



Somaliland's renewed stalemate: the consequence of extensions

Hargeisa

June 2022

Contents

1. Introduction	3
2. Background.....	3
3. Multi-party system.....	4
3.1 Introduction	4
3.2 Registration of new political associations.....	5
3.3. 2021 amendment	5
3.4 The judgment of the Supreme Court.....	6
4. The Guurti: the elephant in the room.....	7
5. Renewed dispute.....	7
5.1 Introduction	7
5.2 The dispute over the election date.....	8
5.3 Investigating the National Electoral Commission.....	8
5.4 Failed negotiations	9
6. Way forward	9
6.1 Introduction	9
6.2 Short term solutions	9
Possible scenarios.....	10
6.3 Durable solutions.....	11

1. Introduction

The political leaders in Somaliland are in a deadlock over the election schedule. This paper outlines the history and causes of political disputes in Somaliland and how the democratisation process is entangled with the practice of term extensions, unconstitutional actions, legal lacunae and last minute preparations. Twenty-one years of the military regime (1969-1991) coupled with civil war produced fragile state institutions, a weakened rule of law and a consensus-based dispute resolution mechanism that undermined the natural growth of crucial institutions that are vital for functioning democracy.

The paper first introduces the history of Somaliland's elections, the birth of the multi-party system, and the legal and political dimensions of registration and operation of political parties in the last twenty years. Moreover, the paper analyses the constitution, legislation and Supreme Court decision concerning the registration and elections for new political associations and existing parties. The brief also examines the history and legality of the extension of terms and how that is related to the present-day dispute. Lastly, the paper presents short-term solutions for the current stalemate and durable solutions that address the root causes of the problem.

2. Background

Exactly twenty years ago, Somaliland conducted in 2002, the first one person one vote election since it declared the restoration of independence in 1991.¹ After the approval of a constitution in 2001,² Somalilanders lined up to vote for local councils for their districts on 15 December 2002.³ Less than six months later, a presidential election was competed in 14 April 2003.⁴ The then incumbent won by a narrow margin of fewer than three hundred votes. In November 2005, the first parliamentary election took place where 82 members of the lower house of the bicameral Parliament, the House of Representatives, were elected from all the six regions of Somaliland.⁵ The opposition parties gained the majority of the House. The first cycle of Somaliland's democratisation process was a success story.

The second phase of the election cycle, however, faced challenges. When the term of the local councils expired in 2007, their term was extended until 2012. President Dahir Rayale Kahin, who was elected in 2003 for five years term, stayed in power until the 2010 presidential election when he lost to the opposition contender, Ahmed Silanyo. The extensions received by President Rayale

¹ Somaliland declared the restoration of independence from Somalia in May 1991. On 26 June 1960 Somaliland gained independence from the UK and joined a union with Somalia five days later on 1 July 1960. After a decade long civil war against the military regime of Somalia, Somaliland unilaterally announced that it is no longer part of the union. So far, no country recognizes Somaliland as an independent country, although it fulfils the criteria of statehood.

² INITIATIVE INITIATIVE & REFERENDUM REFERENDUM INSTITUTE, Somaliland National Referendum May 31, 2001, Final Report of the Initiative & Referendum Institute's Election Monitoring Team Issued on July 27, 2001

³ Final Report of the European Union/GTZ, Contract No: 169-EDF-IR14-02, December 2002

⁴ Report on the South African Mission on the Somaliland Presidential Elections

⁵ Ragnhild Hollekim, Stig Jarle Hansen and Geir Moe Sørensen, SOMALILAND: ELECTIONS FOR THE LOWER HOUSE OF PARLIAMENT SEPTEMBER 2005, NORDEM Report 03/2006

were controversial. The opposition took the streets, and the international community intervened to mediate the parties. In 2009, six points agreement was reached that paved the way for the 2010 elections.

The victory of the opposition leader, Ahmed Silanyo,⁶ who long opposed extensions and delays of elections, has not solved the issue. Silanyo himself got extensions twice. His term expired in 2015, but the presidential election took place on 13 November 2017. The members of the House of Representatives who were elected in 2005 held on power up to May 2021. They exceeded their term of 11 years.⁷

3. Multi-party system

3.1 Introduction

When the Siyad Barre's government collapsed and Somaliland declared the restoration of independence in 1991 series of peacebuilding and state-building conferences took place in Somaliland.⁸ In the 1991 Buraq Conference, the Somali National Movement (SNM) leadership, the rebel that ousted Siad Barre from Somaliland, was mandated to lead the new republic for two years transitional term. In 1993, a conference was convened in Borama town to elect new administration as that of the SNM leadership has ended. At Borama, a Peace Charter and a National Charter, a constitutional framework, were approved by delegates representing various clans.⁹ The next conference took place in Hargeisa in 1996/1997. In the 1996/97 Hargeisa Conference, delegates representing clans decided to transition from a clan-based selection of political leaders to elections of universal suffrage based on a constitution. The delegates passed a provisional constitution that obligated the government to hold a national referendum. In 2001 the voters approved an overwhelmingly the constitution.¹⁰ Article 9 of the Constitution stipulates as follows:

1. The political system of the Republic of Somaliland shall be based on peace, co-operation, democracy and multi-party system.
2. The number of political parties in the Republic of Somaliland shall not exceed three (3).
3. A special law shall determine the procedures for the formation of a political party, but it is unlawful for any political party to be based on regionalism or clannism.¹¹

⁶ Ahmed Mohamed Mohamoud, also known as Silanyo, won the election defeating the then incumbent. See, <https://www.interpeace.org/2010/07/first-ever-successful-democratic-transition-in-the-horn-of-africa/>

⁷ <https://reliefweb.int/report/somalia/somaliland-s-fragile-democracy-faces-more-election-delays>

⁸ Michael Walls, *A Somalia Nation-State: History, Culture and Somaliland's Political Transition* (Pisa: Ponte Invisible 2014)

⁹ Mark Bradbury, *Becoming Somaliland*, UK ed. Edition (London : Oxford : Bloomington : Johannesburg : Kampala : Nairobi: James Currey, 2008).

¹⁰ Michael Walls, *A Somalia Nation-State: History, Culture and Somaliland's Political Transition* (Pisa: Ponte Invisible 2014)

¹¹ Somaliland constitution, 2001: art. 9

The article in the first paragraph permits a multi-party system and restricts them only to three in paragraph two. Nevertheless, the constitution was the starting point for a multi-party political system that replaced the clan-based selections of leaders.

3.2 Registration of new political associations

The Law for Regulation of Political Associations and Certification of Political Parties (hereafter referred to as Law No. 14) was promulgated to accommodate the limitations in the constitution. Law No. 14 required the registration of new political associations that shall compete in local councils. The top three winners shall become the three political parties eligible to participate in national elections. In 2002, six political associations were registered. UDUB, Kulmiye and UCID were declared the winners of the 2002 elections and participated in subsequent elections held in 2003 (presidential), 2005 (House of Representatives) and in 2010 (presidential elections). The understanding of the then ruling party, UDUB, was that no political parties/associations could be registered in Somaliland, and the parties that won the 2002 elections shall remain permanently the only permitted parties in Somaliland. Politicians opposed to this stance started to form Qaran Party. The leaders of Qaran were arrested, tried and sentenced.¹² Afterwards, they were pardoned by the President.

The Qaran politicians joined forces with the then opposition party, Kulmiye, which won the 2010 presidential elections. Law No. 14 was amended in 2011 to include new clauses permitting the registration of new parties every ten years. Existing parties (three) and newly registered associations shall compete in local council elections every ten years. Those with the highest number of voters shall become political parties in the following ten years.

In 2012, new political associations were registered under the amendment and ran the local elections. UCID, Kulmiye and WADDANI emerged as the official parties. The next local councils' elections were scheduled five years later, in 2017. This election did happen on time due to postponements. The local council elections took place in 2021, four years later than the scheduled date. This delay has disrupted the purpose of Law No. 14, which was to hold local council elections every five years. Due to the postponement of the 2017 elections, there are no local council elections scheduled in 2022, the date the licenses of the political parties will expire, and the Law obligates the registration of new political associations.

3.3.2021 amendment

In 2021, the Parliament amended Law No. 14 to fill the legal lacunae created by the 2017 local council elections delay. A number of inclusions were made, but the most important and impactful change affected how new political associations shall compete to become parties. Instead of holding the competition in local councils' elections, the 2021 amendment stated that new political associations and existing parties should compete in an exclusively held election. It removed the

¹² <https://www.amnesty.org/fr/wp-content/uploads/2021/07/afr520132007en.pdf>
<https://www.reuters.com/article/uk-somaliland-rights/rights-group-urges-release-of-somaliland-prisoners-idUKL0981028220070809>

articles referring to local council elections. Both Houses approved the amendment. President Muse Bihi Abdi returned the amendment on the grounds that the amendment is illegal and contrary to existing laws and election schedules.¹³

New controversy arose surrounding the legality of the President's return of the amended law. One argument states that the President has passed the 21 days requirement set out in the constitution, and therefore, the amendment becomes law automatically. Article 77(5,6) of the Constitution says:

The President shall sign any bill forwarded to him by Parliament within three weeks (21 days) beginning from the date when the bill was received at the Office of the President, providing that he has not referred it back to Parliament.

If the President fails to sign a bill forwarded to him by Parliament within the requisite period, and has not referred it back to Parliament, then the bill shall henceforth become law, and shall be promulgated by the House which forwarded it (*to the President*).

The opposite argument, held mainly by the opposition parties, contended that the due to the transition period caused by the elections of new members of the House of Representatives gave the President an excuse to wait for the takeover of the new members of the House before submitting his changes.

3.4 The judgment of the Supreme Court

A constitutional case was submitted to the Supreme Court by citizens who argued that original Law No. 14 amended in 2011 is applicable irrespective of the disputed changes as the ten years of the license for the political parties is expiring.¹⁴ The Court agreed with the plaintiffs' contention and ruled that new political associations shall be registered in accordance with Law No. 14 as amended in 2011. The Court further added that there is no need for local councils' elections for new political associations to compete. Hence a direct election for new political associations and the existing political parties shall be held where the three with the highest votes will become the three parties to compete in national elections in the following ten years.

As a result of the Court's decision, the President nominated seven members to serve the Commission for the Registration of Political Associations and Certification of Political Parties established under Law No. 14. On 23 May 2022, four of the nominated members received the approval of the House of Representatives, and the House rejected three. The approval of the majority of the members of the Commission paved the way for operations of the Commission, which informed aspirants of new political associations to embark on the process in a meeting that took place on 29 May 2022.

¹³ Presidential Office, JSL/Xm/GW/081-072021, dated 20.07.2021

¹⁴ Supreme Court Judgment, MSD/DDI/01/2022, dated 16.01.2022

4. The Guurti: the elephant in the room

The Constitution of Somaliland (2001) created a bicameral parliament consisting of the Guurti (also known as the House of Elders) and the House of Representatives.¹⁵ The two chambers of the legislature share the lawmaking powers. All laws, except financial bills, passed by the House of Representatives shall go to the Guurti to approve or return to the House of Representatives. Before the approval of the Constitution in May 2001, Somaliland had clan-based conferences to elect members of both houses of Parliament and the President and vice president. The last clan conference was convened in Hargeisa in 1997. Members of the Guurti, the House of Representatives and a president with his vice-president were elected in 1997. The term of the Guurti is six years. Since the 1997 conference, no election has taken place to replace the members selected in the clan conference. Twenty-five years later, no change has occurred, and once a Guurti member dies or vacates the office, his closest heir fills in through inheritance.

Article 57 of the constitution states

The House of Elders of the Republic of Somaliland is the second part of the legislative, and shall review the legislation passed by the House of Representatives before it is forwarded to the President; and shall have special responsibility for passing laws relating to religion, traditions (*culture*) and security.

According to Article 58 of the Constitution, the members of the House of Elders shall be elected in a manner to be determined by law. Such a law was never passed or even debated before the Parliament. In the absence of a law that determines the procedure of their election, the members of the Guurti enjoy indefinite terms in office. The Guurti exercises unconstitutional power by extending the terms of the President, the members of the House of Representatives, the local councils and the Guurti members themselves.

The extension of terms by the Guurti is not only undemocratic and unconstitutional, but they also create uncertainty, unpredictability and political instability. The unelected Guurti members benefit from political disputes to stay in power.

5. Renewed dispute

5.1 Introduction

The current political stalemate is a result of the extension of terms. Constitutionally the mandate of President Silanyo ended in 2015. Nevertheless, no election took place that year, and President Silanyo vacated the office on 13 December 2017, delaying the presidential elections by two years and four months. The license of the political parties shall expire every ten years, starting from 2012, when the local councils' elections took place. However, the election cycle for local councils was disrupted due to delays. Instead of holding local councils' elections in 2017, the elections were

¹⁵ Somaliland Constitution, 2001: art. 38

held in May 2021. Therefore, in 2022 two elections coincided unplanned due to election delays and extension of terms.

5.2 The dispute over the election date

The opposition parties, WADDANI and UCID, hold that the presidential election scheduled for 13 November 2022 shall take place first, followed by the elections of political associations. The contention is that the presidential election is constitutionally ordained and shall have precedence over other elections that are enshrined in legislation. The ruling party and the government contend that the elections of the political association shall be held first. Then the three parties that win this election shall compete in the presidential election. Their contention is that Law No. 14 stipulates that newly registered political associations shall have temporary certification to operate for six months. Hence, the election shall occur within six months, starting from the date the Commission grants the provisional certificate. The expected date for granting such a certificate is June 2022.

5.3 Investigating the National Electoral Commission

On 27 April 2022, a letter signed by five members of the National Electoral Commission stated that the members have fired the chairperson of the Commission, Abdirashid Mohamoud Ali, and elected Kaltun Sheikh Hassan as the new chairperson. Abdirashid issued a statement disputing the dismissal and insisting that he is still the chairperson. The members of the National Electoral Commission are seven in total. One resigned a couple of months ago, and his position is yet to be filled. Therefore, this means all the members of the Commission except Abdirashid agree to his dismissal.

On 10 October 2022, the President appointed five members committee to investigate the members of the National Electoral Commission in accordance with Article 15 of the Elections Act, Law No. 91/2020.¹⁶ Article 15, titled “the dismissal of the [members] of the Commission,” sets out the process of firing a member of the National Electoral Commission if one of the following exists:

1. If the member loses one of the requirements for membership of the Commission.
2. If the member is unable to perform his/her tasks due to incompetence or on the grounds of illness.
3. If the member commits unethical behavior, theft, corruption, nepotism or similar actions.

If the President believes that one of the above-mentioned conditions is in play, he has the power to appoint an independent committee to investigate and submit a report. Suppose the report concludes that a member shall be dismissed. In that case, the President has the power to dismiss the member subject to the approval of the House of Representatives by a simple majority.

Kaltun Sheikh Hassan argues that the members appointed by the President to investigate the Electoral Commission are not independent. At least three of them, including the chairman of the

¹⁶ President Muse Behi Abdi, Presidential Decree, 10.5.2022

committee, Mohamed Jama, are known members of the ruling party, Kulmiye. Moreover, the opposition accused the President of interfering with the National Electoral Commission.

All the members of NEC members have resigned after the investigative committee started their work. The resignation of the members of the National Electoral Commission deteriorated the situation. It removed the body responsible for holding elections, which might disrupt the election schedule. NEC is legally an independent institution, and its impartiality is a crucial aspect of its work. Any undue influence on NEC might send a deterrent message to future members of the electoral body.

5.4 Failed negotiations

The President has invited the opposition leaders to his office to solve the quandary. On 17 May 2022, the political leaders, in a joint statement, said they had agreed to resume negotiations after the 18 May celebrations (National Day).¹⁷ A meeting took place at the palace on 24 May. The opposition leaders held a press conference that night and accused the President of not being willing to negotiate in good faith. A few days later, they declared that the talks were suspended, and they announced that they would hold public protests to “save Somaliland.”¹⁸ The Minister of Interior, who is also the deputy chairman of the ruling party, issued a decision on 29 May stating that the demonstrations are not permitted and ordered the security agencies to prevent them.¹⁹

6. Way forward

6.1 Introduction

Somaliland is known for solving political disputes through consensus, a practice that widely receives admiration. However, the renewed political dispute indicates that Somaliland needs to have strong independent institutions that have the trust of stakeholders. Consensus is based on mutual acceptance and compromise from all parties. Therefore, it is not a sustainable conflict resolution model in a democratic country where a difference of opinion is a must.

The way forwards is categorised into short term and durable solutions. The Centre for Policy Analysis views that drastic political, institutional and legal reforms are needed if Somaliland’s gains in a democracy are to be sustained.

6.2 Short term solutions

Obviously, the short-term solution is to get a way out of the current deadlock. It is crucial to find a trusted third party to mediate the political parties. The sides in this conflict presented their positions. However, it is key to understand their interests and fears. The ruling party intends to seek an extension for the President. The unexpected loss of the May 2021 parliamentary and local

¹⁷ 18 May is celebrated every year to commemorate the date Somaliland declared the restoration of independence in 1991.

¹⁸ Joint Letter signed by the chairperson of WADDANI and UCID parties, 28 May 2022.

¹⁹ Minister of Interior, WAG/CW/318/06/2022, 29 May 2022

council elections²⁰ changed the President's outlook on the future.²¹ His party seems unprepared for a presidential election due to many factors, including an internal dispute over the successor of President Muse Behi. On the course of a few months, President Behi promised to open the registration of new political associations,²² retracted that by rejecting the changes to Law No. 14²³, and again pushed the registration of new political associations.²⁴ His position changed with the prospect of success in elections, not on principles.

The opposition's main fear is the new political associations. If new political associations compete before the presidential elections, there is uncertainty about whether the opposition parties could survive. Even if one of them survives, the competition will change the entire dynamics of Somaliland's politics and might disrupt alliances built by the main opposition party, WADDANI. Therefore, the opposition parties' interest is to hold the presidential election before conducting elections for political associations and parties. Thus, they are not necessarily against an extension of President Behi's term as long as the presidential election takes place first.

The opposition and ruling party rhetoric inflame the situation. The political leaders should stop the polarising and divisive politics and the inharmonious language that groups people into clan affiliations and loyalties. Dominating identity politics undermines cohesion and solidarity.

Possible scenarios

The following are possible scenarios. The order does not show precedence or preference.²⁵

1. Extensions: it is a possible scenario for both the president and the political parties to gain an extension of terms. The term of the president will expire on 13 December 2022, whereas the license of the political parties will also expire in December 2022. The sides in the conflict might agree to push both elections on a future timetable based on technical recommendations made by the National Electoral Commission. In this scenario, the presidential election takes place first, followed by the elections for the political associations/parties.
2. Holding both elections on the same date: On May 2021, Somaliland conducted parliamentary and local council elections. The experience of May 2021 can be replicated this year by holding the presidential election and the elections for political parties/associations on the same date.

²⁰ <https://www.aljazeera.com/news/2021/6/6/somaliland-opposition-wins-first-parliamentary-polls-since>, last retrieved 30 May 2022.

²¹ The opposition parties won 51 seats in the House of Representatives while the ruling party won only 30 seats. Moreover, the opposition won the mayorship of five cities out of the six main cities of Somaliland. The opposition won Hargeisa, the capital, Burao, the second-largest city, Borama, Erigavo and Las Anod. The ruling party runs Berbera.

²² Annual Address, President Muse Behi Abdi, 2021

²³ See President Behi's letter addressed to the House of Representatives where he rejected the amendment of Law No. 14, Presidential Office, JSL/Xm/GW/081-072021, dated 20.07.2021

²⁴ Annual Address, President Muse Behi Abdi, May 2022

²⁵ Centre for Policy Analysis does not propose or back a particular scenario. We only present these options.

3. Extension of the president's term: This involves extending the president's term and holding the elections for political associations/parties this year or early next year.
4. Presidential election on 13 November 2022: It relates to conducting the presidential election on 13 November 2022 as scheduled and pushing the elections for political parties/associations next year.

6.3 Durable solutions

The present-day disagreement and its substance are not new to Somaliland. Since 2008, Somaliland has been amidst continual meaningless and avoidable political wrangling that threatens the stability of Somaliland and its democratisation process. Solutions have been short-term painkillers that did not address the root causes. The culmination of polarisation, poverty and inept institutions that failed to deliver services or live up to their promises position Somaliland on a dangerous path. Therefore, Somaliland's leaders should take their responsibilities seriously and create a conducive environment that can sustain democracy and stability in conformity with the constitutions, the rule of law, and democratic principles.

❖ Judicial reform

Somaliland needs to reform the judiciary. The judiciary shall be impartial and independent and have the resources necessary to perform its tasks. Without an independent and impartial judiciary, democracy is not fully functional, and it is prone to violence or political instability. It is particularly demanding Somaliland to strengthen the Supreme Court, which serves as a constitutional court. However, the experience of Somaliland in the last thirty years demonstrates that there is an urgent need to establish a separate constitutional court to work exclusively on constitutional cases. Before the creation of a constitutional court, the Supreme Court should be granted clear powers with a written procedure on how to handle constitutional cases. The lack of law that governs constitutional matters creates uncertainty.

❖ Security sector reform

It is important for Somaliland to reform its police and other security and law enforcement agencies to create independent, impartial and professional institutions. It is vital to demilitarise and depoliticise the police. It should not operate under the command of the politicians but on the rule of law.

❖ Reformed electoral body

The composition and nominations of the members of the National Electoral Commission are politically charged. The existing electoral body needs comprehensive reform that distances the institution from the political parties. Lessons can be learned from other young democracies in Africa by making a comparative analysis.

❖ **Inclusive political system**

Somaliland should embrace inclusivity in terms of meaningful participation of women in leadership, elimination of ageism that prefers the older generation and balancing key positions of power with the different communities. Communities in Sool and Sanaag are marginalised, and power is concentrated in central regions of Somaliland (Hargeisa, Sahil and Togdheer).

❖ **Periodic elections**

Extension of terms and postponements of elections undermine democracy. Somaliland should hold elections timely and periodically and embark on a process that ends all forms of term extensions. It is urgent and necessary to have the Guurti elections without delay. At the same time, the Parliament should enact legislation prohibiting the extension of terms and fixing election dates in law.

About Centre for Policy Analysis (CPA)

CPA was established to help the countries of Horn of Africa region to build, peace, democracy, human rights and effective governance systems where all citizens are equal. CPA is based in Hargeisa, the Capital of the Republic of Somaliland.

Contact:

Address: Red Sea village, I/K district, Hargeisa, Somaliland.

Email: Contact@centerforpolicy.net.

Web: www.centerforpolicy.net