and modern governance. Scholars have broadly supported the culturally rooted, internally driven bottom up approach of state building in Somaliland, arguing that it has brought peace and stability and a well-functioning democratic system of government.[61] In contrast an internationally-driven, top down approach to state building has demonstrably failed in south central Somalia. However, while recognising the importance of tradition, neither the constitution nor the 2003 Law of the Organization of Judiciary is clear on how the powers of the modern and traditional institutions are differentiated.

Tensions over the postponed elections in 2009 tested the marriage between tradition and modernity in Somaliland, a test whose outcome is, I would argue, crucial to the rest of Africa. The fusion of traditional and modern governance is a model that is seen to have served Somaliland well before transitioning to a constitutionally-based multi-party democratic system of government. It continued to work when the new political system was adopted in 2002, but signs of incompatibility between elements of traditional and modern governance became increasingly evident, causing mistrust between the political parties, and tragic deaths in the violence surrounding the electoral crisis in 2009.

The Constitutional Court, which has been established in the constitution as a court of last solution in any constitutional crisis failed to fulfil this role effectively during the electoral crisis. This role therefore remains unrealized and the procedures untested and unexplored. Neither the public nor the political parties, who have a right to file a constitutional petition if they feel their rights have been violated or transgressed, have tested the effectiveness and the independence of the court. Some may have concluded that because the Chief Justice has been nominated by the president he works for the government. But it is the House of Representative that approves and appoints the Chief Justice and justices of the Constitutional Court. Theoretically, therefore, the system has checks and balance, but doubts remain about its effectiveness.

Law No. 24 of the 2003 Law of the Organization of Judiciary gives the Constitutional Court the role to assess the constitutionality of acts issued by the parliament and decisions made by the government, determining whether or not they are contrary to the purpose and the spirit of the constitution. When the National Electoral Commission (NEC) suspended the voter registration list prior to the scheduled election in 2009, questions were raised about

*60 Law No: 21 of 2003*

*61 See Iqbal Jhazby (13 Nov,2009) Somaliland: an African struggle for nationhood and international recognition pp 67*

the legality of those actions. In this case the question for the Constitutional Court should have been: "does the NEC have the authority to suspend the voter registration list which had been legalised by an act of parliament Law No: 27 of 2008?" However, no case was filed before the Court because, according to the opposition parties, the Court lacked independence. While one can agree that the Court lacked the minimum required independence and institutional capacity to determine such a case, the consequence was that a modern system was seen to fail and tradition was resorted to. The Upper House of Elders was therefore left to make a judgement on the actions of the NEC.

The role played by the Guurti in resolving constitutional disputes does raise questions over the need for a Constitutional Court in Somaliland. However, the Guurti has its own problems of capacity and independence. The close relationship between the Guurti and government has consistently raised questions over the independence of judgements by the Upper House. Clarifying the roles and powers of the Constitutional Court and the House of Elders will be important for the future of Somaliland.

An independent, effective and impartial Constitutional Court is critical to a functioning democracy, having the ultimate power to determine and rule on constitutional matters. Since the beginning of the democratization process in Somaliland neither the Somaliland government nor the international community have given attention to the importance of establishing an effective and independent Constitutional Court. The crisis in 2009 exposed the flaw with this approach. In order to prevent and manage such problems in the future there needs to be a functioning and independent Constitutional Court.

## Conclusion

Many of the African governments that emerged after independence became undemocratic, over-centralized and authoritarian. Predictably political monopolies led to corruption, nepotism and abuses of power. In places, repressive regimes and one party systems emerged. Constitutions were amended so they could fit to the new reality. In Somalia, the abuse of power under the regime of Mohamed Siyad Barre was one reason why people in Somaliland withdrew from the Union to re-establish a democratic state that protects the rights and freedoms of its citizens. This was laid out in the constitution adopted in 2001.

The political transformations since then have been positive and difficult. As explained in this paper, to promote the rule of law and constitutionalism in Somaliland, there needs to be an effective and independent Constitutional Court. This exists, but the problem lies in the implementation and enforcement of the values and principles enshrined in the constitution. The lack of published annual reports by either the Supreme Court or the Constitutional Court, makes it difficult to know what they have achieved. Neither the public nor the political parties have made use of it and none of the disputes between the House of Representatives and the government have been referred to the Court for resolution. The main reason for this is the lack of trust in the independence of the institution from government influence.

In the absence of an effective court, constitutional crises have been resolved through traditional conflict management mechanisms. The challenges are wide range and multidimensional, ranging from financial to political, and can only be resolved through a comprehensive constitutional review.

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