

Somaliland: A Way out of the Electoral Crisis

I. OVERVIEW

The stalled electoral process has plunged Somaliland into a serious political crisis that presents yet another risk of destabilisation for the region. If its hard-won political stability collapses under the strain of brinkmanship and intransigence, clan leaders might remobilise militias, in effect ending its dream of independence. The political class must finally accept to uphold the region's constitution, abide by the electoral laws and adhere to inter-party agreements such as the electoral code of conduct and memorandum of understanding signed on 25 September 2009, so as to contain the crisis and permit implementation of extensive electoral reforms. International partners and donors should keep a close watch on developments and sustain pressure for genuinely free and fair general elections in 2010.

President Rayale's third term of office should have expired on 15 May 2008. The election that was to have been held at least one month earlier has been rescheduled five times, most recently for 27 September 2009. The new National Electoral Commission (NEC) has yet to set a sixth date.

The latest delay was ostensibly caused by the unilateral decision of the previous NEC not to use a voter registration list tainted by massive, systematic fraud. This prompted both opposition parties to declare an election boycott and suspend cooperation with the commission. The resulting impasse triggered yet another crisis. Publicly the political elite sought to blame the NEC, its technical partner, Interpeace, and each other, but the crisis was one largely of its own making.

The recurrent rescheduling of elections and the fraud-tainted voter registration process are symptoms of deeper political problems. While President Rayale and his ruling party have benefited most from more than a year and a half of additional time in power, all the political stakeholders are in some way responsible for the selection and continuation of an incompetent and dysfunctional electoral commission, rampant fraud during voter registration, frequent skirting of the constitution and failure to internalise and institutionalise democratic practices.

The crisis was defused in late September, when the parties – under strong external and internal pressure – accepted a memorandum of understanding (MOU) agreeing to a change in the NEC's leadership and composition, use of a "refined" voter registration list and delay of the elections to a date to be determined by the NEC, with input from independent international experts. The MOU brought the parties back from the precipice, but it is a vague document that must be complemented by additional measures to prevent new crises.

Somaliland has made remarkable progress in its democratic transformation, but political wrangling and wide-scale attempts to manipulate the political process have corrupted governing institutions and undermined the rule of law. Democratic participation, fair and free elections and effective governance need to be institutionalised and made routine, or non-violent means to resolve political crises could be replaced by remobilisation of militias, with significant risk of violent conflict.

Improving the political culture will necessarily be a long-term, internal process, but as a start the institutions that manage elections – the NEC and the office of the voter registrar – need to be professionalised and depoliticised and the electoral laws and agreements adhered to strictly by both political parties and voters. International partners should encourage and support the government and parties to do the following:

- ❑ Civil society and international supporters must shield the new, inexperienced NEC from political pressure as it organises the presidential elections, and the NEC itself must actively resist succumbing to manipulation. The new commissioners must focus on preventing electoral fraud, working with international experts to develop a calendar for the vote, identifying problems with the current voter registration list and developing solutions for extensive duplicate registrations. The NEC also should be given the resources to hire adequate staff.
- ❑ All parties have agreed to the need for a revised registration list. The problem is that the list clearly still contains too many duplicate records and is not trusted by the political parties. Priorities for the new NEC should include hiring a competent, impartial permanent registrar and complementing the list with alternative methods and mechanisms for voter verifica-

tion and fraud prevention, such as using indelible ink to identify those who have voted, limiting polling hours and imposing driving prohibitions to prevent parties and clans from transporting people to multiple locations. The emphasis should be on improving the process of updating the database and transferring the capability to do so to the Somaliland staff.

- Because of concerns for its accuracy, the registration list should not be used to determine the number of ballots and ballot boxes for particular areas, since that could lead to ballot stuffing where there was greater registration fraud. Agreement is needed on the number of boxes and ballots to be sent to the polling stations.
- Unconstitutional extensions of mandates must stop. Separate elections should be held for both the House of Representatives and district councils in 2010. More contentious will be renewal of the Guurti, presently the non-elected, clan-nominated upper house of the parliament. The constitution provides its members should be selected every six years, but does not stipulate how. Renewal has not happened since 1997, and the procedure needs to be defined urgently.
- The constitutional provision limiting the number of political parties able to compete in legislative and presidential elections to three has resulted in the monopolisation of power by the parties and leaders who were in place when the constitution was adopted. A new law clarifying how these three parties are to be chosen and permitting changes, coupled with a permanent system for the registration of new and independent political associations, should be adopted to encourage competition and accountability in political life.
- The new NEC, with donor support, should identify established, reputable local NGOs to prepare pre-election voter education and civic awareness campaigns. Materials should be developed for schools, and the education ministry should require classes on democratic practices. Clerics should be enlisted to raise awareness of election laws.
- Local NGOs, with foreign technical aid, should help train party and civil society observers to detect fraud, resist political and clan pressures and carry out nationwide election monitoring, partnering where possible with international monitors.

II. THE ELECTION CRISIS

Somalilanders have been unable to vote since 2005, although elections have been scheduled and postponed.¹ The latest delay triggered the most serious political crisis in over a decade. The often postponed presidential elections (originally scheduled for 15 April 2008) are now to be held on a date yet to be determined “based on the amount of time required for the final election preparation to be made”.² The most apparent cause of the delays was the belated appointment of an inexperienced, arguably incompetent NEC by President Rayale, the parties and the parliament. This was exacerbated by Rayale’s attempts to cling to power, party bickering and the voter registration debacle.

The multiple postponements have precipitated a worrying political crisis, as the opposition parties have grown increasingly frustrated with the electoral delays. Some contributing factors, such as the October 2008 terrorist attacks targeting the UN Development Programme (UNDP), the Ethiopian Trade Office and the presidential palace in Hargeysa, are outside leaders’ control, but most can be blamed on all key stakeholders, including the clan leaderships.

A. WINNER-TAKES-ALL POLITICAL CLIMATE

Crisis Group already warned in 2003 that the principal obstacles to democratisation were internal: a winner-takes-all style of political leadership, manipulation of clan loyalties for political purposes and disregard for the rule of law.³ In all three elections held in Somaliland, “[d]espite the efforts put into voter education, the government, the parties and the public clearly had difficulty in adhering to international electoral norms”.⁴ Candidates courted supporters by providing qaad⁵ or paying off debts. All parties encouraged double and underage voting and transported voters to multiple sites.⁶ Little has changed since Somaliland had its first polls, and this

¹Local elections in December 2007, then 1 July 2008, 6 October 2008, finally “after the presidential ballot”; presidential elections on 15 April 2008, then 31 August 2008, 31 December 2008, 29 March 2009, most recently 27 September 2009.

²“Memorandum of the Understanding on the Upcoming Presidential Election of Somaliland”, 29 September 2009, *ibid.*

³Crisis Group Report, *Somaliland: Democratisation and its Discontents*, 28 July 2003, p. 31.

⁴Mark Bradbury, *Becoming Somaliland*, (London 2008), p. 211.

⁵Qaad (often spelt khat) is a leafy shrub containing a mild stimulant related to amphetamine.

⁶Bradbury, *Becoming Somaliland*, *op. cit.*, p. 211.

has led to the recurrent political crises and the delayed elections.⁷

The parties, especially their senior leaders, have benefited from delayed elections.⁸ The constitution allows for only three official parties, based on the results of local district elections. By repeatedly agreeing to postpone the latest round of those (originally scheduled for December 2007), the incumbent politicians and parties have monopolised power,⁹ thus ossifying the political system and perpetuating the control of an old political generation.¹⁰

Civil society noted this problem several years ago. According to the Academy of Peace and Development:

Recent observations have suggested that all the parties have largely failed to meet certain minimum democratic requirements regarding their internal structures, administrative procedures (eg, internal rules and regulations), and finances. It has been suggested that the three parties could, over time, become the “properties” of certain individuals – undermining democratic competition, and leading to the worrying prospect of

the same three candidates contesting the next presidential election.¹¹

Indeed, the candidates in the next presidential elections will almost certainly be Rayale Kahin, Ahmed Mohamed Mohamud “Silanyo” and Faisal Ali “Waraabe”, the party chairmen who also contested the office in 2003.

Competition between clans has exacerbated the electoral crisis. Historically, party policies and elections have mattered only in so far as they advanced a perceived clan interest or achieved “equitable representation” in state institutions.¹² As the impasse over the electoral process dragged on and cross-party relations became strained, tensions and competition between the clans intensified.¹³ The governing UDUB party largely draws its support from the Gadabuursi and the Habar Yunis; Kulmiye, the main opposition party, from the Habar Je’elo. In early 2009, Habar Je’elo leaders held a congress in the eastern town of Garadag at which they allegedly vowed to use all means necessary to win the presidency.¹⁴ Politicians are mobilising clans to maximise votes, and there is evidence that some elders are manipulating their clans to support favoured candidates.

B. ARBITRARY EXTENSIONS OF TERM IN OFFICE

Much as in the 1990s, the president and the Guurti cling to power through quasi- or unconstitutional extensions of their mandates. The blame is often cast on the NEC, but all stakeholders have failed to ensure that the political process set by the constitution is followed. The result is that elections are often deferred, thereby prolonging the tenure of many incumbents.

⁷For detailed background on previous elections, see Appendix B below.

⁸There is little real ideological difference between the three parties, but clan support varies significantly, particularly based on the affiliation of party and local leaders. The ruling party, UDUB (the Somali acronym for Democratic United Peoples’ Movement), led by President Rayale, largely draws its support from the Gadabuursi and the Habar Yunis. The main opposition party, Kulmiye, led by Ahmed Mohamed Mohamud “Silanyo”, a veteran politician who served two consecutive terms as Somali National Movement chairman, is heavily supported by the Habar Je’elo. UCID (the Somali acronym for the Party for Justice and Democracy), led by Faisal Ali “Waraabe”, a civil engineer who spent many years in Finland, obtains much of its support from the ‘Iidagale clan and other groups in the Hargeysa area.

⁹The constitution is unclear about whether political associations can compete in each local election. The current government contends that they cannot. This position has the effect of stifling attempts to set up groupings that might become alternatives to the current three established parties, since it is only by competing in and doing well in local elections that it is possible to attain the status of one of the three official parties permitted by the constitution to contest national elections. Kulmiye has pledged that if it wins the presidency, it will clarify the law so political associations can compete in each local election. Crisis Group interviews, party leaders and civil society members, Hargeysa, 17-19 November 2009. See Section III.D below; also “Somaliland Facing Elections”, Amnesty International, March 2008, p. 8; and “Hostages to Peace: Threats to Human Rights and Democracy in Somaliland”, Human Rights Watch, July 2009, p. 37.

¹⁰Crisis Group interview, Somaliland academic, Hargeysa, 19 August 2009.

¹¹“A Vote for Peace: How Somaliland Successfully Hosted its First Parliamentary Elections in 35 Years”, Academy for Peace and Development, September 2006, p. 50.

¹²“Such is the importance attached to clan and sub-clan representation that it is clear that equitable representation along clan lines will long continue to be essential to the stability of Somaliland”. Ibid, p. 43.

¹³The political dispute has exacerbated traditional conflict. For example, tensions have been mounting in Gabiley, Adwal region, in the past year, and there have been clashes between clans. A dispute over land and grazing rights between the Jibril Abokor sub sub-clan of the Habar Awal sub-clan and the Gadabuursi (President Rayale’s clan) is at their root, but it is compounded by political concerns. A committee formed to probe the clashes submitted its recommendations to Rayale, but he has not acted on them, as he is wary of antagonising either of the clans, which are critical voting blocs.

¹⁴Crisis Group interview, Somaliland journalist, Hargeysa, 24 August 2009. Kulmiye Chairman Silanyo is from the Habar Je’elo clan.

1. The Guurti and district councils

The House of Elders (comprised largely of clan elders and known as the Guurti) is in charge of passing legislation relating to religion, traditions (culture) and security.¹⁵ It remains the only unelected representative institution in Somaliland. Its term was to expire in October 2006 (many members have served since the 1993 grand conference). However, the 2001 constitution does not address how the Guurti is to be selected, and by early 2006 – despite years of stalled negotiations principally between the incumbents and clan leaders – no consensus had been reached on whether it should remain clan nominated or be directly elected, like the House of Representatives.¹⁶

The president then decreed in May 2006 to extend the tenure of the Guurti for another four years. The Guurti agreed and quickly voted to extend its own mandate, although there is no provision in the constitution for either institution to do this. The opposition objected to the length of the extension as well as the failure to include the House of Representatives in the decision.¹⁷ The joint decision had the effect of aligning the Guurti – which has the constitutional power to extend the president's term – even more closely with President Rayale.

Following the extension of its own mandate, the Guurti extended the mandates of the district councils in 2007, even though it lacks legal power to do so.¹⁸ According to local activists, Rayale colluded with the two opposition parties in this.¹⁹ Because the constitution allows only the top three groupings in local elections to contest national elections, the extension prevented emergence of any new party to compete with the UDUB, Kulmiye and UCID.

2. The president

The Guurti has frequently extended the president's term. Constitutionally it may do so only if “on the expiry of the term of office of the President and the Vice-

President, it is not possible, because of security considerations, to hold the election ...”.²⁰ The Guurti has interpreted this authority much more broadly since the presidency of Mohamed Haji Ibrahim Egal, whose term was prolonged twice (in 1995 and 2001); Rayale's term has been extended three times.²¹

Rayale's first term extension occurred in October 2007, when it became apparent that the new NEC was forced to reschedule elections when it became apparent they could not be held as planned on 15 April 2008. Since the constitution requires that the vote take place at least one month before the president's term ends, it had to ask for an extension of the president's time in office, which was set to expire in May 2008.

On 11 October the NEC and the political parties signed an agreement to reschedule elections and that “anything that hinders [these] tasks shall be resolved collectively”.²² This postponed local and presidential polls to 1 July and 31 August 2008 respectively. Much of the extra time was for voter registration (see below), but it was delayed by argument over the type of registration system. Agreement was finally reached in February 2008. Because nothing was in place, however, the parties decided among themselves two months later to postpone both elections again, while ignoring the delicate question of how long the president's term should be extended. The next day, the Guurti unexpectedly passed, at the president's request, a resolution extending his mandate by more than a year, to 6 May 2009. This angered the opposition and plunged the region into yet another crisis.

As a result of this and continued concerns about NEC capacity, the donor community²³ announced it would withhold funding for voter registration. This prompted a new local mediation that resulted in June 2008 in all political parties signing another agreement, to implement the registration process and delay the presidential elections to 29 March 2009 (and postpone local elections until after that poll). It again stipulated that further delay must be a “joint collective decision” and mandated a tripartite monitoring and dispute resolution mechanism.

Satisfied, the donors reinstated funding for registration, which finally began in October 2008 but was delayed

¹⁵ Constitution, Article 61(1).

¹⁶ The House elections resulted in large losses for small clans.

¹⁷ Bradbury, *Becoming Somaliland*, op. cit., p. 225. The leaders of the House of Representatives and the opposition parties denounced the move as unconstitutional. Claims to the contrary by the government and the Supreme Court appear to be contradicted by a law (no. 19), endorsed by the full parliament and the president in March 2003, that states the House of Representatives shall extend the Guurti's mandate when requested by the president. “A Vote for Peace”, op. cit., pp. 49-50.

¹⁸ The Guurti has the constitutional power, under Article 83 (5), to extend the president's term for reasons of security, but not to extending the term of local councils.

¹⁹ “Hostages to Peace”, op. cit., p. 21.

²⁰ Article 83 (5).

²¹ Since Rayale's latest extension expired on 29 October 2009, he will receive a fourth extension for a period ending one month after the date of the yet-to-be-rescheduled presidential elections.

²² “Somaliland Electoral Laws and Codes”, available at www.somalilandlaw.com/electoral_laws.html#Extension2.

²³ The donors forming the Somaliland Democratisation Program Steering Committee were the U.S., UK, European Commission, Norway, Sweden and Denmark.

again by the terrorist attacks in Hargeysa. After it resumed, it became apparent that wide-scale, systematic fraud was significantly inflating the number of registered voters.²⁴

Due to disputes over the voter list, as well as the lack of preparation, it again became clear that the presidential election would not be held on schedule. Kulmiye broke off communication with the government and demanded that President Rayale leave office on 6 April and be replaced by a caretaker government until elections could be organised. Once again the standoff was ended by the Guurti, which – in direct violation of the June 2008 agreement – extended Rayale’s term to 29 October; the presidential election was then rescheduled to 27 September. Both opposition parties rejected these decisions and vowed to withdraw recognition of the Rayale government.²⁵

Weeks of escalating tension followed. A mediation effort by members of the voluntary Elections Monitoring Board eventually brought the three party leaders, including Rayale, together for talks that led to the announcement on 29 April 2009 that the opposition accepted the new extension of the president’s term and the fourth postponement of the elections in return for a guarantee by the government (to be endorsed by parliament) that Rayale’s mandate could not be extended again, even if elections were not held on 27 September. Before this agreement could be signed on 5 May, however, the president said that while he accepted the document, he would not sign it because the prohibition of a further term extension was unconstitutional.²⁶ The mediators then suspended their activities.

The agreement bought some time, but the parties failed to address the underlying issues: what to do with the flawed voter list and NEC’s incompetence and incoherence. When the September election date was missed, Rayale was allowed to stay in office.

C. THE INCOMPETENT NEC

The first NEC did a remarkable job under difficult circumstances and with no initial experience.²⁷ Over its

six-year mandate, it held three relatively successful elections, despite strong pressure from all parties and widespread attempts to manipulate the voting.²⁸ It was able to do so because it had an able chairman and dedicated members and tried to work through consensus. In large part because they successfully resisted manipulation by political and clan leaders, the commissioners were unceremoniously let go after their mandate ended on 20 January 2007.²⁹

Appointing a new commission proved contentious. The NEC has seven commissioners. According to the 2001 electoral law, the president nominates three, the Guurti two and the two opposition parties one each. All must be confirmed by the House. Contrary to the procedures established for selecting the first NEC, President Rayale tried to influence the selection of the other four commissioners, telling the Guurti and the opposition parties to send him four names each (a total of eight) from which he would select four. Unwilling to give the president greater influence over the NEC, the Guurti submitted only two names and UCID one.³⁰ Kulmiye was unable to agree on a nominee.³¹ The opposition-controlled House then rejected all six nominees, arguing that the list did not represent all sections of society and was incomplete (since there was no Kulmiye nominee). It instead passed a motion, on 18 February 2007, calling for the original NEC to be extended for two years.³² The president ignored this and ordered the NEC members to vacate their offices.³³

the Academy for Peace and Development. Crisis Group interview, former NEC commissioner, Hargeysa, 20 August 2009.

²⁸ For more detail, see Appendix B below.

²⁹ Ibid; see also, Ibrahim Hashi Jama, “The Appointment of the Somaliland National Electoral Commissioners & the Constitutional Court Case in 2007”, www.somalilandlaw.com.

³⁰ Jama, *op. cit.*

³¹ The list included no previous NEC members, women or members of the two major eastern clans, the Habar Je’elo and Dulbahante. This disappointed donors, who wanted some experience and continuity in the body, women’s groups and the two clans. The resulting pressures divided the party leadership, making it difficult to agree on a consensus candidate. “NEC on a Rope? The Need for Good Leadership”, Somaliland Academy of Peace and Development, *The Academy Today*, April 2007.

³² Ibid. The House lacked the legal authority. It was unclear whether all NEC members would have agreed to an extension, though three publicly said they were willing. Crisis Group interview, former NEC member, Hargeysa, 20 August 2009.

³³ This dispute was settled by the Constitutional Court (the full Supreme Court), which ruled that the House had exceeded its statutory powers in rejecting the six nominees and extending the term of the first NEC. However, the decision did not resolve the struggle over the composition of the NEC.

²⁴ Crisis Group interview, NGO representative, Nairobi, 15 September 2009.

²⁵ Crisis Group interview, Somaliland academic, Hargeysa, 19 August 2009.

²⁶ Crisis Group interview, NGO representative, Nairobi, 15 September 2009.

²⁷ Elections had not been held in Somalia since 1969. The NEC received technical advice from two European Union experts and logistical support from Interpeace and its local partner,

Three and a half months later, the House considered a new list of seven nominees submitted by the president but rejected the Guurti's two candidates as not meeting the criteria of the 2001 electoral law.³⁴ The president and the Guurti refused to forward new candidates, and a week later the Guurti re-submitted its two names. The deadlock was only broken three months later, when the Guurti backed down and offered, through the president, two new candidates, whom the House confirmed on 3 September 2007. All seven commissioners were sworn in on 9 September 2007, eight months after the previous commissioners' terms had ended.³⁵

The delay had significant consequences for both the scheduled district and presidential elections and the creation of a voter registration list. September 2007 was barely a half year before the presidential elections. Furthermore, the Voter Registration Act enacted in July 2007 required that a registration list be created before the elections. Aware that this would be impossible on the present schedule, the NEC and the parties were forced yet again to delay the elections. On 11 October 2007 they rescheduled local elections, as noted above, from December 2007 to 1 July 2008, and the presidential elections from 15 April to 31 August 2008.

The extra time did not help the NEC, which lacked experience, did not work well together and was widely believed to be incompetent and corrupt.³⁶ Despite significant international aid, it badly mismanaged registration, failed to adequately plan and prepare for the elections and so was unable to keep to the schedule, which was adjusted several more times.³⁷ Faced with a fifth delay of the presidential vote, the chairman called for abandonment of the registration list and for keeping to the latest date of 27 September 2009. But this proposal further split an already polarised NEC and plunged Somaliland into yet another crisis, from which the government and parties are still attempting to extricate themselves.

D. VOTER REGISTRATION DEBACLE

During the first three elections, the voter registration issue emerged as a prime area of contention between the UDUB and the opposition. The ruling party argued that registration, though desirable, was neither neces-

sary nor feasible, given the time and resources available. Opposition parties feared that lack of registration would facilitate vote rigging and ballot stuffing by government supporters. Because of these concerns, the July 2007 law required that voter registration be implemented before any further elections.

1. The registration system

Preparation for the registration process was initially held up by the eight-month delay in re-establishment of the NEC and the political crisis created by the decision to delay the presidential elections. Given the time constraints, international experts advised the stakeholders to use a relatively simple, paper-based system.³⁸ But in mid-February 2008, the NEC and parties decided to adopt a sophisticated biometric system based on fingerprint identification. This was a hybrid that was supposed to issue cards (like a paper-based system) at the voter registration site but also employ a fingerprints identification system (AFIS) to capture unique biometric data on each registrant, which could then be used to eliminate double registrants from the voter list.

This process ran into significant problems. Preparation for tenders did not go smoothly. Because of the continued political impasse and concerns about the NEC, the donors announced they would withdraw funding for the voter registration.³⁹ They said they were willing to fund the presidential elections, provided the parties and the NEC chairman were able to reach a written consensus on their timing. A month later, after local mediation, the parties signed an eight-point code of conduct to implement both voter registration and the presidential elections before 6 April 2009.⁴⁰ Based on this, the donors agreed to re-instate funding for voter registration.⁴¹

Nevertheless, problems with voter registration continued. UDUB blocked appointment of a national registrar, so an "acting registrar" – with much diminished power –

³⁴ Both were over the statutory age limit (60), as was one nominee who was accepted. Jama, *op. cit.*

³⁵ *Ibid.*

³⁶ Crisis Group interviews, civil society members, party leaders, former NEC members, Hargeysa, August and October 2009.

³⁷ Donors wrote again to the NEC, Rayale and the parties on 29 May 2009 expressing concerns about NEC leadership and capacity to manage the elections. Their message was reiterated in Hargeysa by a high-level European Commission delegation.

³⁸ The first NEC tried and failed to create a paper-based system, because too many people tried to obtain multiple cards. Crisis Group interview, former NEC commissioner, Hargeysa, 20 August 2009.

³⁹ Continuing political, technical and legal uncertainties were the publicly announced reasons for the Somaliland Democratisation Program Steering Committee. Crisis Group interviews, Nairobi, August and September 2009.

⁴⁰ The government violated the agreement by blocking the agreed tripartite monitoring and dispute resolution mechanism. The group met only once, after which the government refused to participate.

⁴¹ They contributed more than \$10 million to the voter registration exercise.

was responsible for managing the process.⁴² He was not able to hire and train local technicians to operate the voter registration server and produce the final list, making the process dependent on foreign consultants. Money intended for civic education was squandered by NGOs connected to certain NEC members.⁴³ Citizens were not made aware of the consequences of multiple registration.⁴⁴

The international NGO Interpeace gave the NEC technical assistance.⁴⁵ Interpeace, along with its local partner, the Academy for Peace and Development, had provided valuable logistical support in earlier elections,⁴⁶ but it lacked experience with voter registration and integrating and operating the technical equipment required for the hybrid system the NEC and political stakeholders wanted. Copenhagen Elections and its partner, Electronics Company of India, Ltd. (ECIL), won the international tender.⁴⁷ Because of the delays in establishing the NEC and deciding on the registration system, however, time to develop the system was very short. ECIL had to produce a custom system, including self-contained suitcase kits and a full set of software, in two months.⁴⁸

Time and funding constraints limited the training voter registration kit operators received and the number of registration days to five per region.⁴⁹ This introduced additional complications, since the system was troubled by technical, environmental and operational problems. An initial difficulty – that the electronic printer kits frequently clogged because of the rough conditions at many registration sites⁵⁰ – was largely solved after technicians received special training on printer cleaning and main-

tenance. But the slowness of the fingerprint scanning component and periodic breakdowns increased the length and wait period for queues.⁵¹ There were also significant delays in configuring the AFIS system in the server.

2. Systematic fraud

The biggest problem with the registration process, however, was wide-scale and systematic fraud by individuals and clan leaders. This was prompted by both the decision to combine registration with a scheme to produce national identification cards and attempts by clans to inflate their numbers.

It was decided early on to combine registration with an attempt to create a civil registry and national identification system. The chance to obtain a free identity card reportedly prompted many Somalis in neighbouring Ethiopia and Puntland to register in Somaliland.⁵² In addition, many Somalilanders tried to obtain cards for friends and relatives abroad.⁵³ Many clan and political party leaders tried to inflate the number of clan members in their strongholds. According to registration officers, local leaders often turned up at centres to support nationality claims and say, “register this boy or that girl for me”.⁵⁴ People registered multiple times, and clans and political parties also bussed in members from other regions.⁵⁵

The initial test was Saxil, a relatively small area centred on the port of Berbera, where registration began on 14 October 2008. Given that it was the first, logistical difficulties were to be expected, but the process was overwhelmed by the numbers who arrived on the opening day, including outsiders brought in by clans. Computers, scanners and other equipment were “difficult to operate”; some did not work or broke down.⁵⁶ The large number of

⁴² Crisis Group interview, Nairobi, 15 September 2009. The nominee for registrar, Mohammed Barud Ali, was vetoed by UDUB because he had been a member of Kulmiye.

⁴³ Crisis Group interview, Nairobi, September 2009.

⁴⁴ Crisis Group interview, civil society representative, Hargeysa, 25 August 2009.

⁴⁵ Interpeace is an international peacebuilding organisation that seeks to help divided and conflicted societies build sustainable peace. Its Somaliland partner is the Academy for Peace and Development.

⁴⁶ Crisis Group interview, former NEC commissioner, Hargeysa, 20 August 2009.

⁴⁷ Copenhagen Elections is a relatively new company; Electronics Company of India is a diversified electronics company with strong links to that country’s nuclear program. Both were new to Africa and eager to break into its market.

⁴⁸ The system was evaluated as “meet[ing] the specific criteria set forth in the NEC specification”. “Assessment of the India-ECIL Automated Registration System”, Creative Associates International, 10 September 2008, p. 23. There were 380 voter registration kits in total.

⁴⁹ The short registration period contributed to the long queues and the time pressure the operators faced.

⁵⁰ This prevented issuance of some registration cards and may explain some of the duplication, as citizens returned to try again.

⁵¹ Although Creative Associates initially found the registration system adequate, it subsequently determined that the fingerprint scanner was not adequate for Somaliland. Crisis Group interviews, civil society and NGO representatives, Hargeysa and Nairobi, August-September 2009. The system was also slowed by people registering multiple times. Crisis Group interview, former NEC commissioner, Hargeysa, 17 November 2009.

⁵² Crisis Group interview, Nairobi, 15 September 2009.

⁵³ There are numerous reports of people bringing photos of friends and relatives to obtain identification cards for them. Crisis Group interviews, journalists, civil society members, former NEC commissioners, Hargeysa and Nairobi, August-October 2009.

⁵⁴ Crisis Group interview, former voter registration officers, Hargeysa, 25 August 2009.

⁵⁵ Crisis Group interview, journalists, civil society members, former NEC commissioners, Hargeysa and Nairobi, August-October 2009.

⁵⁶ Crisis Group interview, former voter registration officers, Hargeysa, 25 August 2009.

registrants and the equipment problems forced the NEC and government to extend the registration.⁵⁷

The biggest problem was that many who registered did not scan their fingerprints, registered multiple times using other fingers, or provided another person's fingerprint. Kit operators (all trained and paid) were encouraged, and sometimes coerced, into not requiring fingerprints. There were also cases in which the kit operator used fingerprints for other registrants.⁵⁸ The motivation is unclear, but there are suggestions this was done to speed up the process so more people could register.⁵⁹ Some kit operators allowed the use of fingers other than the required right index one, thus creating opportunity for multiple registration.

A number of things could have been done to prevent wide-scale fraud. Each registration team included two members of the interior ministry, the NEC and the police, and one from each political party as well as the appeals court.⁶⁰ This should have been a safeguard against fraud but failed because of collusion with and pressure from clans and parties. In addition, the NEC and political leaders could have penalised cheating, including prosecuting blatant abusers. None of this was done. Indeed, some leaders promoted abusive practices.⁶¹ The government reportedly has evidence on multiple registrations, but no one has been prosecuted. Another potentially important deterrent was the software on the server that was to eliminate duplicate records based on the fingerprint data. However, President Rayale and the government blocked "scrubbing" of the Saxil region data, arguing that running AFIS during the process would be unfair for regions that registered first.⁶²

⁵⁷ A factor that may have limited registration numbers somewhat is that rumours were spread – perhaps deliberately – that the fingerprint data would be provided to Western countries to prevent illegal immigration. Crisis Group interview, Nairobi, 15 September 2009.

⁵⁸ In one case, over 150 registrations were reportedly made with a single fingerprint at the same registration centre. "Interpeace press statement", 25 July 2009.

⁵⁹ Crisis Group interview, Nairobi, 15 September 2009.

⁶⁰ An NEC representative would register the voter and provide a voter card, while an interior ministry representative would register the same person in the civil registry and provide an identity card. Eligibility disputes were adjudicated by the Appeals Court representative. Police provided security and party observers monitored the integrity of the process. Because such observers receive small stipends, the parties are under pressure to hire locals. Crisis Group interview, Kulmiye chairman, Hargeysa, 18 November 2009.

⁶¹ Crisis Group interviews, civil society members, former NEC commissioners, Hargeysa and Nairobi, August-October 2009.

⁶² Crisis Group interview, Nairobi, 15 September 2009.

Without a deterrent in place to prevent fraud, the process moved to the Awdal area, where the fraud snowballed. Moreover, on the final day of registration there, suicide bombers attacked targets in Hargeysa, forcing a five-week suspension.⁶³ This gave the clans and political leaders even more time to organise fraud, which particularly benefited opposition parties, since the remaining areas tend to vote for them, particularly Kulmiye in Togdheer. The government decided at the end of the registration drive to deploy an additional 130 teams to the disputed eastern Sanaag and Sool regions.⁶⁴

3. Attempting a technical fix

The extent of the fraud became clear once the data was uploaded to the server. There was no fingerprint data for 53 per cent of the list of 1.3 million. Interpeace and the Indian contractors suggested a technical fix by adding a facial recognition filter. On 10 February 2009, the parties accepted this. However, the pictures taken during registration were not very detailed, making it hard for the program to eliminate matches. Adding a second software filter after completion of the registration also created a major technical challenge and introduced significant additional delays in producing a draft voter list. Ultimately, the software allowed the list to be reduced to 1.14 million.

Incomplete Voter Registration Records ⁶⁵		
Regions in order of registration	% registered without fingerprint	% of registrants disqualified by the server
Saxil	23.81	8.07
Awdal	41.02	9.92 ⁶⁶
Hargeysa	46.25	8.45
Togdheer	58.54	15.80
Sanag	67.85	28.54
Sool	71.54	22.43

With the list still contested, it was clear that the 29 March date could not be met, so the election was rescheduled for 27 September. Although the NEC was responsible for managing the process, it blamed Interpeace.

⁶³ ECIL pulled its two employees from Hargeysa and did not allow them to return, requiring Interpeace to use two newly trained technicians to run the server and program the software.

⁶⁴ This was paid for by the Somaliland government, not its international partners.

⁶⁵ Data made available to Crisis Group.

⁶⁶ Fraud was low in Awdal during the first registration, but particularly high in the supplementary period.

On 17 July, Interpeace presented the results of the server operation to the Voter Registration Task Force. That month it also hired Creative Associates to assess the process. Creative Associates concluded that though there were still too many multiple registrants, the improved list of 1.14 million would be “sufficiently credible and acceptable” if reinforced with complementary measures to prevent multiple voting.⁶⁷ It also advised that the system not be abandoned, because it would make planning and budgeting too difficult and undermine confidence in the election. A week later, Interpeace gave the revised *draft*⁶⁸ voter list to the NEC and political parties with two options: accept it as is; or allow time for further technical improvements to the software to eliminate additional duplicate registrations. The opposition parties accepted the draft list, while UDUB opted for further revision.

The following day, after meeting President Rayale, four of the seven commissioners (including the chairman and deputy chairman) agreed to sign a statement to discard the list; the three other commissioners refused.⁶⁹ Soon thereafter, the NEC chair, Jama Mohammed Omar “Sweden”, announced on the BBC Somali Service a majority decision to not use the voter list for the elections and accused Interpeace and its international contractors of negligence. He and his deputy also stated that there was no voter registration list.⁷⁰ At the request of the two opposition parties, on 29 July 2009, Interpeace produced for the Voter Registration Task Force a hard copy (22,000 pages) and six CDs of the draft list.⁷¹ UCID and Kulmiye collected the CDs; the NEC and UDUB refused them and criticised their distribution.⁷² The chairman wrote to donors that the process was a

complete failure due to Interpeace. He also announced that election preparations were on schedule, and the campaign period would begin on 3 August.

E. CONTAINING ESCALATION

Despite the NEC assurances, planning and preparations for the presidential elections did not go smoothly. The opposition-dominated House declared abandonment of the voter list unlawful and said it should be rescinded. The House also warned it would take necessary constitutional steps, ie, possible impeachment, if this did not happen.

The crisis continued to grow, as the opposition parties began protests in major towns. Tension also rose in parliament. On 24 August 2009, six UDUB legislators disrupted a House session on an impeachment motion with a verbal and physical attack on the speaker and his deputy. They were suspended for three sessions, but five days later, police were sent in to force their reinstatement. Street protests followed against the police action, and two days later, the beleaguered Rayale convened a closed-door, all-day meeting of army generals and twelve key ministers. This did not end the protests, and the situation became even more heated when parliamentarians brawled in the House chambers and one pulled out a pistol. Four days later, four people were killed as the police fired on demonstrators outside parliament. Rumors began to circulate that some clans were mobilising militias.

Many observers in Hargeysa said Somaliland was at the brink of a new civil war,⁷³ and concerted pressure was applied by civil society and the international community, notably Ethiopia and the UK. Takeda Alemu, the Ethiopian foreign ministry’s state minister, spent several weeks in Hargeysa, supplemented by John Marshall, the British deputy ambassador to Ethiopia, who visited several times; Nicholas Bwakira, the African Union special envoy; Ahmedou Ould-Abdallah, the UN special envoy; and the Friends of Somaliland donor group.⁷⁴ External pressure was complemented by pressure from the Guurti, the House of Representatives and civil society groups.

All this was helpful, but the parties only stepped back from the precipice when confronted by the likelihood that the alternative was indeed return to armed conflict. On 25 September 2009, they accepted an MOU to change

⁶⁷ Jeremy Grace, Creative Associates, “Evaluation of the Somaliland Voter Registration System: Presentation to the political parties’ representatives”, 21 July 2009.

⁶⁸ Part of the confusion surrounding the process was the impression that Interpeace had presented the final list; however, that required the approval of all three political parties.

⁶⁹ According to an insider, the meeting and the vote were pre-planned by the president and the NEC chairman. Crisis Group interview, Hargeysa, 21 August 2009.

⁷⁰ Crisis Group interview, civil society members, party leaders and former NEC commissioner, Hargeysa and Nairobi, August-October 2009.

⁷¹ The draft list was provided without photographs and other data. The Voter Registration Task Force, with NEC and party representatives, was supposed to agree on the parameters, eg, the software filters, for the final list for the presidential election.

⁷² Regardless of whether Interpeace was required to give the draft list to the parties, many Somalilanders feel it should have given it to the NEC to distribute to the parties. Crisis Group interview, Independent Scholars Group, 21 August 2009. The next day, Ruben Zamora, the Interpeace program director, was deported at the NEC chairman’s request and his laptop confiscated.

⁷³ Crisis Group interviews, Hargeysa, 17-19 November 2009.

⁷⁴ The donors forming the Somaliland Democratisation Program Steering Committee are the U.S., UK, European Commission, Norway, Sweden, Denmark and Switzerland. Switzerland recently joined the committee.

the leadership and composition of the NEC, use the “re-fined” voter registration list and delay the elections to a date to be determined by the NEC, with input from independent international experts.⁷⁵ Because of continued disagreement between Rayale, “Silanyo” and Faisal Ali “Waraabe”, however, the document is brief, vague, lacks enforcement provisions and must be complemented by additional measures to prevent a new crisis.

III. A PERMANENT WAY OUT OF THE RECURRENT CRISIS

The MOU has eased tensions, but the question remains whether the president and the parties will abide by its terms. In the past, numerous agreements have been breached, principally by the president, but also by the opposition. There is nothing in this one to enforce compliance. It will be crucial for local civil society and key international players (Ethiopia, the UK, the European Commission) to hold all sides accountable to the letter and spirit.

A. AN INDEPENDENT AND IMPARTIAL ELECTORAL COMMISSION

On 5 October 2009, President Rayale accepted the resignations of all seven members of the troubled NEC,⁷⁶ but the process to constitute a new body was quickly politicised. Although some of the initial candidates were impressive, most were affiliated with particular groups.⁷⁷ The president for the first time used his authority to “appoint” the elections commissioners as justification also to vet their candidacies before presentation to the House for approval, even though the law clearly assigns this right to the House Internal Affairs Committee.⁷⁸ Rayale thus

⁷⁵ See Appendix C below. The political parties notified the Guurti that they accepted the MOU on 25 September. It was subsequently signed in front of international observers on 30 September.

⁷⁶ Western donors who supported the democratisation and electoral process demanded the NEC’s replacement as a precondition to releasing funds for the presidential election, because it was “incompetent” and partisan. “Somaliland: Rayale accepts resignations of all Somaliland electoral commissioners”, *Somaliland Times*, 10 October 2009, www.somalilandtimes.net. Two commissioners quit on 4 October 2009 “to help facilitate” the MOU.

⁷⁷ Given Somaliland’s short history with democracy and relatively small pool of highly educated individuals, it will continue to be difficult to find ideal candidates for the NEC.

⁷⁸ The relevant sections of the electoral law are: “The Elections Commission shall be appointed by the President of the Republic of Somaliland after he has received the ... nominations”, Article 11(2); and “The appointment of the Commis-

sion shall be approved by the House of Representatives on an absolute majority vote of half their members plus one, and after the House Internal Affairs Committee has ensured that the appointees fulfil the conditions set out in this law”, Article 11(3).

rejected all the initial nominations of the opposition parties and the Guurti, including reappointment of the only nominee with experience as an elections commissioner and the only woman candidate.⁷⁹ The wrangling delayed constitution of the new NEC by nearly a month.

The nominees presented to the House and approved on 28 October were ultimately consensus choices, but they are largely unknown and acknowledge they are without experience managing elections.⁸⁰ There is concern that they may not have sufficient standing to resist interference from the parties and clan leaders.⁸¹ It is imperative, therefore, that civil society and international supporters shield the new body from political pressure as it organises the presidential elections.⁸²

B. FIXING THE VOTER LIST

The new commissioners must focus on preventing electoral manipulation.⁸³ They must also work with the independent international experts to develop a calendar for the presidential elections, identify the problems with the voter registration list and develop solutions for the many duplicate registrations.⁸⁴ They should also be given the resources to hire staff to help with logistics and to maintain and update the voter registration list.

All the political parties have agreed on the need for a voter registration list. The problem is that the present version still contains too many duplicate records and is not trusted by the parties. It is also thought to have more duplicates in some regions than others, which is a concern to clans and politicians from regions where there

⁷⁹ UCID’s initial nominee, Khadar Mohammed Guled, an attorney, was a recent respected addition to the disbanded NEC. Hassan Saeed Yousuf, a Guurti nominee, is a prominent journalist who has been arrested fifteen times but never convicted. The president rejected Kulmiye’s initial nominee, Iihan Mohammed Jama, three times before the party presented another.

⁸⁰ Crisis Group interview, NEC, Hargeysa, 19 November 2009.

⁸¹ Crisis Group telephone interview, Somaliland academic, 4 November 2009. Many people have been impressed with the body’s efforts to consult stakeholders, its cohesion and dedication. Crisis Group interviews, Hargeysa, 17-19 November 2009.

⁸² The NEC may need to manage as many as four elections in 2010: presidential, House, Guurti and district councils.

⁸³ The Somaliland Democratisation Program Steering Committee organised NEC training in Addis Ababa in November 2009.

⁸⁴ The independent international experts should work only with the NEC, not the political parties.

was less registration fraud. Further refinement and updating is needed, as well as an alternative method of voter verification and mechanisms to prevent multiple voting.

Because of concerns about its accuracy, the registration list should not be used to determine allocation of ballots and ballot boxes in the various regions, lest this facilitate ballot stuffing. Instead, an agreement is needed on the numbers to be sent to the polling stations. Perhaps more importantly, the list also should not be used as a substitute census to determine the size of constituencies and therefore the number of parliamentary seats.

A priority for the new NEC should be identifying and hiring a competent and impartial permanent registrar to facilitate the transfer of the technical elements of the voter registration process, such as operation and maintenance of the server and voter database. The registrar should also quickly implement a process for updating the registration database. However, because of problems with fingerprint data and the quality of the pictures, as well as concerns about disenfranchising citizens if the filter is too stringent, a rapid technical fix is unlikely to reduce the final voter list significantly. Rather than spending much time and resources on improving the software filters, the emphasis should be on improving the process of updating the registration database, as well as transferring the capability to do so to the local staff of a new registrar.

Possibilities for developing alternative methods of voter verification and anti-fraud mechanisms include combining the registration list with the traditional system of using indelible ink (this time not soluble with bleach or kerosene) to identify those who have voted, limiting polling hours and establishing driving prohibitions to prevent parties and clans from transporting people to multiple locations. In addition, greater attention should be given to educating election staff and party and civil society observers – including with local NGO and donor technical assistance – on the importance of resisting coercion and inducements and on how to detect fraud. The NEC also needs to identify which parts of Sool and Eastern Sanaag are secure enough to take part in elections, especially after recent tensions,⁸⁵ and not allow the president or parties to interfere.

⁸⁵ “Puntland president vows to recapture Sool, Sanaag and Cayn from Somaliland”, SomalilandPress, 2 August 2009, at <http://somalilandpress.com/7827/puntland-president-vows-to-recapture-sool-sanaag-and-cayn-from-somaliland/>; “Roadside Bomb Kills Top Somaliland Military Official”, Garowe Online, 2 November 2009, at <http://allafrica.com/stories/200911021644.html>.

C. EXTENSION OF MANDATES OR MULTIPLE ELECTIONS

2010 will be a busy political year. Not only will the NEC most likely hold presidential elections, but the mandates of the House of Representatives, the district councils, and the Guurti will all end.⁸⁶ The legal terms of the House and the district councils are five years, after which elections should be held. House members were elected in October 2005. The Guurti extended the terms of office of the district councils for two years in 2007. The constitution does not provide for extension of the mandates of either the House or district councils.

Choosing a new Guurti will be the most contentious. The constitution says its members should be selected by an undefined process every six years. Most members of the current body were selected by their clans in 1997.⁸⁷ Disagreement about whether the Guurti should be elected, nominated, or reconstituted with a new make up and constitutional responsibilities forced extension of its mandate from October 2006 to October 2010. These issues have still not been resolved, and there is need to agree on and abide by a law for selection or election.

D. OPENING POLITICAL SPACE

A consistent complaint in Hargeysa is that the parties and their leadership have in effect monopolised political power.⁸⁸ Aspiring leaders cannot form new parties or contest leadership of the established parties. This has closed the political system and perpetuated the control of a now quite old generation of politicians.⁸⁹ It is widely assumed that the three candidates in the next presidential elections will be the same party chairmen who stood for the office in 2003: Rayale, “Silanyo”, and Faisal Ali “Waraabe”.

The constitution is unclear about whether other political associations can compete in local elections – the only route by which they might qualify to become one of the three official parties permitted to also compete nationally. The government contends they cannot. Kulmiye has pledged that if it wins the presidential elections, it will clarify the law to allow it.⁹⁰ The government has stifled attempts to set up alternative parties, arresting and sen-

⁸⁶ The mandates of the House and the Guurti end in October, that of the district councils in December.

⁸⁷ Bradbury, *Becoming Somaliland*, op. cit., pp. 223-226.

⁸⁸ Crisis Group interviews, Hargeysa, August and November 2009.

⁸⁹ Crisis Group interview, Somaliland academic, Hargeysa, 19 August 2009.

⁹⁰ Crisis Group interviews, Kulmiye chairman, Hargeysa, 17-19 November 2009.

tencing the leader and deputies of the political association Qaran to three years and nine months in prison and banning them from political activity for five years for “seditious assembly”, namely holding illegal political meetings.⁹¹

Limiting the number of parties able to compete in national elections would not be so problematic if the existing ones were democratic and able to evolve politically, but all have largely failed to meet minimum democratic requirements for their internal structures, administrative procedures and finances.⁹² Thus, there is little political space for the new ideas or individuals a healthy democracy requires. A permanent system for the registration of new and independent political associations should be anchored in a new law to increase competition and accountability among political parties.⁹³

A key challenge for the new NEC will be to improve compliance with election laws and foster greater public awareness of the requirements for free and fair elections. Neither the parties nor voters appear to appreciate the importance of abiding by the rules and the spirit of the electoral laws. As demonstrated by the registration debacle, fraud is condoned, even expected. The new NEC, with donor support, should identify respected local NGOs to prepare voter education and civic awareness campaigns before elections. Schools need civic and voter education material, and the education ministry should require them to teach democratic practices and procedures. Clerics should be sought out to raise awareness about the importance of obeying election laws.

Without fair media coverage and equal airtime, elections cannot be free and fair. Although there are more than a dozen private newspapers, they are largely limited to Hargeysa, and their audience is kept down by one of the world’s highest illiteracy rates. The largest broadcasters, Somaliland National TV and Radio Hargeysa, both owned by the government, have tremendous influence, even though electronic media coverage is also restricted mostly to the capital. They have provided greater air time to government candidates in past elections.⁹⁴ The NEC must ensure fair media coverage in 2010, including equal

airtime for parties on Radio Hargeysa and Somaliland National TV.

IV. CONCLUSION

Democracy is more than holding elections and peacefully transferring power from one leader to another. It is also abiding by mutually agreed upon laws, rules and procedures that ensure the integrity of the entire political process. And it means institutionalising the electoral process so that few voters question the impartiality and professionalism of those who manage the elections.

In Somaliland, it is the constitutional responsibility of the president, the parliament and the political parties to ensure that the principal institution charged with holding free and fair elections, the NEC, does so impartially and competently. In 2007, leaders failed their duty and sowed the seeds for recurrent crises that sprouted when the three parties allowed clans to cynically manipulate the voter registration process for political gain. The harvest came when leaders refused to address the issue honestly and negotiate a compromise to salvage the voter registration list and allow the elections to go forward. While certain leaders may be more culpable in the latest crisis, all have failed in their responsibility to advance Somaliland’s democratisation and its goal of international recognition.

The MOU has bought some time but has not addressed the problems of political culture. The delays in establishing the new NEC suggest that too little has changed in how the political institutions work together. Without much greater political adherence to agreed laws, rules and procedures, including those that ensure the integrity of the electoral process, Somaliland will continue to lurch from one political crisis to another, with the threat of return to civil war ever present.

Nairobi/Brussels, 7 December 2009

⁹¹ See fn. 9 above. The three Qaran leaders were released after four months, but the ban on political activity remains in place.

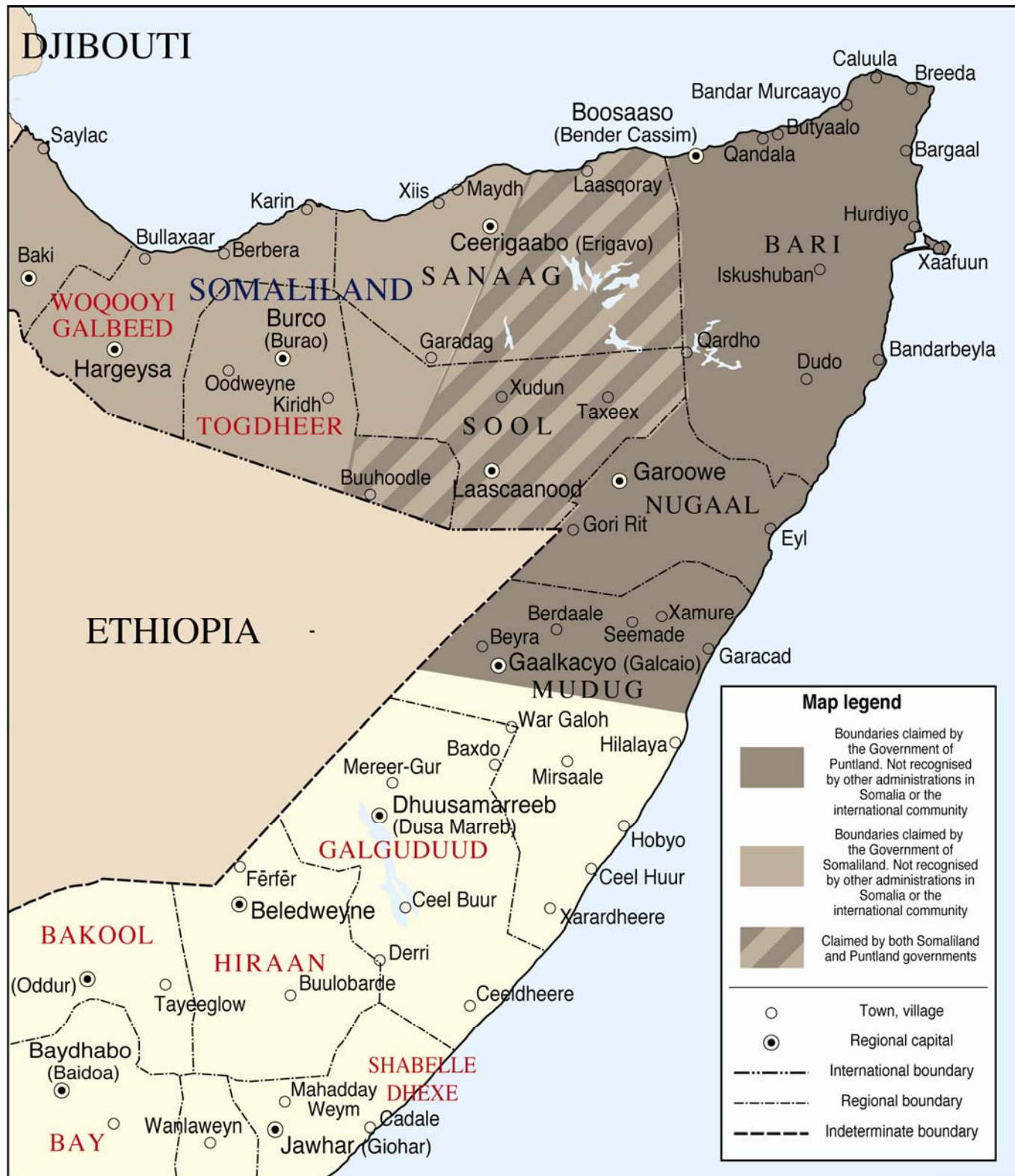
⁹² “A Vote for Peace”, op. cit., p. 50.

⁹³ The proposed new law would not override the constitutional provision limiting the number of official parties able to compete in national elections to three but rather increase democratic competition and accountability by clarifying the process through which a political grouping might achieve that status.

⁹⁴ Stig Jarle Hansen with Mark Bradbury, “Somaliland: A New Democracy in the Horn of Africa?”, *Review of African Political Economy*, 1 September 2009, p. 467.

APPENDIX A

MAP OF SOMALIA



This map has been produced by the International Crisis Group. It is partially based on the United Nations Cartographic Section's map of Somalia (Map No. 3690 Rev. 7, January 2007).

APPENDIX B

A FRAGILE DEMOCRACY

While Somaliland has successfully held three peaceful elections, its democracy is still fragile.⁹⁵ A winner-takes-all political culture continues, and political leaders have entrenched centralised, patrimonial systems of authority that undermine institutions and the rule of law.

A. A DECADE OF TRANSITIONAL GOVERNMENT

From 1991 to 2002, Somaliland made significant advances in creating a stable, rule-based government. It established security and relative stability, drafted and approved a new permanent constitution and peacefully transferred power from one president to another. This period, however, also included recurrent political crises, as government branches, clans and political organisations engaged in brinkmanship and created precedents for extra-constitutional extensions of political leaders' terms of office and loose interpretation of the constitution and laws.⁹⁶

The transitional government combined modern political institutions with the traditional Somali system of clan representation, in what is called the *beel* system.⁹⁷ This included a two-chamber parliament, each with 82 members and seats distributed by clan. The House of Representatives was the legislature; the House of Elders (comprised largely of clan elders and known as the Guurti) was charged with maintaining peace and security. The *beel* system proved crucial in sustaining the peace accord and government efforts to demobilise and disarm most clan militias, but while it resolved some clan grievances, it also gave rise to new problems. It complicated the delicate issue of power-sharing both among and

within the clans. Few were satisfied with the allocation of seats.⁹⁸

One of the most significant political tasks for the transitional government was preparing a permanent constitution. Drafting started in 1994, but the president and parliament disagreed over who should lead the process and whether there should be a strong legislative branch or a strong executive. Each produced its own draft, and the impasse was not bridged until 2000, when a 45-member committee, jointly nominated by president and parliament, completed a mutually acceptable version. The compromise was that the presidency retained most of its executive powers, and the parliament was granted greater financial oversight and a role in administrative appointments.⁹⁹

Approval of the constitution paved the way for multi-party elections, about which the public remained deeply ambivalent. Few wanted a permanent *beel* system, but many were concerned that introduction of multi-party politics was being rushed and that the then president, Mohamed Haji Ibrahim Egal, could not be trusted to set up a level playing field for electoral competition.¹⁰⁰

Time for completion of the political transition was short. Local elections were to take place in late December 2001, to be followed by presidential elections before the expiration of Egal's mandate in March 2002. But the legislative and administrative preconditions for elections did not yet exist. An electoral law was passed only in November 2001, and the NEC was formed a month later – just two days before the scheduled elections. The Guurti, therefore, granted the president an extension of his mandate until March 2003.¹⁰¹

⁹⁵ For earlier Crisis Group reporting on Somaliland, see Africa Reports N°110, *Somaliland: Time for African Union Leadership*, 23 May 2006, and *Democratisation and Its Discontents*, op. cit.

⁹⁶ Somaliland initially had a Transitional National Charter, created by the 1993 Borama Conference. This was replaced by a draft constitution in 1997. The current constitution was approved by a national vote in May 2001.

⁹⁷ Only intended to serve as a three-year stopgap, the *beel* system continues to underpin Somaliland's government. For an in-depth examination of it, see Cabdirahmaan Jimcaale, "Consolidation and Decentralisation of Government Institutions", WSP-International/Academy for Peace and Development, Hargeysa, 2002, pp. 29-43.

⁹⁸ Bradbury, *Becoming Somaliland*, op. cit., p. 13. Because the clans could not agree on their relative sizes, they accepted a modified distribution of seats according to the 1960 census. "A Vote for Peace", op. cit., pp. 22-23.

⁹⁹ The referendum to approve the constitution was held on 31 May 2001. Reportedly, 1.183 million voted "yes" (97 per cent). The constitution tries to create a balance of powers between the presidency and parliament, but in practice the president has dominated. See "Hostages to Peace", op. cit., pp. 18-22.

¹⁰⁰ Bradbury, *Becoming Somaliland*, op. cit., p. 13.

¹⁰¹ The Guurti did not have this power since the constitution only allows for the extension of the president's term of office "because of security considerations", Article 83(5). President

Egal died on 3 May 2002 while undergoing surgery in South Africa. Article 130 of the constitution stipulated that the parliament should elect a new president within 45 days,¹⁰² but the political leaders ignored it and opted to apply Article 89, which was intended to come into effect only after the first elections. It stated that the vice president should complete the remainder of the president's term. On the same day, Rayale Kahin was sworn in as interim president (until March 2003), and Somaliland had successfully – if unconstitutionally – carried out a peaceful presidential transition.

B. SOWING THE SEEDS OF INSTABILITY: FAILURE TO INSTITUTIONALISE THE ELECTORAL PROCESS

From 2002 to 2005, Somaliland held three relatively successful elections, for district councils, a president and a new House of Representatives. These were real achievements, but the elections were also undermined by wide-scale attempts by all three political parties to cheat. The electoral system is far from institutionalised; political manipulation is commonplace.¹⁰³ Since 2005, democratic evolution has stalled under the pressure of political bickering and clan manoeuvres.

1. The local elections

The first poll that the NEC managed was for 23 district councils on 15 December 2002. These elections were not only important for granting locals more power to manage their own affairs, but also for identifying the political parties legally entitled to contest subsequent parliamentary and presidential elections.¹⁰⁴ The NEC's task was made more difficult by serious political interference and its own lack of expertise. None of the commissioners had previously administered an elections.¹⁰⁵ Many political leaders had begun their careers during

Somalia's difficult experience with democracy in the 1960s.¹⁰⁶

Egal created the first political organisation, the Ururka Dimograadiyadda Ummadaha Bahoobey (the Democratic United Peoples' Movement, UDUB). In what became typical for all the parties, he was both chairman and, later, its presidential candidate. He also ignored the political party law and largely financed UDUB activities from state funds, while government officials at all levels were enlisted into working for the party.¹⁰⁷

Six other organisations also contested the local elections. There was little to distinguish one from another except their leaders and the degree to which they appealed to different clan constituencies.¹⁰⁸ International observers reported the process was orderly and transparent. Irregularities were cited in a number of areas, including incidents of multiple voting, but were not considered serious enough to have substantially altered the results.¹⁰⁹

UDUB won with 41 per cent of the vote. The second and third place finishers were Kulmiye, the party of Ahmed Mohamed Mohamud "Silanyo", a veteran politician who served two consecutive terms as Somali National Movement chairman, and UCID (Ururka Cadaaladda Iyo Dimoqraadiga, the Party for Justice and Democracy), led by Faisal Ali "Waraabe", a civil engineer who spent many years in Finland. These were the parties that would dispute subsequent national elections, since the constitution (Article 9) limits the number eligible to three.¹¹⁰

2. The presidential elections

The presidential elections quickly followed on 14 April 2003. The parties manoeuvred aggressively for advantage, with little regard for election laws and agreements or the integrity of the process. Kulmiye led in fund-raising, attracting hundreds of thousands of dollars from supporters in the diaspora. UDUB made up for a lack of

Egal's first term was extended, from May 1995 to March 1997, because of armed conflict.

¹⁰² The speaker of the Guurti would serve as interim chief executive.

¹⁰³ Bradbury, *Becoming Somaliland*, op. cit., p. 205.

¹⁰⁴ Article 9 of the constitution, following a Nigerian precedent, limits the number of parties to three. The Electoral Law requires political organisations to obtain 20 per cent of the popular vote in each of Somaliland's six regions. The purpose of these provisions is to ensure that all parties represent a "national" constituency, not merely a clan or region.

¹⁰⁵ However, the commissioners' evident dedication and the presence of foreign experts, seconded by the European Commission, bolstered public confidence.

¹⁰⁶ During that period, many of Somalia's parties engaged in rampant poll fraud. An October 1969 coup ended the democratic experiment.

¹⁰⁷ Crisis Group Report, *Democratisation and its Discontents*, op. cit., p. 16.

¹⁰⁸ Ibid. The lack of clear policy differences among the parties made it easier to mobilise voters around parochial clan issues and promises of gifts than political arguments. Hansen and Bradbury, "Somaliland", op. cit., p. 467.

¹⁰⁹ "Somaliland Local Elections: 15 December 2002", Independent Observers' Statement, International Cooperation for Development/Catholic Institute for International Relations and Royal Danish Embassy, Nairobi, p. 1.

¹¹⁰ There were more than 60 parties in Somalia's last election, many of them clan-based.

private donations by using public funds and assets, in direct contravention of the Political Parties Act. It pressed ministry staff and vehicles into service, and the government appointed additional ministers to get out the UDUB vote in their clan areas.¹¹¹ All three parties handed out cash to manipulate the process.¹¹²

The NEC, however, had learned important lessons from the local elections. It increased the number of polling stations by more than 100 to reduce queues and late closings and ensured that its staff and party agents received more training. More importantly, presiding election officers, who had previously been appointed from local communities and so could be influenced by their clans, were cross-assigned. The results were dramatic: despite an increase of 58,572 in the overall number of voters, some regions experienced a precipitous drop-off in recorded votes that many observers attributed to controls on ballot stuffing. In Hargeysa's rural Salaxaley district, a UCID stronghold where ballot stuffing was reported in the local elections, votes cast fell from roughly 23,000 in December 2002 to just over 13,000 in April 2003. In Rayale's home Awdal region, where over 100,000 votes had been cast in local elections, there were just 68,396; UDUB's count there fell by more than 15,000.¹¹³

International election observers reported no major irregularities, though there were credible accounts in some areas of multiple voting.¹¹⁴ Several polling stations reported suspiciously unanimous results for one party or another, but since party agents were at all locations and signed off on the counts, allegations of cheating were difficult, if not impossible, to substantiate.¹¹⁵ In the absence of voter registration lists, indelible ink was used to mark voters and prevent multiple balloting. But the ink was soluble in kerosene, mild bleach or lemon juice – a flaw all parties were quick to exploit. In major towns, party offices reportedly had buckets of bleach or kerosene with which voters could remove the stain so they could vote again. Although all exploited this, most observers said Kulmiye benefited the most. According to an NEC

commissioner, “they were simply better organised and more determined when it came to double voting”.¹¹⁶

When the NEC finally declared the preliminary results, the margin was razor-thin: UDUB won by 80 votes, out of nearly half a million. Party leaders had committed themselves to abide by the results, but the NEC disqualified more than a dozen ballot boxes, and its numbers included errors and omissions. These could easily have meant the difference between winning and losing.¹¹⁷ The Supreme Court was to certify the results, but it was not the ideal institution to arbitrate the final count. Rayale had ordered a popular shake-up of the court, so all seven judges had been appointed by him.¹¹⁸ According to a local think tank, the Academy for Peace and Development, their application of the law was “ad hoc, non-uniform, and highly subjective”.¹¹⁹ The final decision on 11 May was that UDUB had won not by 80 votes but by 217. The court did not publicly explain how it arrived at this result. No evidence has been brought forward to suggest that it acted improperly, but the appearance of partisanship, reinforced by reluctance to explain the decision, has undermined its role in the election process.

On 16 May 2003, Rayale was sworn in as president. UCID announced acceptance of the results. Kulmiye, which felt it was the winner, rejected the outcome, but later acquiesced to popular pressure to abide by the results.¹²⁰

3. Legislative elections

The most recent elections were for the House of Representatives. These were originally scheduled for mid-2003 but were put back to early 2005, because the parliament was unable to agree on a new electoral law. The main issue was distribution of seats between the

¹¹¹ Crisis Group Report, *Democratisation and its Discontents*, op. cit., p. 22. New Somaliland shilling notes began to appear on the streets prior to the December 2002 local elections and up to the presidential poll, triggering massive inflation: the value of the shilling against the U.S. dollar dropped from 6,300:1 in December 2002 to 7,500:1 on the eve of the presidential elections.

¹¹² Ibid.

¹¹³ Ibid, p. 25.

¹¹⁴ There were only a small number of observers, and they were able to monitor only a small subset of polling stations.

¹¹⁵ Crisis Group Report, *Democratisation and its Discontents*, op. cit., p. 23.

¹¹⁶ Ibid, p. 22.

¹¹⁷ A plurality is sufficient to elect the president. Rayale won with only 42 per cent of the vote.

¹¹⁸ The president has the constitutional authority to appoint and dismiss judges to the Supreme Court. This is supposed to occur in consultation with the Judicial Commission and parliament, but in practice he has acted unilaterally. The justice ministry administers the courts, salaries and budgets, further limiting judicial independence. Bradbury, *Becoming Somaliland*, op. cit., p. 235; Cabdiraxhaan Jimcaale, “Consolidation and Decentralisation of Government Institutions”, in WSP International, (ed.), *Rebuilding Somaliland: Issues and Possibilities* (Lawrenceville, 2005), pp. 85-86.

¹¹⁹ “The Judicial System in Somaliland”, Academy for Peace and Development, Hargeysa, August 2002, p. 3. The judiciary remains dysfunctional and underfunded. “Hostages to Peace:”, op. cit., pp. 24-27.

¹²⁰ Kulmiye conceded defeat after three weeks of mediation by clan leaders. Bradbury, *Becoming Somaliland*, op. cit., p. 195.

six regions (and thus clans).¹²¹ The dispute dragged on for years until resolved through negotiations facilitated by the NEC chairman, Ahmed Haji Ali Adami, in February 2005. Talks with the president led to further delays, and the law was passed only in May, forcing postponement of the vote to September.¹²²

During the House election campaign, 246 candidates competed for 82 seats. Clan leaderships played a key role in selecting the candidates and financing their campaigns. Furthermore, as clan territories cross the Ethiopian border, the candidates and parties also sought votes there.¹²³ Again, everyone cheated. UDUB continued to use government resources, and each party tried to use multiple voting. However, the NEC had successfully managed two elections, so it was much harder to systematically manipulate the voting process, and both domestic and international observers stated the polling process was fair and transparent.¹²⁴

The result was a big win for the opposition parties. UDUB took the most seats (33), but Kulmiye (28) and UCID (21) together gained a majority in the House. Clan and regional affiliation proved an important determinant of voting patterns. The election altered the parliament's clan composition, primarily favouring the larger ones. The three major sub-clans of the Isaq, the Habar Awal, Habar Yunes and Habar Je'elo, won 23 seats in total. The Gadabuursi (Rayale's clan) gained two seats. The smaller sub-clans and minorities lost thirteen of their fourteen.¹²⁵

The House elections also created divided government – one party controlling the presidency, the other two the main legislative body. This aggravated power struggles, producing protracted standoffs over procedural and legal issues. These first affected the electoral processes when the parties failed to agree on the appointment of a new NEC, after the mandate of the successful first one expired on 20 January 2007. The new commission was not approved until 3 September and only began work at the end of October, less than six months before the presidential elections then scheduled for 15 April 2008. It proved unable to conduct the election, due in part to incompetence, but also to a dominant presidency, the difficult political culture and the pervasive influence of clans and clan leaders.

¹²¹ "A Vote for Peace", op. cit., p. 21.

¹²² This also required a Guurti special resolution to extend the term of the House of Representatives, due to expire at the end of May, until 17 October 2005.

¹²³ Bradbury, *Becoming Somaliland*, op. cit., pp. 204, 206-207. Some candidates apparently transported enough voters from elsewhere to win. "A Vote for Peace", op. cit., p. 41.

¹²⁴ "A Vote for Peace", op. cit., p. 32.

¹²⁵ *Ibid*, pp. 43-45.

APPENDIX C

MEMORANDUM OF THE UNDERSTANDING ON THE UPCOMING PRESIDENTIAL ELECTION OF SOMALILAND¹²⁶

The three registered political parties in Somaliland, together hereafter referred to as the "Parties".

Committed to preserving the peace, stability and credibility that Somaliland has achieved over the last decade and half;

Conscious of their responsibilities to safeguard the welfare of the people of Somaliland in a sub-region where the preservation of peace and stability in any country is not an easy exercise;

Fully cognisant of the imperative necessity of creating the conditions for fair, free and peaceful elections, without which the preservation of peace, stability and credibility of Somaliland will not be possible;

Fully convinced that the ruling party and the two opposition parties have historic responsibility to make the upcoming election free, fair and peaceful;

have reached the following understanding:

Paragraph 1

Given the shortage of time remaining before 27 September 2009, which is the jointly agreed time for the next election, the parties accept that the Election be postponed, the new time for the election to be decided as per what is stated in paragraphs 4 and 5 below.

Paragraph 2

The Parties agree that all options, including changes in the leadership and composition of the National Election Commission, need to be considered to restore public confidence in the Commission and to make sure that the Commission is able to perform the role expected of it under the Constitution.

Paragraph 3

The three parties have agreed that there is a need for a Voter Registration List as legally provided for, for this and future elections. In this regard, taking note of the shortcomings of the existing Voter Registration List, the three parties accept that there is a need to further refine the list and to consider whether further safeguards are required to avoid multiple voting.

Paragraph 4

The parties have agreed to invite independent international experts to assist the National Election Commission in reviewing Somaliland's electoral preparations. The Experts will be invited to submit their recommendations to the Commission including on how to refine the provisional voter list, and on the timetable under which the remaining preparations for the election can be held. The Commission shall then fix the new date for the election based on the amount of time required for the final election preparations to be made.

¹²⁶ The memorandum was signed on 30 September 2009 by the three party chairmen, President Rayale Kahin, Ahmed Mohamed Mohamud "Silanyo", and Faisal Ali "Waraabe". Translation available at <http://eastafricapi.com/>.

The Parties also decided that detailed Terms of Reference for the experts should be agreed with the political parties and the Commission.

Paragraph 5

On the basis that the determination of the date of the election is depoliticised, with the date to be fixed by the Commission, in light of the recommendations by the experts as set out in paragraph 4 above, the parties have agreed that the term of office of the President and Vice-President should be extended to a date not more than one month after the date to be fixed by the Commission for the elections.

Paragraph 6

The parties underline the need for Friends of Somaliland to continue their engagement with the three parties with the view to contributing to the faithful implementation of the understanding contained in paragraphs 1 to 5 above and assisting the Somaliland authorities to carry out free, fair and peaceful elections critical for preserving the stability, security and credibility of Somaliland.

Signed in Hargeysa on _____ 2009

UDUB

Kulmiye

UCID



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