



# **URURKA DARYEELKA DISTOORKA (UDDAA) PROMOTION OF THE CONSTITUTION GROUP**

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**Statement (Bayaan) by UDAA and other Diaspora groups listed below**

DATE: 03/08/2009

## **The Decisions of the Somaliland NEC and the President are Unlawful and Damaging to the Conduct of the Election and to the interests of Somaliland**

### **Events to date**

Like many other Somalilanders at home and abroad, we have watched with increasing dismay the long saga of the presidential election which has been postponed four times from its constitutionally ordained period<sup>1</sup> of April 2008. We were heartened now and again to see problems solved painstakingly through the Somaliland way of consultation, co-operation and consensus. The code of conduct was finally agreed on 11 July 2009 by the four sides (the three parties and the National Electoral Commission – NEC) and both Houses passed the amendments needed to align the old 2002 Electoral Law with the changes that have been made since in 2005 and in 2007<sup>2</sup>. The next step, under the agreement between the NEC and the parties, was the production of the voters' roll by 27 July 2009, which would mark the outcome of the \$10m voter registration exercise and was to be followed by the start of the campaigning and the polling date of 27 September 2009.

The voters register (roll) was finally issued by the Interpeace<sup>3</sup> on 27 July 2009. The two opposition parties accepted the announced roll outcome but the government party rejected it immediately. It is what happened at this stage that has plunged Somaliland, again, into both a constitutional/legal and political crisis. Instead of continuing to solve the disagreement about the declared outcome of the voter registration process that started in October 2008, the NEC decided that the release of the list to all the parties was a cardinal crime and having met on 27 July 2009:

1. Resolved, by a majority vote of 4 out of 7 to set aside the voter registration exercise and hold the presidential election without a voters' register;
2. ordered that legal expert, Mr Robin Zamora of Interpeace who has been helping this NEC (and its predecessor) be "declared *persona non grata*" and expelled immediately from the country; and
3. threatened, in a publicly broadcasted interview, that any presidential candidate that does not comply with their edict will be disqualified.

As the NEC immediately passed its resolutions to the President, the latter in turn implemented them and added that he no longer needs the donors' promised funds (amounting to millions of dollars) for the election.

**UDDA and the other Somaliland organisations signing this statement believe that these precipitate and joint actions taken by the NEC and the President, who is after all the Chairman of the third party and a prospective candidate, are not only contrary to the electoral and public laws of the country but are also extremely damaging to Somaliland's interests and to the standing and reputation of the Somaliland NEC.**

### **The rule of law**

1. The rule of law is the cornerstone of the Somaliland Constitution and the President and the NEC must abide by the laws of the country. Simply put, neither the NEC nor the President can unilaterally or bilaterally announce that the election will be held without voter registration. Since the passage of the Voter Registration Act 2007 on 8 July 2007, no voting in Somaliland could take place without voter registration. Article 30 of the Law states unequivocally that for anyone to exercise his right to vote, he must do so, with his voting card, at the relevant polling station, and Article 41 made null and void any other previous laws or provisions which are in conflict with this Law.
2. The fact that the 2002 Presidential and Local Councils Election Law needed amendments to bring it in line with the changes made by both the 2007 Registration Law and also 2005 (House of Representatives) Election Law does not mean that, without repealing or amending the Registration Law itself, we can simply go back to the position of the 2002 Law at the behest of the President, let alone the NEC.
3. Although the amending bill to update the 2002 Law was passed by both Houses recently, no announcement has been made yet that it has been signed by the President and published in the official journal (as set out in Article 66(2) of the bill) to bring it into force. Some pro-government supporters stated that the bill contains an Article 67 which somehow allows election without voter registration, but the bill (as confirmed by the House of Representatives<sup>4</sup>) consists of only 66 articles.
4. Article 66(1) of the new bill simply confirms that the amendments shall be used only in every election held in Somaliland under the voter registration system<sup>5</sup> and does not, in any way, amend or qualify the Voter Registration Law. This is understandable as the whole objective of the amending bill was to align the 2002 Law with the newer laws and not the other way round.
5. As neither the amending law nor the Voter Registration Law set out the procedures and circumstances when an election without voter registration can be held, then any decision about setting aside the 2007 Law, even for temporary period, is one that can only be made through a clear amending law passed by both Houses and the President. There is nothing in the recent amending bill which says that the decision about the validity or otherwise of the voter registration will be made by the NEC or the President.
6. In any case, it is a fundamental statutory duty of the NEC, especially under the Voter Registration Law, to register all potential voters and hold elections based on an electoral register/roll. No public body in any country that we are aware of has the power, on its own, to divest itself of a statutory duty that it was entrusted with and then insist also that its decision must be binding on all other affected organisations.
7. If the Commission was simply making a recommendation, why has it not discussed it fully with all the political parties and the donor bodies and seek a consensus? Why did it report to the President only and insisted that the opposition parties must fall in line? It has become custom and practice, and an obligation under Article 9(1) of the

Constitution (co-operation), that any such proposals affecting the parties or the elections should be discussed with the political parties and with others before any decision can be made even if the latter still required parliamentary and presidential approval.

### **The NEC**

Above all the NEC, by law, must not only be impartial (Article 11(6) of the 2002 Law), but must also be seen to be impartial. The NEC members were clearly aware that the three parties held different views about the likely outcome of the voter registration exercise and would have known that the best way to proceed in these circumstances was to engage, as usual, in detailed consultations and discussions before a consensus can be reached. This was the approach the NEC has followed before and was “codified” in the various four way agreements with the three parties. The NEC members could not therefore have been unaware that a decision on such an important issue made with the agreement of Chairman of one of the parties could be seen as anything but partial. In these circumstances one can only conclude that the NEC was:

- a) neither contrite about its failure (no doubt shared by others) to oversee a fully successful voter registration exercise;
- b) nor interested in leaving room for all the possible options to be examined with the continued advice and help from Interpeace and from the donor countries; and
- c) totally indifferent to how the opposition parties and the public view its impartiality.

### **Conclusion and recommendations**

We are seriously concerned that yet again we are facing another crisis based on precipitate actions taken by a public body (the NEC) and the government. At a time of financial difficulties worldwide and in the light of the long delays in the payment government’s contribution to the electoral expenses so far, we cannot understand how the Somaliland government could so easily reject offers of millions of dollars from the donors.

Yet again we also hear that anyone who objects to these latest edicts is working against the interests of Somaliland. The fact that we have been the subject of no less than two international reports<sup>6</sup> about the government’s human rights record this year is also linked to this malaise and we have witnessed only recently the imprisonment of radio journalists and the closure of a television station at an election time when the media ought to be allowed to play its important role.

We make the following recommendations so that free and fair elections can be held soon:

#### **The President**

1. We earnestly urge the President to rescind the expulsion order of Interpeace and arrange a meeting of Interpeace, representatives of the donors and the parties to mend fences.
2. We ask that the President and Chairman of UDUB initiates immediately a genuine discussion on how an election based on the declared registration can be held with the added safeguards of the use of ink marking, UV rays, tighter control of travelling, more polling staff/temporary booths in each polling station etc. In

Malawi, which was mentioned by the President, similar difficulties were faced in 2008/9 in the new registration procedure, but the unverified outcome of the registration was still used for the elections<sup>7</sup>.

3. We urge the President to issue a decree ending the extra judicial activities of the security committees and declaring that any one accused of a crime be brought to a court of law in line with the constitution and laws of the land.
4. A free and vibrant press and media are essential for democracy and we urge that, especially in these election months, the Press Law should be followed.

#### The NEC

5. We believe that the NEC (or some of its members) acted unlawfully and have jeopardised the conduct of the election to the extent that one party is already threatening not to work with them. We think that their actions, especially those of the Chairman and Vice-Chairman meet the test of impeachable offences under Article 63 of the 2005 Law. The NEC has lost the confidence of two of the three parties. It has been proposed before, not least by the donor bodies, that some of the NEC members were not up to the job. We did not support these proposals out of concern for any likely delays in the election. We are sad to admit that we were wrong. We appeal to the current Chairman and Deputy Chairman to act responsibly and re-consider their position as commissioners now.
6. We urge the rest of the NEC to re-establish quickly working relationships with all the parties and with Interpeace.

#### Parliament

7. We support fully the joint statement issued by the Chairmen of both Houses of Parliament.
8. We ask that both Houses pass resolutions about the actions of the NEC and the President. Whatever the final wording of these resolutions may be, it is important that both Houses debate such resolutions. Parliament has a voice and must be heard.
9. We believe that holding an election without voter registration requires the endorsement of both Houses through a change in the law. Parliament must insist that it should be consulted and convinced of the advantages, if any, for such a change at this juncture.
10. We believe that the shortcomings of the declared voter register/roll can be ameliorated by measures to stop multiple or under age voting. We are not the first country that faced difficulties with voter registration, and the answer is to build on what has been done so far.
11. (Medium term) We urge both Houses to set up a joint committee to study what has gone wrong over the last few weeks and also with the whole voter registration process. We suggest that you seek the full co-operation of the donors in your investigation and ask them to provide finance for an independent audit on the conduct of the registration procedure and to ensure that Interpeace officials provide evidence and testimony on their dealings with the NEC with a view to learning from the experience.

#### Civil Society

12. We urge all civil society groups to monitor the progress and conduct of the elections. The public has every right to see that their government, NEC and

political parties act in accordance with the law and constitution. Above all whilst acting peacefully and in accordance with the laws and instructions of public officials, civil society groups should record and report any infringements of their rights to the proper authorities/parties.

13. We are all proud of maintaining our peace and should continue to do so. We must also safeguard the fundamental rights and freedoms enshrined in our Constitution.

#### Diaspora groups

14. We urge all Diaspora groups to contribute more in the monitoring the conduct of the elections and in human rights and democracy issues. The support for a specific party should not stop us from protecting the wider public interest.

#### Accountability

15. We remind all government and public officials that they are accountable to the public - impunity is no longer acceptable.

#### ***Somaliland organisations making this statement:***

1. ***UDDA – Promotion of the Constitution Group***
2. ***SIRAG***
3. ***Somalilandlaw.com***
4. ***Somaliland American Council***
5. ***East Africa Policy Institute***
6. ***Somaliland Democracy Watch Organisation(SDWO)***
7. ***Somaliland Overseas***

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**URURKA DARYEELKA DISTOORKA (UDDAA) - Promotion of the Constitution Group** - is an independent non-party political voluntary pressure group consisting of Somalilanders living in the Diaspora who believe that there is a need to promote and advance the Somaliland Constitution. Democracy, the rule of law, separation of powers and fundamental rights and freedoms are the pillars of the Constitution. UDDAA's objective is to help articulate the growing need to challenge the misinterpretation as well as the blatant infringements of the provisions of the Constitution and to campaign for an independent judiciary that can assume confidently its proper constitutional role.

**Convenors:** Lulu Farah [luluforumuk@yahoo.co.uk](mailto:luluforumuk@yahoo.co.uk) ; Khadar Ali Gaas [somalilander\\_1@yahoo.co.uk](mailto:somalilander_1@yahoo.co.uk)  
**Adviser:** Ibrahim Hashi Jama [Ibrahim@somalilandlaw.com](mailto:Ibrahim@somalilandlaw.com)

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<sup>1</sup> Article 83(2) and 88(1).

<sup>2</sup> The 2005 House of Representative Election Law and the 2007 Voter Registration Law

<sup>3</sup> The agency funded by International donors to assist Somaliland in the voter registration and the election.

<sup>4</sup> See copy (in Somali) at [www.somalilandlaw.com](http://www.somalilandlaw.com) .

<sup>5</sup> In Somali "Wax-Ka-Beddelka iyo Kaabista xeerka Doorashooyinka Lr. 20/2001, waxa loo adeegsan karaa oo keliya doorasho kasta oo ku salaysan nidaamka doorasho ee cod-bixiyayaashu diiwaan-gashan yihiin ee laga qabto dalka JSL."

<sup>6</sup> Amnesty International and Human Rights Watch.

<sup>7</sup> See, for example, the Commonwealth Observors report of the May 2009 Malawian election at:

<http://www.thecommonwealth.org/files/211206/FileName/FINALREPORT.pdf>