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16 May 2015

**The term extensions are wrong in law and wrong for democracy**  
***A call for an immediate Constitutional Court review and a statutory reform***

**Overview**

1. Even since 12 January 2002 when the House of Elders (the HoE) first relied on the 'constitutional contingencies clauses' giving the House power to extend the terms of office of the President/Vice-President and the House of Representatives (the HoR) in the event of specified exceptional insecurity or disasters causing delays in elections, the HoE has strayed far and wide from the letter and intent of these constitutional provisions. In a presidential system of government where an elected president and elected houses of parliament can only be replaced by similarly elected president or house<sup>1</sup>, the issue, in my view, has never been whether a short term extension should be made when and if the National Electoral Commission (NEC) declares that, for reasons it has identified, the date of election shall fall beyond the end of a term, but was how that can be done lawfully and with the agreement of all the stakeholders in a way that ensures that the election must then be held at the earliest opportunity.

2. The two constitutional contingencies clauses first introduced by the 1997 Interim Constitution<sup>2</sup> at a time when Somaliland just came out of a period of internal insecurity were meant to ensure temporary continuity of government in the event of the Presidential and House elections not being held on time because of the occurrence of specified serious insecurity or disaster events. Yet, despite none of these constitutionally specified events happening in Somaliland since the promulgation of these provisions, these two clauses have been used, before this week, to justify term extensions for –

- Presidents/Vice-Presidents – 5 times (2002, 2003, 2008 and twice in 2009).
- House of Representatives – 5 times (2002, 2003, 2005, 2010 and 2013).

3. Furthermore, as these contingencies clauses (Arts. 42(3)<sup>3</sup>, and 83(5)<sup>4</sup> of the 2001 Constitution) relate only to presidential and HoR terms, the House of Elders' own first

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<sup>1</sup> Unlike parliamentary systems of government where the Presidency, as head of state, is separate from the head of government and hence can have 'caretaker' governments with much less powers than a freshly elected government, without any diminution of the head of state functions, such as for example, during election periods in Bangladesh, presidential systems which combine the head of state and the head of government into one elected office do not usually have provisions for 'caretaker governments'. Under the Somaliland Constitution, the President's *constitutional powers* cannot be constrained even by the Legislature as that would infringe the separation of powers principles. There is nothing, however, stopping a President from changing his cabinet or his policies, as he sees fit.

<sup>2</sup> Arts. 62(3) and 107(5) of the Somaliland Interim Constitution 1997.

[www.somalilandlaw.com/1997 Interim Constitution.htm](http://www.somalilandlaw.com/1997_Interim_Constitution.htm). The wording of the clauses remained the same in the 2001 Constitution. There were no similar clauses in the 1993 National Charter.

<sup>3</sup> Art. 42(3): 'If the election of the House of Representatives cannot be conducted because of dire circumstances, the outgoing House shall continue in office until the end of these circumstances and a new House is elected. Dire circumstances are: a wide war, internal instability, serious natural disasters, such as earthquakes, epidemic diseases, (and) serious famines; and shall be determined and resolved by the House of Elders on the proposal of the Council of Government.' (*My underlining*)

extension of term of office in 2003 was effected through a law passed by the two Houses and signed by the President - the correct way, in my view, to put into effect any 'non-contingencies clauses' election delays. Unfortunately since 2006 when the HoE's term was extended for a further 4 years by a Presidential Decree backed by the decision of the HoE itself, the HoE has, in effect, extended its own term again in 2010 and 2013, so that its term was until, this week's decision, due to end in mid 2016. These extensions have negated the people's constitutional right<sup>5</sup> to s/elect indirectly<sup>6</sup> (or directly) the members of the HoE since the February 1997 National conference.

4. To further underline how the term extension system of Somaliland has strayed from the contingencies clauses, the HoE decided on 12 December 2007 that it has the power to extend also the term of office of the district local councils elected in December 2002 (for a 5 year term) and did so again in 2009 and a 2010 until the second nation-wide local district council's elections were held in November 2012. There are no constitutional or legal provisions that address such term extensions.

5. Overall, the constitutional contingencies clauses which were meant to be an insurance against the legitimacy of the elected branches of the government being questioned during these unusual specified events, have been so overused, or perhaps abused, during peaceful times that they invariably created the very legitimacy disputes they were supposed to forestall<sup>7</sup>. Almost all presidential term extensions and many of the term extensions of the Houses were very hotly contested and the least contested were the local district council's term extensions. This simply attests, in my view, to the Somalilanders' strong desire for peace and for prompt conflict resolution which occasionally involves the acceptance of seemingly unconstitutional and unlawful solutions. It also explains why past and present opposition parties vehemently denounced the various HoE resolved term extensions as being unlawful and yet were often willing to accept them in the end. This pragmatic approach is, however,

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<sup>4</sup> Art. 83(5): '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 of the President and the Vice-President, the House of Elders shall extend their term of office whilst taking into consideration the period in which the problems can be overcome and the election can be held'. (My underlining)

<sup>5</sup> [Art. 22\(2\) of the Constitution](#) sets out citizens' rights to be elected or to elect their representatives. This fundamental right is to be interpreted, under Art. 21(2), in a manner consistent with international human rights conventions. For example, Art. 25(b) of the International Covenant on Civil and Political Rights ([ICCPR](#)) states that every citizen shall have 'the right and the opportunity ... without unreasonable restrictions' 'to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'. In its [1996 General Comment on Art. 25\(b\)](#), the Human Rights Committee stated that 'Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law'. (My underlining)

<sup>6</sup> Art. 58 of the Constitution states that the members of HoE shall be 'elected' (*doorasho*) in a manner to be determined by law, but Art. 62 also refers to the 'selection' (*xulashada*) of the HoE. This is why I use the term 's/election' of the HoE in this commentary.

<sup>7</sup> I have explored some of these issues in a [2008 Interview](#) published in *Jamhuuriya* titled 'Disorder that does not exist in the country will not bring about a constitutional term extension, but an unconstitutional term extension may lead to disorder'.

counterproductive especially when it involves recurring political and legal problems<sup>8</sup>. Furthermore, the continual acceptance of unlawful procedures has a stunting effect on the development of constitutionalism, the rule of law, the constitutional separation of balance of powers and the democratic process of holding periodic timely elections.

6. There is, therefore, an urgent need for a statutory reform of the procedures for dealing with 'non-contingencies' clauses electoral delays necessitating term extensions (which do not require any amendment of the constitution) as soon as these current HoE term extensions are reviewed one way or another, including, I hope, a review by the Constitutional Court which should be given a chance to revisit its infamous 2006 private advisory opinion to then President about HoE term extensions<sup>9</sup>.

### ***The latest term extensions***

7. On 25 April 2015, the President forwarded to the HoE a very short note enclosing a statement from the NEC advising that the NEC will be able to hold the Presidential and House of Representatives elections on 1 June 2016 – a date which fell beyond the expiry of the terms of the President and of the HoR. The President's letter did not specify the Government's recommended extension period for the HoR, as required by contingencies clause 42(3) if he was triggering its use, and his short letter simply stated that the House 'should undertake its constitutional duty'<sup>10</sup>.

8. On Monday 11 May 2015 the HoE decided:

- a) To extend the term of office of the President/Vice-President whose elected first term of office expires on 27 July 2015<sup>11</sup> (and not, as widely publicised, on 26 June 2015 which is the 5<sup>th</sup> anniversary of his election day) to 27 April 2017 - a period of 1 year and 9 months.
- b) To extend again for the third time the term of the House of Representatives (elected in 2005 for 5 years<sup>12</sup>) which is due to end on 26 June 2015 to 27 April 2017 - a period of 1 year and 10 months.
- c) *Implicit in these two above resolutions is that under Arts. 83(2) the election of the President/Vice President must be held a month before the end of the term of office; and under Art. 42(2), the President shall announce the HoR election a month before the HoR end of term, both of which are matters which the NEC takes note of when*

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<sup>8</sup> The current events mirror somewhat the 2008/9 disputes and it appears that the lessons of that protracted dispute were not learnt. At that time the current government party, Kulmiye, was on the other side of the fence on these issues.

<sup>9</sup> This was explored in this 6 May 2006 paper by the Somaliland Forum titled '[A term extension too far: Guurti Resolution is unconstitutional and unacceptable](#)'. This related to the 2006 HoE extension of its term for a 'record' 4 year period which was said was based on a confidential advisory Supreme/Constitutional opinion.

<sup>10</sup> A wording also used by the President in his previous letters to the HoE in connection with the 2010 extensions of the terms of the HoR and the local district councils. In contrast, the previous President's communications to the HoE were explicit in asking it to exercise the constitutional contingency clauses.

<sup>11</sup> Under Art 88(1) of the Constitution, the 5 year term of office of the President started from the date he was sworn into office, which was 27 July 2010.

<sup>12</sup> Under Art. 42(1) of the Constitution, the first term of the office of the House commenced on the date Supreme Court declaration of their electoral results which was 1 November 2005.

*setting the dates of elections in the exercise of its statutory power under Art. 8 of 2002 Election Law.*<sup>13</sup>

- d) To extend the term of House of Elders (selected in 1997 for a 6 year term) whose four times extended term was not even due to end until mid-2016, by an additional two years to 27 April 2018. The HoE decision states that its end of term will be 'one year after' (quoted verbatim) the end of the extended term of the HoR. This means the Elders who do survive since their selection in early 1977 for a 6 year term will, by 2018, serve for over 21 years<sup>14</sup>.
- e) To annul the date of the elections set by the NEC in its letter to the President dated 20 April 2015, as the earliest date it can hold the elections (which was 1 June 2016). According to the HoE, the NEC has misinterpreted Art. 8<sup>15</sup> of the 2001 Election Law which gives the NEC power to set the date of elections.  
(Dates corrected)

9. It was significant, this time, that the three political parties were of the view that any term extension should reflect the NEC determined date of polling (1 June 2016) which even took note of, as pointed by the NEC, an unusual, and, in my view, unnecessary requirement in the 2014 Voter Registration (Amendments & Additions) Law<sup>16</sup> that the NEC must produce the final voter register list six months in advance of the polling date – a requirement that could still be repealed when this Law is revised, as happened in 2009 revisions of the then Voter Registration Law. It was also reported that the opposition political parties might have accepted a November 2016 polling date in one of their discussions with the HoE.

10. The HoE written reasoning of its decisions went as follows. The HoE -

- a) assessed the circumstances existing at the eastern regions and throughout the country;
- b) noted the need for voter registration throughout the country so that the integrity of the whole of the land and of all the people is maintained as mandated by the Constitution;
- c) believed that the NEC declaration of the polling date was inconsistent with the provisions of the constitution and the laws;

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<sup>13</sup> Also the similarly numbered identical Art. 8 of the 2005 HoR Election Law. See also paragraph 12(d) of the Commentary for further comments on this issue and footnote 15 below for the text of these articles.

<sup>14</sup> Under Art. 72(2) of the Constitution, '[i]f a seat of the House of Elders becomes vacant during any period prior to the final six months of the term of office of the House, it shall be filled as determined by law, and the new member shall serve for the remainder of the term of office of the House'. As no HoE s/election which would address also the filling of vacancies has not yet been passed, the transitional Art. 130(3) applying to vacancies of any the first HoE or HoR member selected in the 1977 National Conference is still being used in the case of the HoE. The Clause states that in the event of a vacancy, 'the community which he [*the former incumbent*] represented shall fill that vacancy until such time the system of elections through parties is adopted'. There are no published procedures as to how the selection is done but it said that it is mostly through inheritance. In August 2011 one daily newspaper stated that 36 deceased HoE members were replaced by their sons or close relatives.

<sup>15</sup> Article 8 of the 2001 Election Law (and the similarly worded Art. 8 of the 2004 HoR Election Law) reads:

'Timing of the elections: The Commission shall declare, in accordance with the Constitution, the dates when elections shall be held and their declarations shall be published as Presidential Decrees.' (*My underlining*).

<sup>16</sup> Arts. 7(2) and 26(2) of the [Voter Registration \(Amendments & Additions\) Law 2014](#).

- d) noted that the HoR Election Law whose one time use has lapsed and that no other law has so far been promulgated – this requires time, discussions, convincing each other, compromise in respect of the disputed allocation of seats, which is still an outstanding matter;
- e) assessed the weather of the coastal districts and the optimum period for the holding of an election;
- f) assessed fully the economic, social, and peace, in general, as well as the economic effects of the war in the Gulf of Aden on the Somaliland commerce and the need to avoid another postponement of the elections, recurring term extensions and non-completion of the outstanding matters;
- g) has seen Arts. 42(3) 83(3)<sup>17</sup> and 83(5) of the Constitution; and
- h) considered and reached its decision on the basis of the above reasons.

### Comments on the law

11. Looking at the stated reasons of the HoE written decision, the following points arise:

- a) The decision mentions in passing the constitutional contingencies clauses 42(3) and 83(5) which list the '*conditions precedent*' for the exercise of the powers of term extension, but it does not state how exactly these clauses relied upon apply to these current cases. It is a principle of constitutional (and administrative) law that if a public body is exercising a power given to it under the Constitution or a law, it should state clearly how it has applied the relevant enabling provisions.
- b) The contingencies clauses call for the identification and assessment of the nature and duration of the specified events justifying the reliance on these clauses. The HoE decision mentions briefly '*the circumstances existing at the eastern regions and throughout the country*' and the mainly economic effects of the Gulf Aden War, both of which may have some security implications, but there was no evidence (and neither has the HoE argued) that any of these matters have actually led to the delays in the elections for the these contingencies clauses to come into play in this instance. Indeed the NEC letter which the President forwarded to the HoR sets out the reasons for the delays and the date when the NEC could overcome these and hold the election and none of the reasons had anything to do with the contingencies clauses specified events.
- c) There is nothing in the contingencies clauses which gives power to the HoE to assess and enquire into other election related matters that have nothing to do with the specified events, such as:
  - i. the need for voter registration throughout the country (11(b) above);
  - ii. the deficiencies of the HoR Election Law (11(d) above); and
  - iii. the coastal weather in the summer months (10(e) above).
- d) In basing its whole decision on these 'non-contingencies' clauses matters, the HoE has therefore both misinterpreted the constitutional provisions and has brought into its decision making matters irrelevant to the exercise of the contingencies clauses powers. It has therefore acted beyond its powers (*ultra vires*) and hence unlawfully. These assessments of the 'non-contingencies'

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<sup>17</sup> Art 83(3): The outgoing President and Vice-President shall continue in office until the new President and the Vice-President assume their offices within a month (*of the election*).

clauses electoral issues lay within the statutory powers of the NEC and not the HoE.

- e) In annulling the declaration of the NEC as to the earliest date that the elections can be held, the HoE has again gone beyond its powers<sup>18</sup>. The Elections Laws (2002 and 2005 – arts. 8 of both) assign the declaration of the election dates to the NEC and the NEC only. The reference to the Constitution in these articles does not divest the NEC of this power but obliges the NEC to follow the constitutional provisions relating to the elections of the President and the HoR which are set out in Art. 83<sup>19</sup> and Art. 42<sup>20</sup>. Both Articles state that the Elections shall be held a month before the respective end of terms and the NEC would always ensure compliance with these strictures, but in this situation when the term extension issue has still to be sorted out, the NEC declaration serves as an authoritative guide as to the earliest date that the election can be held and it beholds on whoever is deciding the minimum necessary term extension to ensure that the minimum required dovetails with NEC declared polling date.
- f) In any case, the constitutionally set one month gap between the election date and the end of term of office was intended to ensure that the elections are held on time before the end of the term and was not meant to delay further an election date set by the NEC. It is the main reason why many citizens and outside observers, including the international community, cannot comprehend an election date set up the HoE and not by the NEC.
- g) As I have mentioned in paragraph 3 above, the HoE's own term extension defies both logic and the law. In granting themselves an extra year of every term extension they gave to the current HoR in 2010 and 2013, the HoE decided to revive a 2003 one clause sunset law in a wider law proposing a controversial President led indirect elections for the HoE which was rejected by the HoR, but a single clause in that Law dealing with HoE term extensions was, in the end, passed.<sup>21</sup> At that time, incidentally, there was no argument whatsoever about

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<sup>18</sup> Judicial review of decisions of public bodies, like the NEC, comes under the jurisdiction of the Supreme Court, and the Constitutional Court where a constitutional issue is engaged - Art. 10(3)(c) and Art. 15(1)(a) of the Organisation of the Judiciary Law – Law No. 24/2003&2006 (60 Arts. version).

<sup>19</sup> Article 83: Election Procedures

1. The President and the Vice-President shall be elected jointly through a direct general election by means of a secret ballot.
2. The joint election of the President and the Vice-President shall be based on the list system and shall take place a month before the end of the term of office of the outgoing President.
3. The outgoing President and Vice-President shall continue in office until the new President and the Vice-President assume their offices within a month (*of the election*).
4. The two candidates in the list which obtains the highest number of votes cast in the Presidential and Vice-Presidential election shall be recognised as the successful candidates.
5. ... *The contingency clause – see footnote 4 above.*

<sup>20</sup> Article 42: Period of Office and Election Term

1. The period of office of the House of Representatives is 5 (five) years beginning from the date when the Supreme Court declares the electoral results.
2. The President shall announce the election of the new House a month before the expiry of the period of office of the outgoing House.
3. ... *The contingency clause – see footnote 3 above.*

<sup>21</sup> The initial clause dealing with the HoE term extension was numbered Clause 19 and read: '*If the indirect elections of the House of Elders cannot take place because of dire circumstances or because of practical problems, the President shall propose, in a reasoned way, the existence of such circumstances and the decision on how long such circumstances can be overcome shall be made by the House of Representatives*'. However, there was an alternative clause proposed by the then President which stated

the fact that the constitutional contingencies clauses did not apply to the HoE's own term extension, and so the 2003 sunset law stated that any extension to the then expiring 5 year HoR term should be mirrored by an a one year extra extension to then 6 year term of the HoE which was due to expire in 2004. The rationale for this linkage formula was to avoid both terms expiring in the same year and necessitating two elections in the same year. As it turned out, the then HoR required another short extension in 2005 to take its term to September 2005 when a new HoR was finally elected. This marked the end of the linkage 'escalator' formula, as the new HoR would not by then be requiring any extensions for the following 5 years, but the HoE whose s/election law was still to be finalised required another term extension in 2006. This time, however, instead of seeking a law passed by both Houses and the President as in 2003, the then President sought a controversial secret advisory opinion from the Supreme/Constitutional court which allegedly stated that the HoE can use the contingencies clause relating to HoR term extensions 'as they are both houses of parliament' and then the HoE gave itself a previously unheard of 4 year term extension<sup>22</sup> to 2010 – *the same year that the elected HoR's new 5 years term was due to end*. This was endorsed by a Presidential Decree although this still did not amount to a law as HoR approval was not sought. When in September 2010, the new HoR 5 year term ended, the HoE then gave the HoR a term extension of 2 years and 8 months and then decided to revive the 2003 sunset one year escalator formula and gave itself another similar extension plus one year. Again when the HoE next extended the HoR's term in April 2013 for a further 2 years and 27 days, it gave itself a similar extension plus one year to take to it mid - 2016. And this week, even though the HoE term is not expiring until 2016, having extended the HoR term for 1 year and 9 months to 27 April 2017, it extended its unexpired term further to 27 June 2018 on the basis that the linkage *escalator* formula requires the HoE term to end always 'one year after' the end of term of the HoR<sup>23</sup>.

- h) In all these HoE term extensions, there have not been any assessments of the reasons for the delays in the HoE's s/elections or the time when these issues can be solved or overcome. The last time an HoE election bill was proposed was in 2006 when a Direct Election Bill passed by the HoR was rejected by the HoE on a vote of more than two thirds majority and also on a point of principle (under Art. 78(5) of the Constitution) which meant that the HoR could only overrule the HoE by a two thirds majority vote of its membership which it could not muster<sup>24</sup>.

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that *'the term of office of the House of Elders was as set out in the Constitution and shall finish a year after the term of the House of Representatives and any extension of the term of the House of Representatives shall increase the term of the House of Elders by an equal period'*. This latter clause was signed into Law. In my view, the phrase 'shall finish a year after' was meant to keep the election of the first two Houses, which were both set up in 1977 (one for 5 years and one for 6 years), apart so as to fall in successive years and so the extensions were therefore linked, but that came to an end when the HoR was elected in September 2005 and the HoE continued with its extended term to 2006 when a different extension method was used. It is for this reason that I have referred to it as a 'one clause sunset law'. For a note of the single clauses see the copies of the bills:

[http://www.somalilandlaw.com/House\\_of\\_Elders\\_Indirect\\_Elections\\_Bill\\_2003.pdf](http://www.somalilandlaw.com/House_of_Elders_Indirect_Elections_Bill_2003.pdf)

<sup>22</sup> See Somaliland Forum 2006 Statement on 2006 term extensions referred to in footnote 9 above.

<sup>23</sup> See the [11 May 2015 Resolution of the House](#) (in Somali).

<sup>24</sup> The [House of Elders Election Bill 20-3/2006](#). In my view direct elections of both Houses may not serve Somaliland well and it should be possible to devise an indirect election system for the HoE. The main stumbling block appears to be the allocation of seats, which is equally the main problem in respect of the

- i) In the Somaliland Presidential system of government, bills can be initiated not only by the government, but also by the House of Representatives under Art. 74(2) and it remains a mystery as to why the non-completion of the electoral laws of the two Houses which are essential to the holding of periodic and timely s/elections have become such a problem that the only time a House electoral law was passed in 2005, it has to be forced through the intervention of the Constitutional Court. It cannot be far-fetched to conclude that the seemingly easy use and abuse of the constitutional contingencies clauses and the revival of the 2003 linkage '*escalator*' formula have something to do with it.

### ***Conclusions and options for change***

12. In these circumstances, and failing a review of the decision by the HoE itself (as the House resolutions can be overturned or amended by another majority resolution), the options for legal challenges and for future statutory action appear to be as follows:

- a) The President may request the HoE to reconsider its decision and to heed the NEC's recommendation that he forwarded to the Elders. It is also open to him to add that the HoE failure to re-consider its resolutions may lead to him seeking a decision from the Constitutional Court on the constitutionality and legality of the resolutions. I understand, however, that Government spokesmen and ministers have already welcomed the HoE resolutions and so this does not, at present, appear to be a feasible option.
- b) The political parties and civil society organisation representing the public can mount a judicial review challenge of the HoE resolutions at the Constitutional Court. Whilst this Court has sullied its name in April 2006 when it gave a confidential opinion to the President to the effect that the HoE can extend its own term of office (see above), it remains still the legal avenue for challenging the HoE's latest term extensions. If the Court agrees that these extensions are unconstitutional and/or unlawful, the decision would not be retrospective but would set aside the latest resolutions. More on this below.
- c) There is a clear alternative route as to how delays in elections which have nothing to do with the constitutional contingencies clauses events can be made and that is a law passed by both Houses and the President which sets out the procedures for dealing with such eventualities and based entirely on the earliest date of the elections set by the NEC and agreed upon by all the political parties with the emphasis always being on consensus and the decisions of the NEC. This is not new to Somaliland as there was indeed in 2003 a one clause sunset law passed to legalise the first extension of the term of the HoE. The NEC's role and that of all political parties will be set out in the Law and then if and when a short term extension is needed to meet an NEC set timetable this could be effected

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HoR Election Law, but it should be feasible within a reasonable period this year to address both of them together, as well as the issue of female representation in both Houses, even if this requires a constitutional amendment of the numbers of the members of the two Houses which is currently fixed at 82 each. If an indirect election system for the HoE is agreed, then that would be held separately at a much lower cost since it would not depend on voter registration or nation-wide polling.

through a resolution of both Houses<sup>25</sup> under this law, which on signature by the President, would become law.

- d) There will be no need to amend the constitutional contingencies clauses, but the new Law, coupled with the Somaliland constitutional principles of co-operation and consensus<sup>26</sup>, if introduced in 2002, could have dealt with practically the term extension situations that have arisen since then, as none of them, in my view, engaged the constitutional contingencies clauses. Without tempting fate and with a successful voter registration this year, Somaliland may, until the constitution is amended, only require to trigger the constitutional contingencies clauses if the contingencies events really do happen.

13. There are understandable concerns about the Constitutional Court's 2006 involvement in HoE term extension, but the Court also, earlier in February 2005, struck down the parts of the 2005 Election Law passed by both Houses (by an unusual two thirds majority in both Houses) which unnecessarily impeded the early holding of the election, such as provisions stating that before the first HoR election could be held, the regional allocation of seats must be based on a nationwide population census; that voter registration (which was never planned then) should take place before the polling date; and that it would constitute the crime of 'high treason' if the polling does not take place in every part of the country when at that time everyone knew that there would be a few far eastern election wards that polling could not take place<sup>27</sup>. So, despite any concerns, the Constitutional Court<sup>28</sup> can be asked<sup>29</sup> (by the opposition parties or civil society groups or anyone with sufficient interest in this matter<sup>30</sup>) to review:

- i) the interpretation of the two constitutional contingencies clauses and how they have been applied in these latest HoE resolutions relating to the Presidential and HoR terms;
- ii) the legality of the HoE's resolution relating the extension of its own term, again, and its revival of the pre 2005 sunset linkage formula law; and
- iii) whether the HoE's continual term extensions since 2003 amount to an unreasonable restriction of citizens' rights to periodic s/election of their representatives contrary to Art. 22 of the Constitution as interpreted in the light of relevant applicable international human rights instruments.

Furthermore, the Court might be asked to consider that even if it holds that the contingencies clauses might apply to the current circumstances:

- i) whether the HoE has not followed the provisions of Art. 42(3) by not first determining the occurrence of the dire circumstances (*durufo adag*) as

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<sup>25</sup> This could even be in the form of a joint resolution passed at a joint meeting of both Houses, which would ensure a speedy decision after NEC recommended date of election has been agreed upon by all the three political parties (including, of course, the party in power).

<sup>26</sup> Art. 9(1).

<sup>27</sup> A copy of the Court decision is available (in Somali) at this link:

[http://www.somalilandlaw.com/Constitutional\\_Court\\_Decision\\_on\\_Election\\_Law\\_Full\\_Decision\\_Final.htm](http://www.somalilandlaw.com/Constitutional_Court_Decision_on_Election_Law_Full_Decision_Final.htm)  
An English language short summary of the decision and its effects is available at the endnotes of my 2005 [translation and annotation of the final 2005 Election Law](#).

<sup>28</sup> Art. 15(1) of the Organisation of the Judiciary Law ([OJ Law – 60 Arts. version](#)). Under clause 3 the Civil Procedure Code applies to such cases as there are currently no Constitutional Court Rules.

<sup>29</sup> Art. 15(5) of the OJ Law.

<sup>30</sup> The third party interventions under Arts. 186 to 191 of the [Civil Procedure Code](#) do, in my view, allow intervention in the proceedings by public interest groups in support of the claim.

- defined by the clause and the occurrence of the security considerations, as set out in Art. 84(5), which made the holding of the elections not possible;
- ii) whether the HoE has acted beyond its powers in attempting to assess other matters such as climate, non-completion of the laws, the voter registration scheme and all other non-contingencies clauses reasons for the delay of the elections which have been corrected addressed by the NEC, as part of its own statutory duty, in arriving at a possible date for the election; and
  - iii) the detrimental effects the HoE's numerous resolutions have/had on the electoral rights of citizens (under Art. 22 of the Constitution) in delaying unnecessarily elections that could have been held earlier than towards the end of the specified term extension periods.

### ***Final thoughts***

14. Somalilanders value the role of the *Guurti* (the HoE) in making and helping in the maintenance of the peace, which have proved pivotal in Somaliland's state building. Their skills in '*turxaan-bixin*' (airing of all grievances with a view to their global settlement) have been useful in settling disputes between various communities and also, for example, in 2014 between the various factions of the House of Representatives, where their search for win-win solutions for the two disputing sides proved more suitable than (often untried) judicial adjudication<sup>31</sup>. Terms extensions and the holding of elections are, however, matters grounded on the Constitution and the electoral laws and whilst disputes concerning them may seem to involve two sides – the body whose term is ending and the opposition parties that object to such extensions – they also involve the electorate who has entrusted the offices to the elected bodies for a set term and should not have their constitutional right to elect or be elected unduly affected or infringed except for reasons laid by law. Their interest is indeed paramount and the decisions of the statutory body (the NEC) charged with declaring the earliest date suitable for an election before or after a term end reflects closely that interest.

15. The numerous term extensions decided upon by the HoE have been detrimental to the role and standing of the HoE, and the sooner a law is passed to deal with 'non-contingencies' clauses election delays, the better for the HoE and for Somaliland's democracy. I would also add that the clauses themselves should be repealed at the earliest revision of the constitution, as the same law would be able to cater for insecurity and other dire circumstances that may arise.

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<sup>31</sup> I have considered the effects of '*turxaan-bixin*' settlement of disputes on the development of Somaliland constitutionalism in this 2006 Article:  
[http://www.somalilandlaw.com/SOMALILAND The Sheikh Concordat Dec 2006.pdf](http://www.somalilandlaw.com/SOMALILAND%20The%20Sheikh%20Concordat%20Dec%202006.pdf)