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LESSONS FROM SOMALILAND ELECTIONS:

Presidential Election November 2017

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Table of Contents

I. Executive Summary	(2)
II. Background Development Somaliland Election System	(8)
III. Experience from Nov. 2017 Presidential Election	(11)
IV. Recommendations	(24)
V. References	(27)

I. EXECUTIVE SUMMARY

The Somaliland people have been practicing ‘One Person One Vote’ elections system since 2001, when the first popular polling was conducted on the referendum to adopt the present Somaliland Constitution in May 2001. Since then, three Presidential elections, one parliamentary election and two local Council elections were held, on the One Person One Vote system. During that period which is approaching three decades, the electoral system and operational experience of the Somaliland people and state has been evolving. In all these elections, lessons were drawn for Somaliland, to improve its future elections.¹What is significant today, is to also draw lessons for Federal Somalia, which is expected to hold One Person One Vote elections in the following few years.

Therefore, this paper will highlight how the following key requirements of a democratic election have evolved in Somaliland: Developing election legal system; adopting and adapting an electoral system; establishing an electoral commission; creating a voter register; building the norms and codes of conduct of the election process. This latter point is mainly concerned with the campaigning norms and procedures and the media coverage of the election. The paper also highlights the expected and actual roles of key actors among them the Political Parties, the Government, the National Electoral Commission, the donor community, the Domestic civil society and also the Clan system and the Business community.

The last presidential election reflected Somaliland’s resilience as well as its vulnerabilities in its path to a stable statehood and democratic governance. Starting with the resilience side, it was the first time, that there was pronounced weakness in the Presidency, creating a situation where the power was diffused to different factions, and critical government institutions were rendered dysfunctional. Yet Somaliland survived due to its social resilience and people’s capacity to tolerate exigencies of the system, while pinning their hopes that change will come with election. That should be credited for Somaliland as clear signs of political maturity.

Elections, for transitional states, are often harbingers of political uncertainties and such fear was strong in the Somaliland case, considering its internal fragility and its ambiguous international status. However, holding two very challenging elections in five years and coming out of them in one peace must attest to the resilience of the Somaliland people.² This last election happened in the backdrop of five years of political upheavals in the Parliament to unseat the Speaker, in the foreign policy,

¹See Fadal, M; Paper Presented toSORADI Conference (8-9 Nov. 2011). P-92.

²The Local Councils Election (Nov. 2012) in which the political space was opened for new political parties to enter; and this Presidential election (Nov. 2107), which posed more possible dangers for conflict than any other before.

especially in dealing with such socially and political divisive agreements to grant military bases and long-term leasing of ports to another country; and also allegations of national resource mismanagement. The campaign while fought on these charged issues and more, was relatively played within the rules of the game to the credit of both major parties, KULMIYE and WADDANI. Focus on personalities was much less than past presidential elections and also with less mudslinging than expected. Moreover, the campaign was very intense and mobilised the population to the maximum to come in rallies and to express their opinions. The media was also quite responsible, albeit few rouge journalists abused the tolerance of the population and also targeted politicians.

On the downside, the election blurred the dividing lines between the clan, the state, and political parties. In fact, the whole purpose of limiting the political parties to three was to mitigate the power of the clan to hijack the party politics and that attempt has failed miserably. One can say in Somaliland politics, what matters most in winning elections are now clan mobilization, clan alliances and money. The elected President, in this last election, has definitely a formidable challenge in his hands. The speed with which the opposition conceded should not deceive him, to overlook the bitterness and suspicion from the other clans.

The other negative phenomenon in the Somaliland elections is the growing power of business to influence the process and outcome. Business people are spending millions of dollars in the campaign. That is not a healthy development for Somaliland and not an easy situation for an elected Government to uphold the national interest for all and not to be seen beholden to rent-seeking groups.

In addition to above highlighted issues related with the efforts to draw lessons from Somaliland's two decades of multiparty election, the following summarised topics which are more grounded on the election operation will form the body of issues that the paper will address to contribute to the realization of Somali populations and polities' aspirations to develop a democratic elections culture and by extension democratic governance, to ensure social justice and sustainable multifaceted development.

1. The Electoral System

In the Presidential Elections, the President and Vice President are elected as a joint card. So, three sets of Presidents and Vice Presidents compete in each presidential election. It is a simple majority winner takes all system. There are no second or third rounds. The law does not allow independent candidates to run. In the Parliamentary and Local Elections, the open-list system is followed and are also majoritarian based, but with a component of proportional representation. The first local election was conducted on a party-list system, but that has changed in the second local election, and it is now an open list system.

2. Registering new political Parties

Forming new political parties can be done in a roundabout way, by going through the Local Election, which once every ten years gives opportunity to new entrants in the system. This process of going through local elections to qualify new parties is a complex and cumbersome undertaking. Election

systems need to be simplified and not to have too many objectives at the same time as in Somaliland's present situation: to elect local councils, to register new national political parties and to fulfill the constitutional limitation that national political parties not to exceed three in number; all those objectives fulfilled in the same election.

Initially, the logic of limiting the number of political parties was said to avoid political fragmentation of the society into politicized sub-sub clans and proliferation of clan parties; but, after two decades of elections, fragmentation is more intense today than ever before. Furthermore, the limitation infringes on people's constitutional freedom for association and right of political choices. The political space is artificially constricted, which breeds not only heightened incidence of internal conflicts in the existing political parties, resulting in frequent faction break-ways, but also further political polarization of the society and its clan-divisions.

3. Voter Registration Exercises:

Voter registration is important for planning the election requirements, but more importantly to improve the integrity of election results. It is also important to decide on the institutional custody and procedures of updating it for its continued usefulness for other elections and uses. Surely, the recent Somaliland decision to discard the tainted Final Voter List (FVL) from 2008 voter registration and the subsequent adoption of new VR with the latest biometric technology - the Iris Scan - together offer a lot to study and to draw lessons from. A key lesson is that technology is not a panacea to overcome election fraud; it can be circumvented, unless the chief election stakeholder, that is the authority in power, is fully committed to harnessing its benefits.

Furthermore, voter registration is a very challenging undertaking: 1. It is a politically loaded exercise which affects election schedules and also touches something which is a taboo in the Somali clan society – divulging its numbers strength- by attaching number of voters to each district; 2. Laws governing voter registration often have controversial components and are best enacted, when no election schedule is looming over it 3. It is technically challenging: Planning, execution and addressing security are a primary concern of its operations 4. It is very expensive and therefore, raising tens of millions of dollars requires full cooperation of donors and recipient polities;

4. Election Delays and Term Extensions

Frequent delays of elections are becoming part of Somaliland state culture, which normalises in the eyes of public the extensions of the terms of office of elected bodies, something whose legality is questionable. The problem here lies with three main issues: 1. The Constitutional Article 83 (5) is overused or even miss-used, concerning the presidential elections, because none of delays so far meet the purpose of the Article, which addresses an inevitable election delay situation due to insecurity; 2. Extensions are also a tool of self-perpetuation, since the modality of electing/selecting the Guurti House members is not yet settled and their six-year term expired many times over. 3. The Executive Branch, especially last two Presidents, instead of concentrating on their re-election on time, opted for getting series of extensions to their time in office through the easy route of Guurti House. This practice is an affront to the principle of the primacy of the rule of law in a democratic society.

5. The National Electoral Commission's Key Operational Roles:

(i) Contracts and Procurement Processes

One of NEC's sensitive tasks is to fulfill contracting arrangements of both local and international nature. NEC has to process contracting arrangements for the procurement of sensitive materials chief among the printing of the ballot papers outside the country, their safe delivery and storage until the Election Day³.

While the NEC may have taken all the necessary precautions for such liable material, there was an information gap with the opposition and in the public domain about the contracting process, and the quality and security arrangements. In a democratic society, secrecy around such key liable elements of the election is an unwanted source of suspicion in such sensitive times. This situation is further aggravated when a complete book of ballot papers was found by the opposition outside the custody of the NEC system.⁴ That fuelled rumours and allegations that the ballot papers were duplicated locally.⁵

(ii) Managing Election Campaign

Somaliland election campaigns are relatively structured and regulated by the National Electoral Commission in accordance with Law No 20/2001, Articles: 28, 29, and 30. By Law, the campaign period is between 21 and 30 days for Presidential elections and 27 days for Local Council Elections; campaigning ceases 48 hours before the Election Day. In the last Presidential Election, the Commission allocated 21 days, giving each party seven exclusive days of rallies arranged to happen once every three days. Separating individual party's schedules helps to avoid co-incidence of counter rallies, aiming to keep them peaceful; each party takes all available space for rallies in its allocated day.

During the campaign period, NEC employs following election codes of conduct: Media Code of Conduct and Political Parties Code of Conduct. Both Codes are designed to control abusive behaviour in the campaign and to avoid anything that can instigate violence. In addition to these instruments, the NEC also relies on the Campaign Monitoring Board, which plays an advisory role for it, to monitor the stakeholders' campaign activities' compliance and to sound the whistle against breeches

³See also ACE: The Electoral Knowledge Network; Printing Ballot Papers: (<https://aceproject.org/ace-en/topics/vo/voc/voc02/voc02b>) - accessed January 2018.

⁴NEC had conflicting responses to the matter. First it denied the authenticity of the document; secondly, it checked and realised it has the hidden features of its consignments of ballot papers and therefore, claimed to have lost it from the polling staff.

⁵Somaliland: One Person Injured as Residents Storm House over Printing Fake Ballot Papers in Burao. Somali Update, Nov 13, 2017; (accessed January 2018).

of election law and campaign codes of conduct. In the last campaign, some non-lethal violence may have happened, but overall the campaign behaviour is characterised to be peaceful.

(iii) Recruitment of election field officers:

Another area which is critically important in the election is the recruitment of NEC staff at regional, district and polling station levels. NEC employs during the election time, six Electoral Region Head of Office persons; 23 Electoral District Heads and a NEC team of three for each one of the 1643 Polling Stations. The recruitment of around 5,000 people in such a short-time is a serious challenge to NEC capacity. Nevertheless, transparency and due diligence in the recruitment process are paramount to election integrity, especially on consideration of the critical role that these personnel have to ensure that election process is free and fair.

To ensure the NEC staff are fully compliant with and upholding the non-partisan nature of the agency's work, the Commission administers Islamic oath to the staff, especially the teams that are manning the polling stations, who are recruited from universities in different regions. Further to reinforce its efforts to buttress integrity of the election, it swaps these student recruits between different regions, to minimise local bias. These NEC Polling stations' teams, especially the Chairpersons of the teams, wield tremendous powers in running this critical point of the election. This team is not only responsible for administering the ballots to the voters but also for the counting, tabulation and issuing the results at polling station level. Here are where mostly things can go wrong and where most of the complaints of the opposition were focussed and where serious appraisal is needed towards improving the system.

(iv) Ensuring Security of Election Personnel and Materials

It is a serious challenge to guarantee the security of the teams of young people and the voting materials, especially in the eastern regions of Somaliland where the reach of the State is still tenuous; this was especially the case in Sool and Eastern Sanaag areas bordering Puntland, as well as the Buuhoodle District of Togdheer Region. Due to local obstruction in Buuhoodle as well as armed incursions in Badhan and Dhahar during the Voter Registration time, the NEC could not ensure security of personnel and material in those areas. Therefore, inhabitants did not register and hence were not eligible to vote in the November 2017 presidential election.

(v) Deployment of Party Agents

Although, according to Election laws, political parties have the right to have an agent in the polling stations, some opposition parties find it difficult to field agents in all polling stations and so are the newly forming associations in the local election and that could represent a source of weakness in the integrity of the election. Ruling parties usually have no difficulty in organizing strong cadre of party agents. It is very much recognized in Somaliland that results a party attains in the election are usually directly related to the quality and morale of its party agents. The adage, that "the election is won or lost at the polling station" highlights the importance of party agents among other requirements of the rule of law.

Addressing complaints is part of the mandate of different levels of NEC system, starting from the polling station, to the District and regional level and finally to the Commission Headquarter and the Constitutional Court. Addressing complaints component of Somaliland elections also begs for serious improvement.

Lessons from Somaliland's last election, is that the system of addressing complaints is very weak. Unfortunately, it seems to be getting worse compared to the early elections. Some of the reports coming from the Party agents of the opposition claimed that, there was a trend that the Polling Station Chairpersons were not honouring party agents' rights of lodging complaints.

So many of the above challenges are very much related with weak institutional base of the election system, especially regarding the human resources capacities, coupled with deficiency in pro-active support for free and fair elections' demand from other government institutions with election responsibilities.

(vi) Facilitation of Election Observers:

It is an accepted norm that most countries allow observers in their elections. International Observers' deployment is also an established election culture now in Somaliland. There are also contingencies of domestic observers that are deployed in close to half of the polling stations under the sponsorship of Somaliland Non-State Actors Forum (SONSAF). There is need to review the usefulness of the observation system, as it stands now, to add value to the free and fairness of Somaliland elections. It is the position of this paper that its mandate needs to be reformed into monitor agents who are able to blow the whistle where they observe any practice outside the law, and also to cover where it matters in remoter corners of election process. The mandate could be in the model of "Third Party Monitors" widely used now in the aid programmes. Expanding their reach needs addressing their security. The security issue will anyway arise in many parts of the Federal Republic of Somalia and needs to be addressed, if international observers are going to be a serious component of international support for the election.

6. Roles of Government Institutions to Uphold Principles of Free and Fair Election

Apart from the National Electoral Commission (NEC) which is directly mandated to manage elections and ensure that the process is free and fair, there are other public institutions, which are critical for advancing democratic governance, core of which is the integrity of the elections process: 1. The security forces, which are responsible for upholding the law. Somaliland security forces are still in a formative state, underpaid and lack a secure system of employment, and above all, are not steeped in the knowledge of their duties and independence to uphold the rule of law. 2. The civil service is politicised by all Somaliland incumbent governments to bring allegiance to the ruling party from own clans, something they are compelled to oblige to secure their jobs. 3. The State Ministries and Regional Governors (both are political appointees) plus the elected Mayors, all engage directly with the elections, in support of the ruling party and with the public resources at their disposal.

A worrisome development is that, it can be gleaned from the Somaliland election experience at least for now, that commitment to free and fair election principle is receding as the Government strengthens

and its reach expands. In addition, the prevalent clan politics can easily be manipulated by state power and combined with money, and hence negatively affects people's democratic interests and rights.⁶ Democracy needs strong public institutions that rely on and enforce the rule of law to uphold the constitutional provisions. The legal opposition as a core component of democratic society and culture can play a constructive role, only if the rule of law is prevailing, otherwise, it will be difficult to bring about change, even if the population is overwhelmingly supporting it.

7. Campaign Finance

The Somaliland election expenditure, for parties and candidates alike, has exponentially grown since the first Presidential and Parliamentary elections in 2003 and 2005. The recent spike in the Somaliland election expenditure is allegedly attributed to be coming from three main sources: 1. State Coffers, especially for the ruling party; 2. Politicised big local businesses and 3. Possibly from external sources. The prevailing free rein climate of funding for political parties' and election campaigns is bound to undermine the democratic principles and objective of the election and needs to be addressed.

II. BACKGROUND DEVELOPMENT OF SOMALILAND ELECTORAL SYSTEM

1. The Electoral Legal Regime

Apart from the Constitution, which sets the tone for the nature of Somaliland election system, there are now four main bodies of election laws as well as various election codes of conduct which supplement these laws especially during election campaigns times:

First, the Presidential and Local Election Law No-20/2001, which has undergone significant amendments since its introduction in 2001⁷. It deals with the direct elections of the President and the Vice –President in every five years, as well as the election of Local District Councils, also in every five years. It also regulates the election campaign (Articles 28, 29 and 30) and all its other aspects.

Second, the House of Representatives Election Law No 20-2/2005, which deals with the election of 82 members of the House of Representative and also regulates filling of vacancies in the seats that arise in between the elections. This Law has sunset clause (one-time-use), and needs amending it, which require taking a decision on the so called “saami-qaybsi” – re-distribution of seats. There has been only one election of the House of Representatives since 2005.

Third, the Somaliland Political Parties and Associations Law No 14/2011, which was first introduced in 2000 and was heavily amended in 2011. This law regulates the registration of new Political Associations registered every 10 year. It serves three main purposes: a) to regulate Local Council Elections for the electoral districts now numbering 23; b) to create a window of opportunity for entry

⁶See ICG (2009); Africa Briefing No 67; P.2

⁷See Hashi, I. Somalilandlaw.com, (accessed in January 2018.)

of new parties in the national political arena and c) to fulfill the constitutional requirement that the Somaliland political parties should not exceed three in number⁸.

Fourth, the Voter Registration Law No 37/2007, which was also heavily amended in 2014. It regulates the registration of voters from all citizens reaching age of 16, the distribution of Voter Cards and the issuance of Final Voter List (FVL) for the elections. The House of Elders' modality of election is still not settled and hence there is no law for it. There was a bill introduced in the House of Representatives in 2006 but which never got off the ground.

2. The Electoral System and Process⁹

In the Presidential Elections, the President and Vice President are elected as one card. So, three sets of Presidents and Vice Presidents compete in each presidential election. It is a simple majority winner takes all system. There are no second or third rounds. The law does not allow independent candidates to run. In the Parliamentary and Local Election, the open-list system is followed. It is a majority winner basis process, with a component of proportional representation. The first local election was conducted on a party-list system, but that has changed in the second local election, and it is now an open list system.

The first local election took place in 2002, and as a result of which the first set of national political parties were formed: UDUB, KULMIYE and UCID. The second round of local election was not held on time, but was held ten years later in 2012, again with the same multiple objectives including qualifying new political parties. In this round, the ruling party (UDUB) failed to qualify and hence disappeared from the scene and its place a new Party (WADDANI) joined the national club.

In both local elections, all Political Associations, which registered and fulfilled the established criteria to participate in the election were able to field candidates in the twenty-three Electoral Districts and hence can produce elected council members. After the election, successful councilors whose Associations did not qualify as national political parties have the choice to join any of the three qualified political parties. According to the Presidential and Local Council Law, this process is to take place once every ten years, but due to in between election term *extensions*¹⁰, it may not be possible for the next round to take place within the specified time in November 2022.

The political parties' registration process is not managed by the National Electoral Commission, but by another independent commission, that is the Registration and Approval Committee (RAC). It is established in accordance with Law No. 14/2000, which was later heavily amended on 4 Aug 2011 and renamed Law No. 14/2011) to establish the second RAC Commission and its new mandate of two-years term; time initially deemed enough to complete the difficult process of qualifying the

⁸Article 9(2) of Somaliland Constitution.

⁹See National Electoral Commission Website: <https://www.slhec.com/elections/elections-overview/>(accessed in January 2018.)

¹⁰So far, no Somaliland election was held on time and this local election was already extended to take place in March 2019, instead of November 2017.

National Political Parties¹¹. This second Commission formed by the Silanyo Government, never disbanded, but after one extension of its term still exists open-ended¹². For now, it is not clear what its status is.

To cull lessons from the Somaliland experience, it is worth dwelling: First on the purpose of the limitation of the number of political parties and whether that purpose is achieved so far. The logic of the limitation was said to avoid political fragmentation of the society. That objective is certainly not achieved, because the prevailing political climate in Somaliland feeds and thrives on the further fragmentation and sub-sub-clan political progression of the society into the lowest denominators. Furthermore, limiting the number of parties by law to three parties infringes on citizens' democratic rights enshrined in the Constitution in Article 22: freedom of associate and to have choices.

Furthermore, the political space is artificially constricted breeding heightened internal conflict situations of existing political parties, which result in frequent faction break-ways, but also further fragmentation of society through clan polarization. It also creates occasion for any Government in the seat to meddle in the opposition parties' affairs and manipulate them to its own advantage, often by playing a mediator role in their internal conflicts. There are also opportunities for incumbent government to co-opt the smaller opposition party against the one it considers a serious challenge.

Secondly, the process of going through local elections to qualify for new parties is a complex and cumbersome undertaking. Election systems need to be simplified and not to have too many objectives at the same time. Election objective should basically be electing somebody to a seat. Having another objective such as to qualify political parties overshadows the original purpose. Political parties can be qualified by establishing criteria based on the popular support of the party, and its geographic representation.

Thirdly, on independent candidacy issue, while it needs intense dialogue and study on its merits and de-merits especially in a clan society, it can be looked at as a way to relief some of the stress in the political system created by the constitutional limitations.

3. The National Electoral Commission:

The National Electoral Commission (NEC) is established through the Presidential and Local Elections Law No 20/2002, which was amended several times to meet demands of subsequent elections. The NEC has seven commissioners, selected through various national institutions: three members are selected by the Presidency, two members by the House of Elders and two members are

¹¹"At the end of their two year term and the completion of the registration and approval process, the Registration and Approval Committee's work will end and all its remaining responsibilities relating to the oversight of the three national parties' compliance with the law shall be taken over by the permanent [National Electoral Commission](#)." Somalilandlaw.com

¹²The intention of keeping it on by the President could be attributed to need for dealing with active internal strife of some of the national political parties for which they had to make a ruling: Both UCID and KULMIYE had problems which this Committee intervened.

selected by opposition parties. The criteria of qualifying as a Commissioner and its five-year term of office are both defined in the Law. While the system tries to accommodate different sectors of Somaliland society in constituting the Commission, the weight of selection choices lies with the Government, which in practice translates into having more influence on the Commissioners.

Two significant issues can have opposite influences about the fairness of the recruitment of the Commissioners. On the one hand, when the selection is complete, the Commissioners have to be approved by the House of Representatives which definitely enhances the legitimacy of the recruitment process. On the other hand, the Presidency has the power to reject choices from the opposition parties, which undermines the fairness of the system. So far, the Presidency rejected choices of opposition parties several times, all rejected due to candidates' high profile and independent mind. The opposition parties are forced to replace the rejected candidate with one more acceptable to the Government.

So, in spite of the diversity of the sources of recruitment, the system is biased towards the Presidency's heavy-handedness and has also always been deficient in gender equity. There are so far only two women who served as Commissioners in all four cycles of appointments.

III. EXPERIENCE FROM NOVEMBER 2017 PRESIDENTIAL ELECTION

The Presidential election which brought Hon. Silanyo to power was held on June 26, 2010 and the constitutional term of office of the Presidency (President and Vice President) is five Years; the next election was scheduled to be 26 June, 2015. The House of Representative election which was overdue many times was also expected to take place at the same time. Therefore, the NEC and the political parties started early preparations for the next election to meet the above deadline. Such preparations revolved around the following major issues without which the election could not have happen: completing a credible Voter Register process to get a clean Final Voter List (FVL); amending articles of the Voter Registration Law including article 12 which set a deadline of six months for issuance of FVL before election due date; amending the House of Representatives Election Law, especially to address the clan/regional seats distribution conundrum; and on top of these systemic issues, settling internal strife in major national political institutions: in KULMIYE on leadership contest, in UCID on Candidacy contest and in the House of Representatives on lowering the threshold of votes to oust the Speaker.

1. Quest for a Credible Voter Registration

Somaliland conducted an expensive voter registration in 2008 with heavy assistance from the International partners. However, the resultant Voter Register was known to be tainted with multiple registrations of many voting individuals. Trials have been made to clean the system from the duplicates, but the available technology was not able to accomplish it satisfactorily. In spite of its shortcomings; the 2010 Presidential Election was conducted using the FVL (Final Voter List) from that tainted Voter Registration. Therefore, after the election, getting a credible voter register became

an urgent task for the Somaliland key election stakeholders and to a certain extent, the International Partners. After going through intense process of consultations between the two sides, a consensus decision was reached to abandon the corrupted Voter Register and to start preparations for a new credible Voter Registration process.

An important challenge was to adopt a new biometric technology or to use a completely manual system. Some key international partners preferred the manual system. However, the three national Political Parties (KULMIYE, WADDANI and UCID) together with the outgoing National Electoral Commission decided to go for the most sophisticated biometric technology in the market, the Iris Scan, to get an FVL. The Election Day process will not use the biometric technology but remain manual, reason being, the available technology, critical equipment and internet coverage in Somaliland are not adequate.

Unlike the Political Parties and International Partners, the Somaliland Ministry of Interior was not on board in the decision to implement the voter registration process, and hence opted out to embark on conducting its own civil registration process¹³. The Ministry claimed that, it will cull the FVL from the civil register, something which the rest of stakeholders had serious reservations. Therefore, the two processes went side by side for a while; the Voter Registration was still in the preparatory stage, but the Civil Registration was implemented by the Ministry, without serious preparation, only in the three Western Regions (Awdal, Maroodijeex, Saaxil and partially in Togdheer. Afterwards, the Ministry of Interior abandoned the civil registration exercise, without completing it. Its flagship product from the partially completed civil registration process was a national ID issued to those who registered.

The above two parallel registrations systems created confusion in the public sphere. Over a million dollars of public money was squandered on the unfinished civil registration, money which was expected to facilitate development of a credible voter registration. Worse of all, due to the contradictory processes of registrations, the voter registration exercise missed its implementation target to be ready by January 2015. This delay, though, provided an important justification for the Guurti House to extend the term of office of the Presidency in May 2015 for 22 more months, which also meant postponement of the House of Representatives for same period. As a result, the donor community which initially indicated its intention to pay for the bulk of the costs of the voter registration retreated from that understanding. The Somaliland Government eventually paid the major part of it, but at its own pace, which resulted in more delays and continued uncertainty for the completion of the process.

Clearing Legal Hurdles

Some of the most difficult hurdles facing the Somaliland voter registration process were legal challenges. The Voter Registration Law No 37/2007 required substantial amendments. The most controversial issue was amending Article 12, which determined the cut-date for the Final Voter List to be ready before the election date. The reason why it became so important is that, it can trigger

¹³The Leadership of the ruling party KULMIYE is to be commended for sticking with the Voter Registration decision and helped to move the process forward, while Kulmiye Government in power was undermining the process.

delay of election if the list is not ready by then, and that in Somaliland terms will mean a term extension for the Presidency¹⁴. So, one can claim that, a failure to complete the voter registration can wilfully be engineered by any incumbent Government.

Considering the circumstances surrounding the voter registration process, meeting the deadline of completing it six months before June 2015 was not possible. One option therefore, became for the Parliament to amend the Article to change it from six months to a one-month (30 days) period before the election, but that in practice became a highly-contentious matter between the opposing parties and political circles. With no consensus solution in sight, the main opposition side pushed amendment through a highly-contested vote to pass in the House of Representatives to adopt the 30-day option, but the Guurti House immediately blocked its ratification. Somaliland was plunged into a period of serious political crisis, triggered by the opposing underlying interests, which surrounded the Voter Registration process. Eventually the Law was amended to adopt one-month period, but that only happened after the election was postponed to March 2017 and therefore, the incumbent Government got its extension.¹⁵

Other Challenges Surrounding the Voter Registration Process

Aside from the complications created by the political tug of war between opposing sides, completing a voter registration process in Somaliland or in any Somali territory for that matter, is in itself a challenging task. It has to consider, the lack of fixed/registered address for all those to be registered including city people; the logistics nightmare arising from: the rudimentary roads' infrastructure; the weak telecommunication networks; shortage of equipment and financial resources; wide spread illiteracy; the transhumant nomadic mode of life of a large segment of the Somali population, and above all the security challenges. Any successful voter registration exercise to be conducted in any Somali polity should cope with the above challenges.

To mitigate above challenges, the National Electoral Commission broke down the process into two main phases, each with its own sub-phases: First, the Registration phase, which completed within a period of nine months (16 Jan. – 20 Sep., 2016). This also had some three sub-phases, each covering two electoral regions. Second, The Card Distribution phase which took also another six months to complete (17 April – 1st October, 2017)¹⁶, also with its sub-phases as above. In between the Registration and Card Distribution phases, the NEC announced the total Number of Voters registered in each region and district. This news was particularly important for the Political parties and their candidates to gauge the strength of their supporters and that of the opponents. The total registered number of eligible voters for the First Phase was 873,333, whereas, the total number of eligible voters that returned to take their voting cards in the Second Phase was 704,089.

¹⁴For an insightful account of this matter, read DHARAARO: Qalinka: Boobe Yuusuf Ducaale; (<http://www.dharaaro.com/index.php/video/2-home/201-xaqa-cayimaadda-maalinta-doorashada-a-xaqa-muddo-kordhinta-madaxtooyada>) - accessed in January 2018.

¹⁵See also Ibrahim Hashi: Somalilandlaw.com; Voter Registration Law.

¹⁶See NEC Election Roadmap (28th March, 2017)

Key lessons drawn from the Voter Registration Exercises:

Ultimately voter registration is important for planning the election requirements, but more importantly to improve the integrity of election results. It is important to decide on the institutional custody and procedures of updating it for its continued usefulness for other elections and uses. Surely, the recent Somaliland decision to discard the tainted Final Voter List (FVL) from 2008 voter registration and the subsequent adoption of new Voter Registration with the latest biometric technology - the Iris Scan - together offer a lot to study and to draw lessons from. A key lesson is that technology is not a panacea to overcome election fraud; it can be circumvented, unless the chief election stakeholder, that is the authority in power, is fully committed to harnessing its benefits.

Furthermore, voter registration is a very challenging undertaking: 1. It is a politically loaded exercise which affects election schedules and also touches something which is a taboo in the Somali clan society – divulging its numbers strength- by attaching number of voters to each district; 2. Laws governing voter registration often have controversial components and are best enacted, when no election schedule is looming over it 3. It is technically challenging: Planning, execution and addressing security are a primary concern of its operations 4. It is very expensive and therefore, raising tens of millions of dollars requires full cooperation of donors and recipient polities;

2. Election Postponements and Extension

The Constitutional Article # 83 (5) mandates the Guurti to extend Presidency's term of office, but only in a situation where election could not be held because of insecurity situation. The Guurti House has during the reigns of last two former Somaliland Presidents used the above Article lavishly, and without any relevant security situation. Unfortunately, the Article does not give limitations to the extendable period and therefore, often times the Guurti grants the extensions of more than popularly deemed necessary.

During the Silanyo Presidency, his term was extended twice: first just before the term expired, reason being the Voter Registration was not completed on time. The Guurti granted 22-months extension, with a new date of election set for March 30th, 2017. All three political parties proposed a shorter time of six months, until the end December 2015, but the House of Elders would not heed that. The matter was taken to the Constitutional Court, which also upheld the Guurti Decision.

The Second extension was supported by the opposition which was due to a very serious drought which especially affected the eastern regions of Somaliland. Several seasons' rains failed and hence the pastoralists moved from their home areas in search of water and pasture. Since the voter registration system ties the voter to a specific polling station, it was recognized that people cannot come back to their voting areas before next rains, expected towards the first quarter of the year (Dayr

rains) of 2017. Therefore, the Guurti granted another extension of the Presidency term of office for 7 more months, with a new election time in the month of November, 2017.¹⁷

While most attention is paid to the extension of the Presidential terms, in fact, terms of office of the Guurti, The House of Representatives, and the Local Councils are also all in perpetual state of extensions by the Guurti. The sitting House of Representatives was last elected in 2005. It stayed on by a series of extensions and is now scheduled for election in March 2019 together with the Local Councils. The Local Councils were last elected in November, 2012 and were due for election in Nov. 2017.

Key Lessons to be drawn from Culture of Extensions:

Frequent delays of elections are becoming part of Somaliland state culture, which in the eyes of the public normalises term extensions whose legality is questionable. Furthermore, this practice is eroding an important principle of democratic election, which is that elected officials have specified term of office. The problem here lies with three main issues: 1. The Constitutional Article 83 (5) is overused or even miss-used, concerning the presidential elections, because none of delays so far meet the purpose of the Article, which addresses an inevitable election delay situation due to insecurity; 2. Extensions are also a tool of self-perpetuation of the Guurti House, since the modality of electing/selecting its members is not yet settled and their six-year term expired many times over. 3. The Executive Branch, especially last two Presidents, instead of concentrating on their re-election on time, opted for getting series of extensions to their time in office through the easy route of Guurti House. This practice is an affront to the principle of the primacy of the rule of law in a democratic society.

3. The Election Campaign

Somaliland election campaigns are relatively structured and regulated by the National Electoral Commission. By Law, the campaign period is between 21 and 30 days and ceases 48 hours before the Election Day. In the last election, the Commission allocated 21 days, giving each party seven exclusive days of rallies arranged to happen once every three days. Parties have the choice to make rallies or otherwise. Separating individual party's schedules helps to avoid coinciding of counter rallies, and aims to keep them peaceful; each party takes all available space for rallies in its allocated days. Usually, the party holds rallies simultaneously in all 23 Electoral Districts, but with a major focus on the six electoral region capitals.

During the campaign period, NEC employs various codes of conduct to supplement existing election laws, which include: Media Code of Conduct and Political Parties Code of Conduct. Both Codes are designed to control abusive behaviour in the campaign and to avoid anything that can instigate violence. In addition to these instruments, the NEC also relies on the Campaign Monitoring Board, which plays an advisory role for it, to monitor compliance of the stakeholder activities and to blow the whistle against breeches of election law and campaign codes of conduct.

¹⁷The Guurti sets number of months' extension, while the the NEC sets the exact date of election.

In the last presidential election, there were some violent incidents especially in Hargeisa, where buses carrying supporters of one party crossing to other party's strongholds suffer smashed windows; there were also incidents where signs of one party were removed or destroyed from another's stronghold. However, the worse incidents were: 1. When several vehicles believed to be from competing party supporters attached the WADDANI Presidential Candidates Residence trying to forcefully get inside it, but were repulsed by the security guards stationed in the House without the attackers causing significant damage; 2. The WADDANI HQ office was also firebombed from burning tyres hurled over the fence and which caused substantial damage to the office and documents. Both incidents were left to the police to deal with it.

Such a trend of using violence in the campaign has been quickly arrested by all concerned stakeholders. Both key opposing candidates (KULMIYE and WADDANI) have addressed the issue in a rational manner. The WADDANI leadership de-escalated the situation by restraining itself from retaliation and announcing that the matter is left to the concerned security forces. On their part, the KULMIYE leadership condemned the acts and called its supporters for a peaceful campaign. That conciliatory tone from both candidates minimized any further incidents during the campaign, despite the large size of rallies mainly populated by young people.

Campaign Finance

The Somaliland election expenditure, for parties and candidates alike, has exponentially grown since the first Presidential and Parliamentary elections in 2003 and 2005. According to the Rift Valley Institute (RVI) comparative analysis of 2005 and 2012 elections, personal indebtedness of candidates grew from 57.1% in 2002 to 79.6% in 2012¹⁸. Researching the expenditure of recent Somaliland Presidential election will no doubt produce astounding results, having in mind that Somaliland is a poor unrecognized country.¹⁹The recent spike in the Somaliland election expenditure is allegedly attributed to be coming from three main sources: 1. State Coffers, especially for the ruling party; 2. Politicised big local businesses and 3. Possibly from external sources. The prevailing free rein climate of funding for political parties' and election campaigns is bound to undermine the democratic principles and objective of the election and needs to be addressed. As was succinctly concluded in RVI study "Regulation of campaign finance may seem a secondary issue in the consolidation of democratization in Somaliland. But without addressing this subject, future electoral processes may be similarly compromised, and diminish both national and international confidence in Somaliland's elections."²⁰

4. Challenges Facing NEC in Conducting Free and Fair Election

NEC is the most important mandated institution in the country for ensuring elections to be free and fair; however, it is increasingly becoming difficult for opposition parties to keep faith in NEC, to play the independent role it is supposed to have. In the last election, the WADDANI Party claimed that

¹⁸RVI 2015; Diagram 1; P.16

¹⁹ New World Bank GDP and Poverty Estimate for Somaliland; Jan 2014

<http://www.worldbank.org/en/news/press-release/2014/01/29/new-world-bank-gdp-and-poverty-estimates-for-somaliland>

²⁰RVI (2015) p.41

the election was tampered with, though; it did not pursue to prove the allegation, so, let us say, it will only remain an allegation unless proven. The jury is still out there and to that end, both the domestic and international observers have responsibilities, to address it for the sake of improving the future of democratic elections in Somaliland.

(i) Contracts and Procurement Processes

Conducting “One Person One Vote” election in Somaliland is a huge undertaking, especially in the reality of working with a shoe-string budget. Furthermore, all its actions need to meet transparency expectations from its stakeholders, including the opposition political parties and the international partners. The latter contribute to the election process financial resources to fund operations, procure materials and equipment and to obtain human expertise. One of NEC’s sensitive tasks is to fulfill contracting arrangements of both local and international nature. NEC has to process contracting arrangements for the procurement of sensitive materials chief among the printing of the ballot papers outside the country, their safe delivery and storage until the Election Day²¹.

In all previous presidential elections, the contracting of ballot paper was handled mainly by international agencies and the printing used to be done in one of the donor countries. Donors used to contribute at least 70% of the election funds. This time round, it seems that NEC contracted a company and its transparency has been questioned by the opposition, though not formally challenged; but the media ran some such stories about the process. There were also rumours and allegations that the ballot papers were duplicated locally.²²

While the NEC may have all the precautions necessary of such liable material, there was an information gap with the opposition and in the public domain about the contracting process, and the quality and security arrangements. In a democratic society, secrecy around such key liable elements of the election is an unwanted source of suspicion in such sensitive times. This situation is further aggravated when a complete book of ballot papers was found by the opposition outside the custody of the NEC system.²³

(ii) Recruitment of Election Staff

Another area which is critically important in the election is the recruitment of NEC staff at regional, district and polling station levels. NEC employs during the election time, six Electoral Region Head of Office persons; 23 Electoral District Heads and a NEC team of three for each one of the 1643 Polling Stations. The first two smaller recruitments were done in a transparent manner, with all three

²¹ See also ACE: The Electoral Knowledge Network; (<https://aceproject.org/ace-en/topics/vo/voc/voc02/voc02b>)

²² Somaliland: One Person Injured as Residents Storm House over Printing Fake Ballot Papers in Burao. Somali Update, Nov 13, 2017

²³ NEC had conflicting responses to the matter. First it denied the authenticity of the document; secondly, when it tested the document, NEC realised it has the hidden features of its consignments of ballot papers and therefore, claimed to have lost it from the polling staff.

Political parties represented in the process. During this last Presidential election, the regional and district staff remained to be those recruited for the Voter Registration process²⁴. Clan issues arise even when the process is done with such due diligence, especially when a powerful stakeholder feels the system is not in its favour²⁵.

The more difficult recruitment was for over 4900 persons by NEC within a very short time; this comprised three persons, which have to operate each polling station during voting day. These three people are at the core of the system to fulfill the whole objective of the voting process, to ensure that the One Person One Vote principle is realised and respected. These three people, especially the Chairperson of the team wields tremendous powers in running this critical point of the election – the polling station. This team is not only responsible for administering the ballots to the voters but also for the counting, tabulation and declaring the results at polling station level. Here are where mostly things can go wrong.

Due to the sheer size of the required numbers, the NEC resorts to recruit them from the universities in the six electoral regions. When it completes recruitment, in an attempt to avoid local bias, NEC swaps the recruited teams between the regions, which in itself is a huge undertaking and a burden to its meagre resources. In the last two elections, the NEC has introduced having every one of recruited take an oath on the Quran against fraudulent acts in this assignment. In spite of that effort, it has to be realised that this process is the weakest link of the electoral system to fight election fraud; the due diligence required for the recruitment of such mass of people is not easy to fulfil – not enough time or resources. These teams of students are employed only for few days and their pay is only a token amount, not enough even for their accommodation, and they are deployed in a new working area. Therefore, they are vulnerable to manipulation. Furthermore, a student recruited in such circumstances, without enough time to train and build his/her understanding of the magnitude of the responsibility, cannot be seriously held accountable.

(iii) Security of Personnel and Materials (refer Sanaag 2012 Local Election)

Another challenge is guaranteeing the security of the teams of young people and the voting materials, especially in the eastern regions of Somaliland where the reach of the State is still tenuous; this was especially the case in eastern Sanaag areas bordering Puntland, as well as the Buuhoodle District of Togdheer Region. Due to local obstruction in Buuhoodle²⁶ as well as armed incursions in Badhan and

²⁴Voter Cards Distribution was completed only one month before the elections, so the same NEC staff was used in the election.

²⁵Such case happened in Borama in which the Vice President pressured the NEC to change the officer recruited through a transparent process, for sake of clan balance and ultimately the NEC caved in and undermined its own credibility, by sacking the rightful winner of the position in favour of the VP demand.

²⁶No Votes registered in Buuhoodle from 13 Nov. 2017 Presidential Election. See NEC website: Natijada Doorashada ...<https://www.slsec.com/2017/12/06/natijada-doorashada-madaxtooyada-jsl-november-13-2017/> (Accessed February 2018)

Dhahar during the Voter Registration time, the NEC could not ensure security of personnel and material in those areas. Therefore, inhabitants did not register and hence were not illegible to vote in the November 2017 presidential election²⁷.

However, in the Sool region, during this last round of election process (2016-2017) both voter of registration and presidential election took place peacefully in all polling areas, albeit still heavy army deployment for the security of the election, which sometimes compromised the independence of polling process.

5. Party Agents and Complaints System

According to Election laws, political parties have the right to have an agent in the polling station representing own parties. The Agent has a signature to all final documents without which the result won't be valid, except if the agent refuses to sign with malicious intent. The opposition parties find it difficult to field agents in all polling stations and so are the newly forming associations and that is a serious source of weakness in the integrity of the election. The ruling party usually has no difficulty in organizing strong cadre of party agents paid well by the party. In the early days of the election, the international partner community used to pay party agents, including of course the ruling party, however, in the last three elections, parties and Associations should cope with it internally. It is very much recognized in Somaliland that results of the party in the election are usually directly related to the quality and morale of the party agents. Two notable occasions are worth mentioning: KUMIYE is recognized to come to power in 2010 due mainly to its organization, maturity and commitment of its party agents and WADDANI is believed to have failed to follow that example as an opposition in the last election. The adage, that "the election is won or lost at the polling station" highlights the importance of party agents for the integrity of the election. Connected with party agent's role is the complaints system.

The Final Stages of the election are also most trying when results are being tallied and each party is assessing how it fared in the election. Addressing complaints is part of the mandate of different levels of NEC system, starting from the polling station, to the District and regional level and finally to the Commission Headquarters and may also proceed to the Constitutional Court. This component of Somaliland elections also begs for serious improvement.

Lessons from Somaliland's last election, is that the system of addressing complaints is very weak, starting from Polling stations all the way to Central NEC office. Unfortunately, it seems to be getting worse compared to the early elections. Some of the reports coming from the Party agents of the opposition claimed that, there was a trend that the Polling Station Chairpersons were not honouring party agents' rights of complaint. So many of the above challenges are very much related with weak institutional base of the election system, especially regarding the human resources capacities, coupled

²⁷Garowe Online, 17.07.2016: <https://www.garoweonline.com/so/news/puntland/wasiirka-gaashandhiga-somaliland-oo-tagey-badhan-xiisad-ka-taagan-sanaag-barri>

with deficiency in pro-active support for free and fair elections' demand from other government institutions with election responsibilities.

6. International Observers

It is a norm that countries allow outside observers in their elections. International Observation is, therefore, an established election culture now in Somaliland. The EU supported such initiatives since the early days of Somaliland election and in the last several elections, was led by Michael Walls and his team in the auspices of University College London. The Initiative produces a detailed but cautious report six months after the election. And its engagement with key actors before the election polling day, especially during the campaign period has increased. But what significant is that, the International Observations' engagement with integrity of the election has so far been rather more symbolic than actually having an impact or influence.

As it stands now, it is not clear what value it adds to the free and fairness of the election result. Therefore, it needs to explore more robust mandate for international observers, to actually turn them into monitors, who are able to blow the whistle where they observe any practice outside the law, while it matters. Recently, diaspora Somalis were excluded from participating, a move whose legality was at best tenuous, however, across Somaliland parties, that move was understandable and accepted. In the same token, the TOR of the observation exercise could be turned into a "Third Party Monitoring" system, which is now common in the aid environment. It became a potent layer ensure projects are implemented as designed, by verifying activities and sounding the bell if unplanned deviations are observed.

7. Domestic Observers

There is also the Local Observers Initiative, intended to reflect role of the civil society in the pursuit of free and fair election. It is organized with donor funding, through the Non-State Actors Association Forum (SONSAF). The organization fields close to 700 local observers, selected through SONSAF member organizations in the regions and districts. Its role is also symbolic and so far, has served only in taking the line of SONSAF cum NEC as a third layer of endorsing the announced results.

During the run up to recent Presidential Election, the opposition parties, especially WADDANI has challenged SONSAF's neutrality accusing it of being very close to the Government and hence to the ruling party. SONSAF opened dialogue with the opposition to alley such fears. For the sake of improving the integrity of elections, the role of the civil society should be one that is objectively holding the players accountable.

Finally, it is the opinion of the report that both above institutions need to reassess the usefulness of their role in improving the integrity of the Somaliland elections. It should serve as wakeup call for them, the recent experience in Kenya, which bared the gap between the donor communities' standards in the observation work and the Kenyan High Court judges, whose decision, is fair to say, was more in line with popular African sentiment and was hailed also as establishing new milestone for African democracy. It is even more encouraging that those ruled against accepted the Court decision, something that Somaliland can relate to.

8. The Role of National Key Stakeholders: Political Parties, Government and the Clan System

(i) Role of Political Parties and Clans Support

Of the present three National Political Parties, KULMIYE and UCID were in the first cycle of political party formation in Somaliland, in 2002, while WADDANI joined the national parties club only in 2012, which makes it a decade younger in the political competition experience compared to its compatriots. The third party (UDUB), which was the ruling party from May 2001 until June, 2010, disappeared from scene after it lost the 2nd Presidential election and later failed to qualify in the Local Council election in November 2012. UCID and KULMIYE ran in three Presidential elections, whereas, WADDANI participated only in this (2017) presidential election.

Main issues that one could differentiate the Somaliland political parties' strategies to win the election could be described in the following order of priority: 1. Clan allegiances; 2. Financial strength 3. Personality of the Candidate 4. Party Political programme and quality of its cadre.²⁸

Therefore, support of candidates' (President and VP) sub-clans is automatically secured for them; clans who have no candidates are usually won over by securing also for themselves future stake in the party hierarchy and government. Those with no candidate and no direct stake in the party, negotiate their interests and usually are not beholden to any party or candidate, but financial gain of their "gatekeepers" aside, push for programming benefits for their geographic areas, either for immediate action, for instance roads' construction and social services provision support or in the form of promises, especially by the opposition candidates.

The influence of the financial factor in the election has been growing in importance and may dwarf any other strategy in the future. The significance of this presidential election is that business people directly involved themselves in the political arena to pay individual politicians to leave from one party to another, to buy bulk votes from clans or even allocating money for individual votes buying. It is an open secret that prominent business people allocated huge sums to the tune of millions of dollars to the campaign. It is also an open secret that all candidates are supported by business people, but some business people are more directly and forcefully engaged than others. The question is what is the cost of this overpowering influence of business and money on the country's governance, on the democratic process and on the integrity of the election? We should remember that in Somaliland there is no law against financial spending and donation to political parties and elections.

²⁸There is a serious a public argument that the younger generation is not so much beholden to clan lines; such argument could get one's attention considering the intense scrutiny of party programmes in the social media by the young. But a different picture comes out analysing the voting records, especially in candidates' constituencies, which shows, at least for now; the clan-line carries the day.

(ii) The Role of the Incumbent Governments on Election Integrity.

Somaliland is a Presidential system and the elected President has tremendous constitutional powers at his disposal. The check and balances expected from the three pillars of Government (Executive, Legislature and Judiciary) exist in theory, but not in practice. The Judiciary has always been the weakest link in the practice of check and balance principle, whereas the two-House nature of the Legislature, in the current Somaliland experience, undermines the effectiveness of its role. The checks role of the Guurti is more directed against its sister House of Representatives than the Presidency and the Executive Branch where most power is exercised. Any law which could be a challenge to the Presidential line of action is squashed in the Guurti House; often, if the President is not sure about passage of a controversial law or policy action in the House of Representatives, a joint sitting of two Houses is arranged, to overwhelm any opposition from the Lower House. In such joint sittings, the Guurti Chair assumes also the chairmanship of the joint-session.

Therefore, in such a situation, a running President will hardly be obligated to create a level playing field for the opposition, and to heed their demand for free and fair election. The ruling party has unchallenged access to funds from state coffers²⁹ and the state machinery is obligated to support it in the election³⁰. The scheduling of the election will always be to its advantage; the NEC will have difficulty in keeping on track, the free and fairness demand of the opposition. Combining and delinking of the different elections will be strategized to the advantage of the incumbent government's party. While, all the above exclusive support to ruling party could be claimed to be something that goes generally with incumbent privileges, but what heightens their significance in Somaliland is the weakness of the public institutions that could have provided some semblance of checks and balance expected from a democratic system.

Public institutions which are critical for upholding free and fair election principles are: 1. The security forces, which are responsible for upholding the law. Somaliland may share with other transitional countries that, its security forces are still in a formative state, under paid and lack a secure system of employment, and above anything else, are not steeped in the knowledge of their duties and independence to uphold the rule of law. Therefore, their accountability to the laws and principles of free and free elections is constrained 2. The civil service: it is politicised by all incumbent governments and government employees are expected to bring allegiance to the ruling party from own clans. The state is a major employer in Somaliland to the tune of over 15,000 personnel in the President Silanyo's Government, mainly deployed to support the ruling party.³¹ The civil servants have no legal job security and therefore, are bound to secure their jobs by obliging allegiance to the ruling party. 3. The State Ministers, Regional Governors (both are political appointees) and the

²⁹It is a legacy from Somalia's one party system, and none of the past three Presidents changed it.

³⁰The totality of the Guurti House and upper echelons of the Government were all recruited into the UDUB, in its inauguration as the first party to form in Somaliland.

³¹ Regardless of Presidential Decree in the last election JSL/P/WM/-50/92017

elected Mayors, all engage directly in the elections, in support of the ruling party and with the public resources at their disposal.

A worrisome development is that, it can be gleaned from the Somaliland election experience at least for now, that commitment to free and fair election principle is receding as the Government strengthens and its reach expands. In addition, the prevalent clan politics can easily be manipulated by state power combined with money, which can have negative bearing on the democratic aspirations of the people. Democracy needs strong public institutions that rely on and enforce the rule of law to uphold the constitutional provisions. The legal opposition as a core component of democratic society and culture can play constructive role, only if the rule of law is prevailing, otherwise, it will be difficult to bring about change, even if the population is overwhelmingly supporting it.

(iii) The Role of the Legislature

Both Houses of Parliament have critical roles in promulgating laws or amending them to streamline the electoral system. In the experience of Somaliland, the sitting Parliament as well as the one before it, both resisted honouring their term of office duration; wielding the power of law-making, both secured extensions for more than their elected terms of office – the current house was elected in November 2005 and had series of extensions, the last of which is ending in March 2019. Therefore, the legislature role to nurture the democratic election culture is undermined by its interest to stay-on and hence to bend the laws to its own ends. For examples, the first Parliament, in an effort to prolong its life, passed a law which imposed the condition of completing a voter registration process before the election takes place in 2005. Since that could have put off its election for an indefinite time, the case was referred to the constitutional Court who waived the condition of Voter Registration. Other examples for current Somaliland Parliament include: (i) in a period of three years (2014-2016) the Parliament one time voted for linking the Presidential and Parliamentary elections, which was formalised by a Presidential decree, but again the Parliament voted for the delinking of the two elections, which was interpreted as meeting of interests of the ruling party for its election strategy, and the two Houses of Parliament for term extensions beyond the Presidential election of 2017.

(ii) another high-profile case generated within the House of Representatives was that of “Saami-qaybsi” - clan-seats distribution – which blocked the amendment of the Parliamentary Election Law, and hence compelled the extension of House of Representatives term of office till March 2019. This problem is still looming over the election of that House.

So, the lessons to be drawn from the role of the legislature in deepening the democratic culture, especially in the core principle of holding elections on time, is that the interest of the members to stay-on beyond their elected term became more important than the interest of the nation to hold elections on time. It is more worrisome for the national interest and living by the rule of law, when more state bodies’ interests for extension meet, especially those of the Executive and the Legislature, then the power of state leans towards accommodating them – that is what happened in Somaliland during the years after 2010 Presidential election.

IV. RECOMMENDATIONS

1. Revisiting NEC Mandate

(i) The Somaliland National Electoral Commission should be developed into a more pro-active institution whose mandate is more than managing elections, but which can conduct comprehensive public education on democracy; do research and publications; initiate laws and amendments to the Parliament and manage electoral boundaries' issues.

(ii) Commissioners' selection also needs revisiting. Current system of selection very much favours the incumbent government and ruling party, which is not conducive to requirements of free and fair election process. Furthermore, the tenure of the Commissioners is same as elected office holders, which is five years. There is need to explore (a) Giving Commissioners longer tenure, possibly of double the elected office, say ten years, as a way of job security and assuring their independence.

(iii) Introduce stricter criteria of accountability to their independence and adherence to free and fair elections norms and execution; one measure to take is to bar from them serving in any executive position in Governments that are elected during their tenure.

(iv) Introduce "Due Diligence Act" to govern procedure of handling materials and services' procurement contractual matters. Such contracts involve substantial amounts of money running into tens of millions of US dollars and therefore need to follow stricter international standards of due diligence; presently there are no clear oversight systems or regulations to safeguard public interest.

(v) (a) Formalise the recruitment of Regional and District NEC representatives as well as polling station chairpersons (team leaders). The role of these people is very important for the integrity of elections, hence should be formalised and their employment procedures must be made open and transparent; (b) their remuneration need to improve, and their duties should be built on more stricter accountability requirements to assure integrity of the polling station work; (c) To mitigate the burden to recruit large size of people in a short time – staff managing polling stations during the election day - make the process sustainable by building a regional roster of people trained one time for the election work to re-use them for future assignments; in the meantime design appraisal systems of their work, rewarding the best and shedding or even sanctioning those that forsake their national duty.

(vi) Introduce post-election Audit/appraisal system, which non-judiciary institutions could undertake, possibly a non-partisan team from House of Representatives to evaluate the process and suggest how to improve it, without having the mandate to challenge Court endorsed election results.

2. Fighting Election Fraud

(a). The Iris Scan in the registration process succeeded to eliminate individuals registering multiple times and to produce a list of eligible Voters for each Polling Station. However, it did not guarantee that the polling is free from fraudulent acts: under age registration is a problem. Other problems which honest NEC staff could stamp out include: ease of impersonation of missing voters by using their cards; reported theft of identity of registered voters (finding their names already used by ghost voters).

There is an urgent need to address these shortcomings of the system, which undermine the credibility of the election.

(b) Use some electronics equipment support to supplement the manual voting system³²:

- Cameras for reference and as a deterrent from fraud inside the polling stations

- Use of simple money authentication technology to verify if ballots are authentic during counting to allay fears of counterfeit ballot stuffing— it has to be made mandatory procedure.

(c) NEC to stop rushing to announce results and leaving so many loose ends. Give time to ensure due diligence in managing the voting and assuring its integrity as well as to settle complaints for at least three to four weeks.

3. Election Cost

The present state of costs of the Somaliland election to the candidates, and to the political parties is getting out of hand, which in fact is undermining the democratic aspirations of the Somaliland people.

(i) The election expenditure of parties and candidates should be limited by law in line with the democratic world.

(ii) Companies' donations whether owned by one person or is a corporation should be limited by law with strict sanctions to both payers and takers resulting breach of law.

(iii). Donations from individuals should also be specified by law.

(iv) All above measures are widely practiced in the democratic world to make elections reflect the wishes of the people and not that of big business and other vote buying agents.

4. Involvement of Clan and Business People in Direct Politics and Campaigns

i. Enact a law which bars traditional titled leadership from adopting any candidate publicly in the media or in any clan conference. It should be understood that the title is for all his clan members, who may belong to different parties and are free to choose who to vote for. However, in that regard, what is not in the public domain (relayed in the media) is not the State's business.

ii. Legislate business people against bribing politicians to change allegiances – having a law against such actions is a moral impediment to whoever is doing it. It will one day work for the determined.

iii. Numbers 1 and 2 will usher Somaliland into the era of *getting serious* about the “addressing separation of clan and state business”.

³²These may be deemed as more expenses, but, without stamping out the avoidable fraudulent tricks, confidence in the election system will suffer and by extension the viability of the democratic system in the Somali context.

5. Election Schedules and Extensions:

- i. Pending elections should happen in the scheduled time, March 30, 2019. The legal and practical implications of the 16-month extensions of Local Council election on the ten-year timeline for new political parties' registration is not yet addressed; *a plausible solution could be to deduct the 16-month extended time from the following term.*
- ii. The Behi Presidency should live up to the challenge and address and resolve the Saami-Qaybsi issue.
- iii. For the solution of Saami-Qaybsi explore opening the three-party system into a more democratic system; ease the independent candidate issue; but most importantly hold a national census, as basis for determining the regional distribution of seats.
- iv. Explore fixing the time of elections to specific dates and combine them into two categories: The Parliament and Local Councils in one category and the Presidency in another category.
- v. It is urgent to revisit some selected articles of the Constitution, including Article 83, to add also clearly what is not permissible according to this Article.

6. Observers

The international observers mandate needs to be revamped to allow them add value to ensuring integrity of election. Now the initiative is reduced to a role of a spectator who moonlights the campaign period and leaves without anybody noticing except winners who want their stamp of approval; the usual report produced after the dust settles, services more the academics and international actors than the local needs for improvement. An option is to transform it from election observation to election monitoring to give it teeth a) To monitor clear violations to the free and fair election ethic; b) take the motto that Somaliland election's integrity matters and therefore, no violation is acceptable c) Establish hotline centre in polling day and have representatives of three parties and the Government present to follow reports relayed from the field and to require from these stakeholders to take immediate action against violation.

3) Integrate domestic and International monitors; train local observers to be part of a larger monitoring initiative with clear mission and accountability; f) Produce a life report and move away from culture of patronizing and allowing the slow death of Somaliland aspiration for democratic elections.

VI. REFERNCES

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