

**This is an extract from a long 2007 article by Ibrahim Hashi Jama on the Somaliland Constitution. This section explores the disputes between the President and the House of representatives over their respective powers in connection with the budgeting process.**

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*The arguments about the 2007 & 2008 Somaliland budgets*

I should mention first that the 2008 (calendar year) budget was finally presented to the House on 6 May 2008<sup>1</sup> and the House which has high on its priority the holding of elections rushed through its approval and agreed to pass the budget unchanged on 29 May 2008. Nonetheless, the controversy surrounding the 2007 budget “that never was” will recur as none of the arguments have been settled. The dispute started with the President returning to the House of Representatives on 11 April 2007 the House budget resolution<sup>2</sup> for re-consideration after the House made some modest changes to the budget allocated to the Presidency when it approved the budget on 19 March 2007. The Deputy Finance Minister promptly issued a ministerial circular on 19 April 2007 and announced that the Government will continue operating on the 2006 budget- an option, which, under Article 55(2) of the Constitution, can only be used if the new budget is not approved by the House. The House Deputy Speaker, in his written response to the President dated 19 April 2007, strongly refuted the President’s assertion that the latter has the power to veto the approved budget, and insisted that that the House resolution was final and did not require presidential endorsement. Various “mediation” talks were entered into, but the matter was never resolved.

The main legal issues appeared to be the degree to which the House can amend the budget proposal; the procedures for passing the budget and the method used to give its provisions legal effect and whether or not the President has veto powers over the House budget resolution. Like many other Somaliland constitutional controversies, however, although these questions look simple enough, the constitutional budget provision (Article 55) is clouded by old laws and by comparisons with the budgeting procedures of other countries, which sometimes overlook the unique eclectic mix of the various legal transplants in Somaliland Constitution. The Somaliland House of Representatives has exclusive powers to legislate in financial matters and the Guurti (House of Elders), unlike the second Houses in presidential systems, has no role in financial legislation<sup>3</sup>. Article 54, which is not an exhaustive list, states that the financial matters the House may legislate on include:

“1. The imposition of taxes, duties and other schemes for raising revenue.

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<sup>1</sup> The Financial Law ((Law No: 87 of 1996) & its allied Regulations of the State 1996 lay down that the budget must be submitted to the House no later than 31 October each year (see Article 11(1) of the Law and Article 4(1) of the Regulations). The House of Representatives, however, uses a deadline set in Article 48(1) of the House Rules which says that the budget should be submitted to them by no later than the month of December in the preceding year.

<sup>2</sup> The House Budget Resolution (Ref: GW/KF-QC2/344/2007) was passed on 19 March 2007

<sup>3</sup> As financial matters are within the exclusive legislative powers of the House and the House of Elders has no role in such matters (see Article 61(2) and 78(1)), any resolution passed by the House does not need consideration by the House of Elders. The powers of the latter House resemble those of the UK House of Lords, rather than the US Senate.

2. The establishment of a Somaliland Income Fund or other Funds which are earmarked for specific issues. The management, collection and disbursement of these Funds shall be determined by law.
3. The printing of currency, and the issue of bonds, other certificates and securities.
4. The regulation of the economic and the financial systems.”

As Article 38 of the Constitution makes clear that the legislative powers of the Republic are vested exclusively in the two Houses and that such power cannot be transferred to anyone outside the Parliament, no taxes or duties and no other methods of raising public revenues shall be introduced or changed by the Government without the specific approval of the House of Representatives. Like all other legislation, however, financial bills must also be submitted to the President for his signature before they are promulgated<sup>4</sup>. Such bills may be introduced<sup>5</sup> at the House of Representatives by Government, which shall forward it the House, or by 11 members or more of the House itself. But the Somaliland Constitution deals with the budget (which, in Somaliland, is the estimates of both revenue and expenditure<sup>6</sup>) separately in Article 55 and states unequivocally that:

“1. The House of Representatives may debate and amend the Budget<sup>7</sup>, and approve it by a resolution of the House.”

The Somaliland House of Representatives has, ostensibly, an unlimited power to amend the budget and shall approve the budget by a resolution of the House (on a simple majority of those voting in at a quorate meeting<sup>8</sup>, as there is no provision in the clause for any qualified majority). This is not unusual<sup>9</sup>, especially in presidential systems. The question which lies at the centre of the controversy, however, is having amended and passed the budget, does the Somaliland Constitution allow for a presidential veto of the House resolution? The answer would seem to depend on whether the budget resolution is a special one which does not require presidential endorsement or whether it is one which is, for all intents and purposes, passing a financial bill under Article 54 of the Constitution.

To rehearse the pros and cons of this matter, I shall set out what I consider to be the main legal arguments:

1. The plain words of Clause 55(1) are clear. There is nothing in there which says that the Resolution shall be forwarded to the President for signature or endorsement.
2. There is no link between Article 55(1) and Article 54 which deals with financial bills. Neither says that the budget is a species of a financial bill.
3. On the whole although resolutions of the House do not amount to a binding law, there are some resolutions specifically mentioned in the Constitution as being the final decisions on a specific matter and are not subject to

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<sup>4</sup> See Articles 76, 77 and 78 of the Constitution.

<sup>5</sup> See Article 74 of the Constitution and Rule 37(2) of the House Standing Rules.

<sup>6</sup> See Article 12 of the Law No: 90 of 1996.

<sup>7</sup> According to Standing House Rule 48(1), the draft annual budget must be submitted to the House by, latest, December every year, but the deadline in the financial laws is 31 October

<sup>8</sup> See Article 45(3) of the Constitution.

<sup>9</sup> See the table in Appendix 1, produced by the Inter-Parliamentary Union in 1986 shows that a fair proportion of parliaments have unlimited powers to amend the budget and this trend has increased since then.

endorsement by either the Guurti (the House of Elders) or the President. These are:

- a. The confirmation of appointments listed in Article 53(1) of the Constitution and other laws (such the Election Law 2002).
  - b. Resolutions relating to the partial or total changes of the flag, the emblem and the national anthem (Article 7(4) of the Constitution).
  - c. Resolutions relating to initial proposals for changes to the Constitution (Clauses 3 and 5 of Article 126 of the Constitution).
4. If the President can veto the House resolution, this negates the power given to them on Article 55(1) and there is nothing in the article which points out what the further options the House have are in such a scenario. In contrast, Articles 77 and 78 which deal with bills have a procedure for dealing with such scenarios, which states that if the President does not return the Bill within 21 days, the bill becomes law and that even if he does return a bill, the House may override his objection by a two thirds vote.
  5. The 1962 financial laws pre-date the Constitution and are in any case linked to the 1960 Constitution and the then parliamentary system of government. Article 65(2) of the 1960 Constitution referred specifically to “the law approving the budget...” and hence the financial laws followed that and reiterate that “the Assembly” shall approve by law the estimated budget not later than the 31<sup>st</sup> of December of the said financial year”. No comparable provisions exist in the Somaliland Constitution and the House has power to approve and amend the budget by a resolution.

The arguments for the second option are as follows:

1. In line with international practice, the budget requires an appropriations bill to put into legal effect. Any such bill must therefore be dealt with in line with the procedures of other financial bills and requires presidential signature under Article 75 to 78 of the Constitution.
2. The fact that the Government also proposes other bills, which after consideration must be signed into law by the President does not necessarily negate the House power to amend these bills in the first instance.
3. Article 55(4) of the Constitution states that the preparation of the budget (and the financial year) shall be determined by law. The existing relevant laws are the Financial & Accounting Procedure of the State (Law No: 90 of 1996) and the Regulation for the Accounts of the State (Law No: 87 of 1996). Both laws<sup>10</sup> which were passed in 1962 refer to the budget as a “law” to be passed by “the National Assembly”.
4. Article 54 states that the imposition of taxes requires legislative approval, and if the House amends the budget by raising expenditure overall, then this needs to met by new taxes.

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<sup>10</sup> Article 13(12) of the first Law reads: “... the national Assembly shall approve by law the estimated budget not later than the thirty first of December of the said financial year”. Article 4(1) of the second law states “The draft budget law, approved by the Council of Ministers, shall be presented to the National Assembly not later than the 31st of October each year, accompanied by a statement of the Minister of Finance”.

The fact remains that, read on its own Article 55(1) (and its identical predecessor, Article 80 of the 1997 Interim Constitution) is clear and unambiguous in stating the powers of the House and also in how the budget will be passed by means of a House resolution. Although, in general, in presidential systems, resolutions of the one or two Houses of parliament/congress do not become a binding law until approved by the president, as well, there are some exceptions where the decision made by the resolution has a binding effect outside the House/s. The practice of budget submissions and approval in Somaliland has also been through the submission of Ministerial letters (e.g those for 2006<sup>11</sup> and 2007<sup>12</sup>, copies of which are available) which set out a summary of the Draft Estimates and Expenditure and finishes with a request that the House approve the budget estimates. No appropriations bills accompanied the submissions and the House resolution was always considered to be binding. There is, however, still the issue that if the House budget changes require the raising of further taxes, Article 54, will kick in and the House will not have it all its way. Normally when the Minister is proposing the raising of the taxes, these are set out in his letter.

I have gone in length into this budget controversy because the underlying issues were essentially about accountability and the new House's determination to ensure that all the Government taxes are in the exchequer and that parliament should have a say about how the budget is allocated. The new House Finance Committee pursued these issue in earnest in 2006 and then again in 2007. This issue also illustrates how old laws have a considerable effect on how the constitution is interpreted. The House has since drafted a new Budget Bill, but the chances are that there will be considerable disagreements about it until there is a consensus about the respective role of the House and the President in financial matters. The Somaliland House is, no doubt, worried about the fact that although presidential systems (except in South America, where Presidents have been referred to as "virtual budget dictators"<sup>13</sup>) tend to give parliaments more powers to amend the budgets, these are often counterbalanced by presidential legislative veto. The separation of powers in presidential systems does have, however, a built-in propensity to lead to confrontation on budgets and legislation, especially at times of cohabitation of different parties controlling the presidency and the parliament<sup>14</sup>.

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<sup>11</sup> Reference: WM/02/08-01/38/2006, dated 01/02/2006.

<sup>12</sup> Reference: WM/02/08-01/59/07 of 13/02/2007

<sup>13</sup> Cox and Morgenstern

<sup>14</sup> Whener J (2004) Back from the Sidelines? *Redefining the Contribution of Legislatures to the Budget Cycle*, World Bank Institute