



**Center for Policy Analysis**  
Peace, Democracy, Human rights

## **PARLIAMENTARY ELECTIONS OF SOMALILAND<sup>1</sup>**

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### **SUMMARY**

*Twenty five years of independence and 15 years of democracy, Somaliland is widely praised for its dynamic nascent democracy in a troubled and turbulent region which the international news report terrorism, piracy, anarchy and dictatorship. With the apparent success and maintenance of peace and stability, flaws lie in the hybrid democratic system envisaged to help the people to reach their potentials in a free and open society where democracy and human rights are the core guiding principles. Since 2005, the election of the House of Representatives has not been held despite expiration of the House's term in 2010. The Upper House (Guurti) was never directly elected by the people. The serving members of the Guurti were selected by clan elders in 1997 and remain in seat since then by extending their own term. This article argues that the main challenge impeding conducting the House of Representatives election is political one, not a legal. The process requires a roadmap with timetable elucidating the timeframe in which the process will be concluded. In the absence of a roadmap, it is obvious that the issue will remain unresolved. One of the key factors obstructing success is that the political elites are in devoid of roadmap. Besides postponement, they have never presented a way out.*

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<sup>1</sup> This article was first presented at the Conference on Reviewing Somaliland Electoral Process organised and convened by Somaliland Non-state Actors Forum (SONSAF) in Hargeisa on 7<sup>th</sup> and 8<sup>th</sup> November 2016.

## **BACKGROUND**

After a decade long struggle, the people of Somaliland finally declared restoration of independence at Buraao in 1991 (Lewis, 2002). Interim government was set up to lead two years of transitional period. The interim government faced turmoil posed by abundance of arms and loss of control created by the collapse of the government institutions. In 1993, traditional elders and politicians held a grand conference in Borama as the term of the government lapsed (Jhazbhay, 2009). The conference put the first foundations of state institutions for Somaliland. Provisional charter was approved by the delegates, and president, vice president and bicameral parliament were elected (Walls, 2014).

The charter was a result of a long discussions regarding the nature of the government, the powers and structures of the state institutions and the legal system. The delegates were divided on whether to create a parliamentary or presidential government. Lastly, the latter option was favoured. A presidency with full executive powers was established. The decision of preferring the presidential system considered the experience learnt during the civilian parliamentary governments of 1960 to 1969. The main objective was to avoid unstable government at a time of a crisis in a new republic forming from the ashes of a brutal dictatorship and devastating war.

The second salient feature of the charter was its adoption of a bicameral legislature resembling the US Congress, but with unique character. The Parliament consists of the Upper House (the Guurti) and the Lower House (the House of Representatives). The Upper House possessed distinctive composition and history. The nature and history of the Upper House will be explained below. Both houses were given jointly the law making responsibilities. The Charter required drafting and approval of a constitution within three years.

Mohamed Haji Ibraahim Egal, the prime minister of Somali Republic who was overthrown by the military in 1969, was elected by the delegates at Borama Conference. Egal was the leader of Somaliland when it gained independence from the United Kingdom in 1960. Similar with his predecessor, Abdirahmaan Tuur, Egal faced fierce challenges. Civil war erupted in 1994 and continued until 1996/1997 Hargeisa Grand Conference (Walls, 2014). Hargeisa Conference was conducted to reconcile warring sides and to elect president and Parliament as the tenure of Egal administration expired.

The delegates re-elected President Mohamed Haji Ibrahim Egal and new vice-president, Dahir Rayale Kahin. The members of the Parliament were also elected. The first provisional constitution of Somaliland was adopted by the conference as a replacement to the Charter and transition to constitutional government. According to the provisional constitution, the new administration was tasked to implement it within three years. However, the people were not able to vote the revised version of the constitution until 2001 where 97% approved in a referendum (Jhazbhay, 2009).

## **HOUSE OF REPRESENTATIVES**

The first direct election of the members of the House of Representatives took place in 2005. The 82 members of the House were elected in five years term from the six regions of Somaliland. The allocations of the House seats created heated debate in 2005. The constitution states the total number of the House members, but does not mention the way in which the different districts and regions will receive seats. The absence of census complicated already complex situation. The population of each and every district and region is obscure. In Borama and Hargeisa conferences, the members of the House were distributed along clan lines.

The Regional and District Self-administration Act (Act No.23/2003) states that the six pre-independence districts of Somaliland shall be recognized as regions. The demarcation of these six regions are based on the delineation of the six districts in 1960.<sup>2</sup> The six regions are namely, Awdal, Hargeisa, Saahil, Togdheer, Sool and Sanaag. After fierce debate that nearly delayed the 2005 election, the political parties agreed ratio based on 1960 parliament. Before Somaliland united with Somalia in 1<sup>st</sup> July 1960, Somaliland Parliament consisted of 33 seats distributed among the six districts.<sup>3</sup>

The House of Representatives Election Law (Law No. 20-2/2005) provides that 2005 allocation is temporary and one time use. Therefore, it became mandatory to have an agreed distribution of seats for the next term. Since 2010, the tenure of the House has been routinely extended by the

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<sup>2</sup> Act No.23/2003

<sup>3</sup> From such allocation the six regions have the following seats: 1. Hargeisa Region 20. seat; 2. Togdher Region 15 seats; 3. Awdal region 13 seats; 4. Sanag Rgion 12 seats; 5. Sool Region 12 seats; 6. Sahil Region 10 seats.'

Upper House of the Parliament, the Guurti, which itself has never been elected by the people directly or indirectly.

### **The Constitutionality of the Extension of the Tenure of the House of Representatives**

Article 42(3) of Somaliland constitution says:

“If the election of the House of Representatives cannot be conducted because of dire circumstances, the outgoing House shall continue in office until the end of these circumstances and a new House is elected. Dire circumstances are: a wide war, internal instability, serious natural disasters, such as earthquakes, epidemic diseases, (*and*) serious famines; and shall be determined and resolved by the House of Elders on the proposal of the Council of Government”.

The article clearly limits the grounds in which the House’s term can be extended. It lists three reasons:

1. A wide war,
2. Internal instability,
3. Serious natural disasters, such as earthquakes, epidemic diseases, (*and*) serious famines.

The term of the House of Representatives has never been extended on the reasons provided by article 42(3) of the constitution. The constitution does not provide the House of Elders open-ended power to determine when the House’s term is to be extended. Therefore, any extension that does not fall under article 42(3) of the constitution is ultra-vires and is beyond the legal mandate of the House of Elders.

The main challenge impeding conducting the House of Representatives election is political, not a legal. Although the House of Representatives Act is not approved, the obstacle hindering the law to be passed is political. There are regions who are dissatisfied of the current seat allocations. Such political impediment could have been resolved in the ten years period Somaliland had to discuss and consult the issue and reach solution. The political elite is unable or unwilling to lead a fruitful discussion that could solve the political controversy. Whenever election is postponed, clear roadmap is not put in place to overcome the challenges. Thus the extended period expires without making a development.

The issue of the seat allocation was the main reason of delay in last postponement. The other delays were purportedly necessitated by logistical and practical hindrances such as absence of voter registration. The main question is then how the seat allocation disagreement could be solved for good in order to hold the election and give back the people the power to elect their representatives?

It is obvious that there are members in the House who are determined to stay in power and use the loopholes as a pretext to drag the dispute in their favour. The clear conflict of interest in the Parliament is one of the main factors that are hampering in reaching durable solution.

The following are the possible solutions. The numbering is not of preference.

1. **2005 ration:** the 2005 ratio was based on 1960 seat allocations. The population of Somaliland changed since 1960. What is not known is however which region the population decreased or increased. If this outdated allocation is taken, the solution will be temporary and will remain pending till the next election. There will be negative political ramifications unless relevant stakeholders are convinced.
2. **Census:** the best way of resolving the problem is getting the exact population of Somaliland and that of each district and region. From that the representative(s) of each district or region will be established by dividing the 82 members to the whole population. This requires financial, logistic, knowledge and institutional capacity. Practically, it is difficult and will take indefinite time. But, if it is succeeded, it will bring the argument to an end.
3. **Compromise:** compromised redistribution of the seats with the current allocation can be made on the basis of inclusive consultations. The stakeholders can attain settlement addressing the concerns of the existing grievances and coming up acceptable compromise. In this way, the election can be held.

Quota for women and minority clans is vital component for inclusive and representative democracy. The groups who are facing obstacles to take part the competitive system need special

arrangements and affirmative action to include in the political system and to have representatives in the decision making bodies. Thus the process shall take into account the quota in all of the stages and phases irrespective of the accepted option.

The process requires a roadmap with timetable elucidating the timeframe in which the process will be concluded. In the absence of a roadmap, it is obvious that the issue will remain unresolved. One of the key factors obstructing success is that the political elites are devoid of roadmap. Besides postponement, they have never presented way out.

Any solution to the current impediment requires political will and leadership to spearhead the process. The recurrent extensions damaged the public trust and harmed the stand of democracy. The institutions are losing legitimacy and the gap between the ruled and the ruling is dramatically increasing. The delays are taken by critics of democracy as its inherent failure. Hence immediate and authentic action need to be taken to rebuild trust and save the good image of democracy in Somaliland.

### **THE UPPER HOUSE (GUURTI)**

The House of Elders known as the Guurti was first established as a law making body in 1993 at Borama. The interim Charter drafted in 1993 created a bicameral parliament consisting of two houses: the House of Representatives and the House of Elders (Guurti). The members of the House were selected by clan elders in 1993. At the 1997 conference held in Hargeisa the clan elders again selected the House members as well as the members of the House of Representatives and the President.

Since 1997 the House of Elders (Guurti) was never elected or selected. Whenever a position becomes vacant mostly because of death, the family of the deceased member fills the vacancy. Whenever their term lapses, they extend their own term.

There is no law regulating the election of the House members. The Guurti keeps the issue out of the debates. The political parties and the civil society are focused on the Lower House (House of Representatives) and the presidency.

## **The Guurti in Somaliland constitution**

Article 38(1) of the constitution states that “the legislative powers of the Republic of Somaliland are vested exclusively in the Parliament which shall consist of two Houses - the House of Representatives and the House of the Elders. The power to legislate cannot be transferred to anyone outside the Parliament”. The role of the legislature is given to bicameral parliament. The constitution further provides the specific role of the Guurti in article 57:

“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”.

In article 58 the constitution dictates that the members of the Guurti “shall be **elected** in a manner to be determined by law”. Their period of office is six years unlike the members of the House of Representatives whose tenure is five years. As stated in the constitution, the Guurti is a law making chamber of the Parliament. It is neither traditional house nor non-political entity. Nevertheless the term “Guurti” has its own meaning in Somali language and customary law history which is misleading when used in the Parliament.

It is undemocratic and against the popular sovereignty to side-line the people and grant the power of electing law makers to the hands of few. Anything short than direct election of the Guurti is contrary to article 58 of the constitution and the spirit and intent of the constitution which is grounded on democracy where sovereignty lies with the people. However, the question of seat allocation remains challenging in similar with the House of Representatives. As explained above such question is not legal, but rather political and requires political solution. On a political settlement, the legal framework could be put in place.

It is not exaggeration to argue that almost all the members of the Guurti are against any change in their seats. Currently they are enjoying indefinite and life time term. It is arguably human nature one to prefer staying in power rather than relinquishing it. It is therefore wrong to expect the Guurti members to support electoral process. Thereby, there should be strong lobby to advocate for

democratization of the Guurti and returning the power to the hands of its owners, the people of Somaliland. The members of the Guurti shall be elected by the people. A law detailing the procedure shall be enacted. This requires a roadmap.

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### **BIOGRAPHY**

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