

Somaliland Local Government Re-organisation through Presidential Decrees in an Election Year

Ibrahim Hashi Jama

www.somalilandlaw.com

07/04/2008

Breaking all records

The term “gerrymandering” in American politics was coined after a US State Governor, Elbridge Gerry, created a strangely shaped electoral district in Massachusetts in 1812 with a view to influencing elections. Whilst President Rayale’s 22 decrees issued on 23 March 2008 expressly state that the new 6 regions and the 16 new districts (in addition to the current 6 regions and 41 districts) created in these decrees will not automatically become electoral districts/regions for the forthcoming local district elections, no one can be fooled into believing that the decrees will not have any effect on the forthcoming local elections and the following national presidential elections. These “record”, and, in my view also, law breaking presidential decrees issued only a few weeks before the end of President Rayale’s five year term of office (on 15 May 2008¹) may well add a new term “Riyaaleynta” to the political lexicon of Somaliland.

It took the democratic government of the Somali Republic and the Siyad Barre Dictatorship 31 years to add 15 new districts² to the independent State of Somaliland’s 6 principal districts in 1960. In the 1960s Somali Republic, the territory of Somaliland consisted of two regions only, but by the end of the 1990s, the territory was divided into 5 regions. Leaving aside the 2 districts of Baligubadle and Salahlay³, it took the late President Egal over 8 years to create one new region⁴ and 19 new districts. All the districts are still graded D (the lowest category)⁵, have no boundaries, do not have elected councils and, in the recent amendments to 2002 Districts & Regions Law (Law No: 23/2002) are now known as “Temporary Administrative Districts” (Degmooyin Maamul oo ku Meelgaadhka ah) until their assessments are completed by the Government, their boundaries delineated and their status is confirmed by both Houses⁶. The 2002 Law, which was signed into law by none other than President Rayale on 29 July 2002 was aimed at, among other things, stopping this presidential practice; setting, for the first time, procedures and criteria for the assessment of each area before its status can be changed; and re-emphasising that the

¹ Under Article 88(1), the President’s 5 year term starts from the date that he was sworn into office, which was on 16 May 2003.

² From 1960 to 1991, a total of 15 districts were gauged out of the territories of the main six 1960 principal Somaliland Protectorate districts, making the total number of districts 21. The 15 new districts were Gabilay, Zeila, Odweine, Buhodle, El-Afweyn, Badhan, Baki, Lughaye, Sheikh, Ainabo, Hudun, Taleh, Las Qoray, Dahar and Garadag. With exception of Gabiley which has been graded A, under Article 6 of the 2002 Law, all the others were graded B or C.

³ Their status was confirmed at the 1996/7 Grand National Conference of the Somaliland Communities. The 2002 law states that their borders shall be based on those used for their relevant polling stations for the referendum on the Constitution 2000.

⁴ Sahil with its seat in Berbera, one of the 1960 principal districts.

⁵ The districts were Faraweyne, Sabo Wanag, Cadaadlay, Darasalam, Alaybaday, Da’ar Buduq, Duruqsi, Balidig, Qoryale, Dila, Bulaxar, Mandera, Hagal, Mayd, Hees, Daraweyne, Fiqi Fuliye, Bocane, and Yagori.

⁶ See the annex to the amended Law (2007).

decisions must be made, under Article 109(3) of the Constitution, by both Houses of Parliament. Despite all this, it took President Rayale one single day to create 6 new regions and 16 districts⁷! And before we hear the usual refrain that President Rayale is being criticised here for something the last President did also, it should be noted that the late President's actions preceded the 2002 Law and, secondly, he was, in any case, also criticised legitimately for creating districts by Presidential Decrees and without parliamentary approval.

Breaking the law

With the announced changes covering vast swathes of Somaliland territory, it was no surprise that the Somaliland papers (and the internet) were awash with messages from self appointed representatives of the various Somaliland communities welcoming the benefits that these changes might bring to their areas of settlement. It is no wonder, therefore, that the opposition parties were wrong-footed by these decrees, and are very wary about the political costs of outright opposition to these presidential decrees. In the mean time, Government Ministers⁸ are making the most out of the announcements by travelling to some of these new districts and regions to "celebrate" the good tidings with the locals. There have been some independent commentaries which highlighted the serious political and social shortcomings of these presidential pronouncements, first and foremost of which is the creation for the first time, in Somaliland, of regions that may be predominantly settled by one clan/sub-clan, which was the case previously only at district level. But, so far no one has questioned the legal validity of these decrees.

It is my considered view that these presidential decrees are, in so far as clearly purport to "appoint" or create new districts and regions, contrary to both the Constitution and the 2002 District & Regions Law (as amended in 2007). Sadly this is not the first time that this Government has been accused of executive (presidential or ministerial) decrees or actions that contravene the Constitution and the law, but with a subdued House of Representatives, a suborned House of Elders⁹ and a subservient judiciary, no one is currently in a position to challenge the validity of these decrees.

⁷ The decrees say the new regions are Salal (taken out of Awdal), Gabiley (out of Maroodijeex), Odweyne and Buhoodle (out of Togdher), Sarar (out of Sool) and Badahan (out of Sanag). The new districts are Wajale, Widh-Widh, Qorulugud, Go'da Weyn, Harasheikh, Rayad Khatumo, Garba Dadar, Boon, Hareerad, Las Eedle, Waridad, Elaal, Warimran and Magalo Ad.

⁸ Minister Buuni and a Deputy Minister, for example, visited Boon and took part in that village's conferral of "district status". The Vice-President, at his visit of Ainabo last week was also reported as having congratulated the inhabitants in their award of a regional status.

⁹ The Elders will, in all probability, shortly be returning the favour the President accorded them in 2006 when he gave them the green light to extend their own term of office for a further 4 years, with a unilateral proposal to extend his term of office after 15 May 2008. Unless the security situation in Somaliland suddenly changes drastically in the next few weeks, any such act will be unconstitutional as it will not meet the test for exceptional term extension under Article 83(5) of the Constitution which is that there are security considerations affecting the country, which are of such a nature that the election cannot be held before 15 May 2008. It is already widely known and has been so declared last year by the NEC and the political parties that because of the electoral registration exercise, the election cannot be held on time. This is not a reason that falls within Article 83(5). There is no other law which permits such an extension and so far no such bill or constitutional amendment has been proposed.

Before I examine the legal status of these decrees, it is apposite to note the legal obligations regarding the current 41 districts and especially the 19 Grade D District, or as the amended 2002 Law calls them “temporary administrative districts”, all nominated before the 2002 Law. The yet unfulfilled duties that the 2002 Law lays on the Government are:

1. Article 8 of the Law states that the Government must revise within 12 months of the promulgation of the Law the grading of all the current Grade B & C districts (with A districts being the 6 capitals of the current 6 regions & Gabiley). No such revision has taken place yet.
2. Article 9 of the Law states that the Government must delimit the boundaries of all the existing regions and districts and then seek the approval of the two Houses for the proposed delimitation. No such delimitation has so far taken place and submitted to the House for approval, which still means that other than the current six regions which are based on the six principal districts of Somaliland, even the boundaries of the 23 Districts graded A, B, & C which were confirmed in Article 6 of the 2002 Law and are also electoral districts (see below) are still not clearly marked.
3. Article 8 of the 2002 Law accepts that the economic and social development of villages/districts will vary in time and confirms that, after assessments based on Article 112(1) of the Constitution and the criteria in Articles 3 and 4 of the Law (see below), districts may deserve changes in their grading, which can be either an upgrading or a downgrading or even a loss of district status. No such assessments have been announced to have taken place and certainly there have been no presidential decrees announcing downgrading (from A or B to C or D) or loss of district status!
4. Article 3 of the 2002 sets out that the criteria for conferring regional or district status which shall be based on the following prerequisite conditions:
 - a) The size of the area.
 - b) The size and density of the population residing in the locality.
 - c) The level of production and natural resources in the area.
 - d) The extent of self-sufficiency and of arrangements for social provision, so that the district can raise at least 60% of its total budget.No reports or assessments setting out how well the current districts meet these statutory criteria have been issued by the Government.
5. Under Article 4 of the Law, the Ministry of Internal Affairs was under a duty to draft Regulations setting out in much more detail the statutory assessment criteria set out in Article 3 of the law, and to have them approved by the House of Representatives. Again, whatever details the Ministry may or may not have been using so far, no such regulations have, so far, been submitted to House for approval.

The 2002 Law was an attempt by Parliament to set objective criteria for any changes to the local authority system of Somaliland. Indeed, The Law (which was initially only 55 articles, but have since been extended in 2007 to 106 articles) reconfirmed again in its Article 10, the Constitutional provision (existing since 1997) that:

“Changes in the number of regions and districts and their boundaries and **the reasons** for the changes shall be proposed by the Council of Government (*Cabinet*) and approved by the House of Representatives and the House of Elders.” (*Article*

109(3) which was previously Article 141(3) of the 1997 Interim Constitution uses identical wording).

President Rayale's 16 decrees

So, why are President Rayale's 16 decrees likely to be unconstitutional and unlawful? In short:

1. For a start, the 16 Decrees issued by President Rayale on 23 March 2008 do not even mention that, at best, they can only amount to being "proposals". On the contrary, they actually purport to "appoint" or create new districts and regions. Nothing in the Constitution or the relevant laws gives a power to the President to create by decree new regions or districts.
2. Secondly, even if these decrees were meant to be "proposals" to be submitted to the Houses, they do not meet the above constitutional provision in that there were no reasons whatsoever included in each decree as to why the change in each case was being made.
3. Thirdly, there are clear and unequivocal constitutional and legal provisions which set out the procedures and criteria for creating new regions or districts, and none of them involves the issue of a presidential decree before the assessments on the basis of the criteria under Article 3 of the 2002 Law are completed, the reasoned proposals are put to both Houses and parliamentary approval (on a simple majority of each House) is given.
4. Fourthly, as these constitutional and legal procedures lay clear duties on the government to undertake the assessments before the status of any district may be changed, a presidential decree which purports to announce the end result of the assessment process prejudices the whole issue and is thereby unlawful.
5. Finally, the president has thereby arrogated to himself powers which he cannot implement by decree.

There is a half hearted reference in the Decrees to the assessments to be carried out under Article 3 of the 2002 Law. This was reported as being a Circular instruction to the Minister of the Internal Affairs and confirms, sadly that the necessary assessments under Article 3 has as yet not been undertaken. But wait a minute – aren't these the very conditions that the districts/regions must first fulfil before they are appointed to their status? If it is the case that they have, as yet, not been assessed as fulfilling these essential criteria, then the decrees are not even proposals but can sadly only be seen as instructions to the Minister to "make it so" or are these cheering Somalilanders going to be told at later date (after the elections?) that their region/district did not fulfil the Article 3 criteria? *Perhaps jeers after the elections are not that damaging when contrasted to the benefits that might accrue from the cheers before the elections!*

The decrees have been taken by the public and the media as being legal and final and akin to the presidential decrees which appoint ministers, who immediately take office, even if the names of them some of them may or may not, at some later date, be submitted to the House of Representatives for confirmation. The difference, however, is that in ministerial appointments the Constitution gives the President the power to "appoint" and remove such

appointees¹⁰, in the first place. In contrast, the power of the Government, with respect to changes in regional/district status is specifically designated as being that of a proposal by the Government¹¹ (and, incidentally, not the President) and not that of an appointment, and, furthermore, that proposal can only be “reasoned” and these reasons are the assessments under the 2002 Law which have to be undertaken prior to the proposal.

Electoral Regions & Districts

The only other condition in the 22 decrees to the effect that the announced appointments will not affect the forthcoming local elections is correct in law, but, perhaps, misleading as the opposition parties are busy calculating the benefits that may accrue to the President’s party from the announcements. Articles 17 & 18 of the 2001 Local District Council & Presidential Elections Law simply state that each district and region shall have an electoral office and the Law also sets out the number of Councillors for each district, depending on its grading A to D¹². Article 7 of the 2002 Regions & Districts Law stated that the residents of the 19 Grade D districts will vote for the districts councils which they previously came under and the amended Article 7 reiterates that these districts will have their own councils only after their borders are delimited, their status is assessed and the two Houses have approved their status (Article 7(4)). This was, in my view, a clear acceptance as any that the way these districts were appointed before the 2002 Law was not the right way round and that the situation needed to be regularised. One may then ask what the point was of adding another 16 new “non-districts” to the existing 19 “temporary administrative districts”!

Regardless of what President Rayale’s decrees say about these new districts and regions, the Electoral Commission cannot take note of them at all until the 2002 Law is amended. We are clearly storing trouble for us, though, because the House of Representatives’ current relatively large “constituencies” under our proportional representation system is still based on the six existing regions (Article 12 of the 2005 Election Law). With the largest region getting 20 seats and smallest 10 seats, it took us years and reversion back to the 1960 Somaliland parliamentary seat allocation to agree on the allocation of the 82 seats. If the two Houses ever approve of the doubling of the number of the regions, the debate about the allocation of seats is likely to be much more controversial and more clan based than even the last one was. Perhaps, as we have already ended up with a category of “temporary districts” since 2002, will we be having also “temporary regions” for the next decade?

What next?

¹⁰ Article 94(2) of the Constitution.

¹¹ This incidentally includes the Council of Ministers, and hence the Minister of Internal Affairs.

¹² Article 4 of the 2001 Presidential and Local Council Elections Law (and Article 25 of the 2002 law) state that the number of the members of the district councils to be elected for each district which shall be based on their grading as follows¹²:

- | | |
|---|------------|
| 1. The Capital City, Hargeisa | 25 members |
| 2. Grade A Districts | 21 members |
| 3. Grade B Districts | 17 members |
| 4. Grade C Districts | 13 members |
| 5. Grade D Districts (No elections yet) | 9 members |

I suspect that despite all the above considerations, and the fact that there is as yet no budget submitted to the House of Representatives this year¹³, contrary again to the Constitution and the law, we are going to hear soon the appointment of 6 new governors (badhasaabs) and perhaps numerous district commissioners. Needless to say, this will be expenditure not approved by the House and hence unlawful.

Overall, as administrative acts which go beyond the powers of the President, these decrees can be challenged at the Supreme Court, and as acts which contravene a constitutional provision (Article 109(3)), they are also open to challenge at the Constitutional Court. I do not foresee, however, anyone mounting these challenges and it is, in any case, by no means clear that the court will entertain any such challenges, anyway.

Recommendations

Somaliland has already enough regions and districts and, with the exception, in my view, of introducing the Capital City Law as soon as possible and making the capital a special territory, whilst Gabiley (the only Grade A district now outside the current regional seats) becomes the seat of the sixth region, there is no need to create any more regions and districts, in the near future.

The Regions & Districts Law should, however, be changed after the elections so that issues relating to the periodic assessment of local government status and boundaries are given to an independent Commission and that changes can only be made on a long term basis after a wide consultation process. There are many experiences from various countries that we can learn from.

In the mean time, Parliament and specially, the House of Representatives must follow up the implementation of the laws it passes. The Internal Affairs Committee ought to ask for explanations from the Ministry of Internal Affairs in respect of all the duties imposed on it by the 2002 Law. The House can also make clear through resolutions its position on the legal status of the 22 presidential decrees and insist that the assessments and the delimitation of the borders of the current 41 districts be completed first, before both Houses are pushed into making final decisions about the newly proclaimed regions or districts. If politically popular but unlawful presidential decrees are not challenged, we might well be facing soon unpopular but more damaging decrees. That is the slippery slope to an era none of us wish to return.

07/04/2008

¹³ According to House of Representatives Standing Rule 48(1), the draft annual budget must be submitted to the House by, latest, December every year, but Article 4(1) of the Regulation for the Accounts of the State, 1996, states "The draft budget law, approved by the Council of Ministers, shall be presented to the *House* not later than the 31st of October each year, accompanied by a statement of the Minister of Finance". The Government has also not accepted the 2007 budget approved by the House, so the only legal "default" budget that can be used this year is the 2007 one, as approved by the House, and that certainly did not include extra expenditure for another 6 regions and 16 more districts not approved by Parliament!