

## **The Appointment of the Somaliland National Electoral Commissioners & the Constitutional Court Case in 2007**

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### ***The President v The House of Representatives*** (case No: MS/DD/02/07)

#### **The case about the NEC nominations**

The following is the short decision (in Somali) handed down on 6 May 2007 by the Somaliland Constitutional Court in the case brought by the President against the decision of the House of Representatives to extend the term of the outgoing National Electoral Commission (NEC) and thereby set aside the nominations forwarded to them by the President. Although the footnote to the decision states that detailed reasons for the decision will follow, no such reasons have been issued.

#### **Background of the case**

The term of office of the NEC expired on 20 January 2007, only two days after the President started the nomination procedures under the Election Law (2001) and asked the other nominating bodies<sup>1</sup> (the House of Elders -Guurti- and the two opposition political parties) to submit names to him. In a letter dated 18 January 2007, the President, who is entitled to choose 3 of the 7 nominees asked the Guurti and the opposition parties who are entitled to name 2 candidates each, asked them, to forward to him by 25 January 2007 four (4) names each (i.e a total of 8), contrary to previous practice, so he can select the final 4 himself. The Guurti, in response, forwarded to the President only 2 names and only one of the opposition parties (UCID) forwarded to him one name.

On 13 February 2007, the House of Representatives considered the six NEC nominees (out of the 7) forwarded to it by the President. The House rejected the whole list of nominees, which they considered to be not representative of all the sections of the society (and included no women) and was still incomplete as the 7<sup>th</sup> nominee was still not picked by the second opposition party. 51 out of the 64 members present voted for the motion – there were no abstentions or votes cast against the motion.

On 18 February 2007, the House of Representatives considered a motion (see the text below) to extend the term of the “sitting” members of the Commission for a period of 2 years. The House carried the motion on a vote of 36 for, 4 against and 19 abstaining.

On 21 February 2007, the President sent letters to the members of the NEC to vacate their offices as their term has expired and ordered them to hand over everything to the administrative director at the Commission. The Commissioners met the President on 25

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<sup>1</sup> As set out in Article 11(2) of the 2001 Election Law.

February 2007 and asked for clarification about the House Resolution and also about the President's order to hand over responsibilities to persons who were not the new commissioners. On 1 March 2007, the President reiterated his wish that the commissioners leave the office, and after various public correspondences between the President and the Commission and the involvement of the police, the offices of the Commission were taken over by the government officials, in the absence of the commissioners, on 2 March 2007. In an interview with the BBC Somali Service on 3 March 2007, the Chairman of the Commission described the take-over of the Commission office and its confidential information by government officers as "a coup".

On 26 February 2007, the President wrote to the Speaker of the House and stated that the actions of the House in refusing to consider the 6 nominees and in extending the term of office of the Commission were unconstitutional. There then followed some public correspondence between them. The House, which has been on an extended extraordinary session, then rose for its 6 week recess on 20 March 2007. The President, it was reported, referred the matter to the Constitutional Court on or about 19 March 2007.

*(For more details of these events please see [this Article](#) by the Somaliland Academy of Peace & Development).*

### **The decision**

The President was represented at the Constitutional Court by the Attorney General and the House by private counsel. The Court heard the case on 6 May 2007 and issued the following brief decision (full text below) on the same day. The Court held that:

1. The resolution of the House to "return" the 6 nominations which the President put to them shall be null and void as it was contrary to Article 11 & 12 of the (Election) Law No: 20/2001, and was neither reasoned nor based on any law.
2. The 6 nominees shall be re-submitted to the House, the opposition parties shall put forward the name of the last nominee, and each nominee shall be approved in accordance with the conditions set out in Article 12 of Law No: 20/2001 only, and voted on separately.
3. The resolution of the House of Representatives to extend the term of the former Commission is rescinded.

### **Comment**

It is disheartening that yet again, the Constitutional Court has not issued detailed reasons for its decision, but it was not surprising that it reached this, in my view, correct decision. The House opposition members were clearly concerned about way the President dealt with the new appointments, in which he already has a lion's share in the nomination procedures. No consultations were undertaken with the other nominating bodies and the President set a period of only one week for other 4 nominations to be put to him. There were also concerns (even from the House of Elders) about the President's attempt to change the procedures at the last minute by asking for a long list from the nominating bodies so he can choose the final nominees himself. The President also asked one of the nominating bodies (an opposition party) to choose its nominee from a specific clan, when there were no agreed

previous discussions about this matter between all the nominating bodies. All this was grist to the mill, but, in my view, the House of Representatives overstepped its powers when, it arrogated to itself a power which it does not have, which was to nullify the nominating powers of the President, the Guurti and the two opposition powers by renewing the term of office of outgoing SNEC, on its volition. Article 11(1)(d) of the Election Law 2001 allows the renewal of the term of a Commission member(s) but it does not give such a power to the House on its own. As the law does not set up a renewal procedure different from that of the nominations procedure, the better view is that any renewal of the term of a commissioner(s) must be undertaken through the nominations procedure.

Unfortunately the later developments have only deepened the disagreements, on many fronts, between the elected House (of Representatives) on the one side and the President and the Guurti (House of Elders) on the other.

### **Later developments**

Both the House and the opposition parties accepted the Court's decision and on 1 June 2007, the House considered all 7 nominations submitted by the President and approved the appointment of 5 members, but rejected two on the basis that they did not fulfil the criteria<sup>2</sup> under the 2001 Election Law. The two were both nominated by the Guurti (House of Elders) and this started another controversy as the President and Guurti refused to submit two new candidates. The Guurti (via the President) re-submitted the names of the same nominees to the House on 9 June 2007. On 23 June 2007, the House wrote to the Supreme Court and asked that the 5 approved commissioners be sworn into office in line with Election Law so they can assume their duties. On 2 July 2007 the President informed the 5 new commissioners that they will not be sworn on to office until the other 2 appointments were approved by the House.

On 7 August 2007, the President issued an administrative decree in which ordered that the 5 confirmed appointees and the 2 rejected, but, in his words, "still awaiting confirmation", shall assume their duties forthwith in a temporary capacity. The President relied on Article 114(3) which states that:

"The officeholders of the state whose appointments are, according to the Constitution, subject to confirmation shall not hold office in a temporary capacity for more than three months (*whilst awaiting confirmation*)".

All the officeholders under the Constitution (other than the yet unformed Ulema Council nominated by a Guurti/Government Committee) are appointed by the President only, and in any case, the NEC Commissioners are appointed under the Election Law 2001 and not under the Constitution and neither were they waiting for any confirmation by the House of

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<sup>2</sup> One ostensible reason given was their age (i.e over 60) but then another nominee of similar age received the requisite votes. The decision was also criticised on the basis that both rejected nominees were from the far eastern regions of the country, but many House members pointed that other nominees from the same regions can be submitted.

representatives as 5 of them were already confirmed in their appointments and the remaining two were rejected by the House.

This impasse was not broken until an Eminent Persons Mediation Panel intervened to discuss various outstanding disputes with both Houses and the President and announced on 21 August 2007 an agreement that, among other things, the House of Representatives shall re-consider again the two rejected NEC nominees. The House did that on 27 August 2007 but the two nominees failed again to receive the requisite qualified majority of 41 votes<sup>3</sup>.

Finally on 3 September 2007, the House of Representatives confirmed the appointment of two new nominees submitted by the House of Elders through the President. All the 7 new Commissioners were then sworn into office on 9 September 2007 – nearly 8 months after the expiry of the term of the previous Commissioners.

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## CONSTITUTIONAL COURT DECISION

### JAMHUURIYADDA SOMALILAND MAGACA UMMADDA SOMALILAND MAXKAMADDA SARE EE DISTOORIGA AH

MS/DD/02/07

6/05/07

Iyadoo Maxkamaddau aqoonsantahay qoraaladii Dacwad furashada iyo jawaab celintoodiiba, markay dhagaysatay doodihii iyo difaacyadii labada dhinacba, wixii qoraalo cadayna ah ama qiraal Maxkamadda horteeda yimi waxay Go'aamisay;;

1. Inuu yahay Go'aanka Celinta Lixda (6) xubnood ee Madaxwaynuhu Komishanka Cusub u soo magacaabay mid la buriyey oo khilaafsan Qodobada 11ad-12ad Xeer Lr.20/2001, asbaab iyo Qodobo sharci kalena looma cuskan.
2. Waxay Maxkamaddu go'aamisay in dib loogu celiyo Golaha wakiilada lixda (6) Xubnood ee Komishanka Madaxweynuhu soo magacaabay iyada oo xisbiyada Mucaaradkuna soo buuxinayaan xubinta ka dhiman, xubin kastana lagu anxixiyo shuruuda ku xusan Qod 12ad Xeer Lr. 20/2001 oo qudha, qof kastana loogu codeeyo.

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<sup>3</sup> There was a vacancy in the 82 member House at that time, and the two nominees received 39 and 38 votes for, respectively, and were hence short of 2 or 3 other votes. There was an attempt on 27 August 2007 to fill the vacancy (which was due to the death of an UDUB – Gov't Party – member) before the voting, and which involved a controversial communication from the acting of the "acting temporary" Commission, but even that would have made any difference tyo the final voting. Under Article 14(2) of the House Election Law, the procedure for filling such vacancies is triggered by the House.

3. Waxay Maxkamaddu burisay Go'aankii Golaha Wakiilada ee muddo kordhinta komishanka hore ee xilgiisii dhammaaday.

Go'aanku wuxuu dhacay 6/05/07.

Garsoorayaasha Maxkamdda

1. Mohmaed Xirsi Ismaciil	Guddoomiye
2. Cabdi Cilmi Xasan	Xubin
3. Moxamed Cumar Geele	Xubin
4. Moxamuud Xirsi Faarax	Xubin
5. Cismaan Ismaciil Axmed	Xubin
6. Moxamed Cabdi Naaleeye	Xubin
7. Yaasiin Xasan Ismaaciil	Xubin

F.G: Go'aanka oo Faahfaahsan Dib ayaa la idinka siinayaa.

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***Motion by 11 members of the House of Representatives on the extension of the term of the SNEC for two years. The motion was carried by the House of Representatives on 18 February 2007 on a vote of 36 for, 4 against and 19 abstaining.***

## **Mooshinkan Golaha**

### **JAMHUURIYADDA SOMALILAND GOLAHA WAKIILADA**

Taariikh: 17.2.2007

KU: SHIR-GUDDOONKA GOLAHA WAKIILADA JSL

UJEEDDO: MOOSHIN KU SAABSAN KOMISHANKA DOORASHOYINKA QARANKA

Hadii aynu mar kasta ilowno ama aynaan ka faa'iidayso raadka taariikheed ee aynu soo marnay, waxa hubaal ah in aan ummaddu ka baxayn turunturo iyo dhibaato joogta ah, waayo? Raad raaca taariikheed waa tusmo sixi karta maxaa shalay kaa qaldamay? Halka aad joogto iyo himilada aad hiigsanayso maxaad ku gaadhi kartaa?

Waxaanu uga jeednaa waxa dalka soo maray seddex Doorasho oo dhammaan ku qabsoomay Nabad iyo guul, iyada oo komishankii hawlaha soo qabtay wakhtigoodii dhammaaday, ayaa waxaa isweydiintu tahay danta ku jirta in la magacaabo komishan cusub iyo in loo eego waaya aragnimadii iyo taariikhdii komishankii hore, mid ka ku haboon haynta xilka adage e Doorasho?.

HADABA

1. MARKAANU EEGNAY: Komishanka Qaranku sidii sharafta iyo aqoonta lahayd ee uu guul uga soo hooyey shacabka reer Somaliland iyagoo ku guulaystay garsoor dhexnimo iyo karti.

2. MARKAANU EEGNAY: Raadka suuban ee ay ku lahaayeen muddadii ay xilka hayeen iyada oo aanay dhicin mar qudha khilaaf dhexdooda galay, kaas oo noqon lahaa guul daro Qaran.

3. MARKAANU EEGNAY: In maanta komishan cusub oo la magacaabo iyo diwaan-gelinta wakhtiga yar ee ka hadhay oo degdeg u bilaabmaysa in aanay is qabanayn, loona baahan yahay waaya aragnimo iyo khibrad.

4. MARKAANU EEGNAY: Waaya aragnimada xubnaha komishankii hore iyo khibrada ay korodhsadeen mudadii shanta sanno ahayd ee ay xilka hayeen, ayna soo qaateen tababaradoodii iyo aqoon korodhsiyo ay caalamka ka heleen.

5. MARKAANU TIX-GELIN SIINAY: Is-fahamka iyo kalsoonida ay ku qabaan Dawladaha iyo Hay'adaha caalamiga ah ee inaka caawinaayey doorashooyinkii aynu soo marnay, gaar ahaan deeq-bixiyeyaasha, hadana laga filaayo inay inaka taakuleeyaan hawlaha diwaan-gelinta iyo doorashooyinka soo socda.

6. MARKAAN TIX-GELINAY: Durba khilaafaadka ka dhex jira meel marinta xubno komishan cusub ah, hawl fulintii komishankii horena si dhab ah loogu wada kalsoonaa.

Hadaba, annaga oo cuskanayna xeer No. 20/2001 qodobkiisa 11aad faqrada 1aad xarafka C, waxaanu soo jeedinaynaa:

1. In xubnihii hore ee komishanka doorashooyinka loo cusboonaysiiyo muddo dhan laba sanno, xubintii ka dhinayd ee iska casishayna dariiqii sharciga ahaa loogu soo buuxiyo, si ay u dhamaystiraan diwaan-gelinta degdega loogu baahan yahay iyo doorashooyinka inagu soo fool leh.