

## COMMENTARY (20 July 2012)

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### **Somaliland Reserved Seats Bill 2012: *Parliament has a second chance that it cannot miss***

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#### **Introduction**

1. The **Reserved Seats Bill 2012 (see second Appendix 2)** currently at the House of Representatives provides the Somaliland Parliament another opportunity to pass legislation which will help women and members of minority groups excluded on the basis of birth or descent (EMGs)<sup>1</sup> exercise their rights to stand for elections. The proposed modest number of reserved seats is aimed at realising, in a small measure, the equality rights in the Somaliland Constitution and is no way contrary to any of the provisions of the Constitution. To borrow the words of former US President Johnson, we have talked too long about equal rights and "*it is time now to write the next chapter and to write it in the books of law*".

2. With the fast approaching date of the local government elections, the six week Ramadan parliamentary Recess, and the fact that the parliamentary electoral laws are unlikely to be revised until next year, I urge the House to revise the bill and turn it into amendments to the 2001 [Presidential and Local Elections Law](#) - Law No. 21/2001 (the 2001 Election Law) which can be done through a 5<sup>th</sup> Annexe to the law following the recent 4<sup>th</sup> passed by both Houses this month. **To facilitate this process a draft 5<sup>th</sup> Annexe Bill based on the current Reserved Seats Bill is attached as a suggested text (see Appendix 1).** The reserved seats for parliament can be considered when the parliamentary elections laws which require considerable changes are being considered. Thorn bushes are better removed, one at a time, from the top (*Oodo dhamceed sidey u kala sareeyaan baa loo guraa*) and the myriad of concerns about the allocation of seats of parliament should not be allowed to delay further the introduction of reserved seats at the forthcoming local councils elections. The current nine Political parties/associations are already anointing their local election candidates and they ought to be aware that if they fail to include at least the minimum number of women and EMG candidates (see table below), they run the risk of not being able to win these reserved seats.

#### **The fate of the 2007 reserved seats bill**

3. In September 2007, the House of Representatives approved a [bill amending](#) the 2001 Elections Law which, among other provisions, included an article (Article 22A) that proposed reserved seats at the local elections for women and excluded minority groups (EMGs). The modest Article 22A proposals were that women and EMGs should have the following reserved seats at the local district councils: 4 and 1 respectively at the Capital

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<sup>1</sup> I refer here to the minority groups such as "Madhiban, Muse Dhere, Yibir, and Tumul" - the EMGs identified in the 2007 Bill who are discriminated against on grounds of birth/descent (or caste).

city (out of a total 25 seats); 3 and 1 at each A districts (out of a total 21 seats); and 2 and 1 at B and C districts (out of a total of 17 seats at each B district and 13 seats at each C district). For women, the percentage of the then proposed reserved seats ranged from 12% to 16% and was considerably below the 30% goal recommended in the 1995 [Beijing Declaration and Platform for Action](#) and which is commonly nowadays considered as the threshold to achieve a “critical mass” of influence. The House of Elders considered the bill on 1 December 2007 and rejected it on a vote of 62 (over two thirds of the House membership) and 3 abstentions, and on point of principle under [Article 78\(4\) of the Constitution](#). This meant that when the bill was later re-considered by the Representatives on 24 March 2008, they could not muster the two thirds majority they needed to override the Elders’ rejection and so the bill lapsed.

4. Although at the time there were considerable difficulties between the then opposition controlled House of Representatives and the Government at that time, the professed reasons for the Elders’ rejection of the bill was that the reserved seats provisions were unconstitutional. This assertion was also made by Government Ministers. In a [commentary that I wrote on the bill on 3 September 2007](#) I set out in detail my contrary views that the reserved seats provisions of the bill did not conflict with the constitution. I also gave examples of the many countries which have adopted reserved seats or quotas<sup>2</sup> which include many African, as well as many Muslim countries. Without rehearsing the same points, I shall examine again briefly why the equal rights clause 8(1) of the Constitution cannot be used, in this context, to thwart the necessary modest measures aimed at making the equal rights of women and EMGs (under the same clause and under the other provisions of the Constitution) a reality and not just a formal statement.

### **Reserved seats and the Somaliland constitution**

5. It is now generally accepted that formal equality, by itself, neither ensures that disadvantaged groups actually receive equal treatment in practice, nor does it tackle, at all, the continuing effects of the past discrimination against them. Reserved seats (or quotas for women) are now used in over 100 countries, whilst those for minorities are found in 30 countries<sup>3</sup>. The majority of these reserved systems or quotas are backed by legal or constitutional provisions, but the fact that there are no explicit reserved seats provisions in the Somaliland Constitution is neither unusual, nor should it, in my view, deter parliament from adopting a system of reserved seats under the electoral laws. No doubt when the time comes for revisions to be made in the Constitution, this will be one of the amendments to be considered, but in the meantime the modest proposed changes are, to use the words of the UN Human Rights Committee<sup>4</sup> “*action needed to correct discrimination in fact*” and “*a case of legitimate differentiation*”.

6. When looking at a provision in the Somaliland Constitution, one must avoid interpreting each provision on its own as this might fail to give effect to other relevant provisions and to its principles and purposes. The following purposive sentiments of

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<sup>2</sup> See for example: <http://www.quotaproject.org/> ; <http://www.idea.int/gender/quotas.cfm> .

<sup>3</sup> See, for example, [Bjarnegård and Zetterberg \(2011\)](#). “Women and minorities as challengers to the partisan representation model: An analysis of group representation and electoral quota design” [http://www.ecprnet.eu/conferences/general\\_conference/reykjavik/paper\\_details.asp?paperid=1707](http://www.ecprnet.eu/conferences/general_conference/reykjavik/paper_details.asp?paperid=1707)

<sup>4</sup> [General Comment 18 \(37<sup>th</sup> session 1989\)](#) Report of the Human Rights Committee, Vol. 1, UN doc A/45/40.

the South African Constitutional Court Deputy President Langa<sup>5</sup> have their parallels in the Somaliland Constitution preamble :

“The Constitution is located in a history which involves a transition from a society based on division, injustice and exclusion from the democratic process to one which respects the dignity of all citizens, and includes all in the process of governance. As such, the process of interpreting the Constitution must recognise the context in which we find ourselves and the Constitution’s goal of a society based on democratic values, social justice and fundamental human rights. This spirit of transition and transformation characterises the constitutional enterprise as a whole.”

Furthermore, Article 21(2) of the Somaliland Constitution also explicitly states that the provisions of the Constitution relating to fundamental rights and freedoms must be interpreted in “*a manner which is consistent with the international conventions on human rights*”. This will involve taking note of, for example, the International Convention on Civil and Political Rights – [ICCPR](#) - (and its [Human Rights Committee General Comments](#)) to which Somaliland is committed to be bound<sup>6</sup>. Like other constitutions, the Somaliland Constitution accepts, under Article 25(4) that the freedoms and rights of one person, may, on occasions conflict with the freedoms and rights of another person in which case it is inevitable that, on these occasions, there may have to be some limitations which have to be considered under the internationally accepted standards.

7. I mention these points because the reaction of the House of Elders to the 2007 bill was simply based on advice given to them to the effect that as Article 8(1) of the constitution guarantees “*equal rights and obligations before the law and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion etc.*”, then reserved seats discriminate against, presumably, men and the majority communities. What this view overlooks is that Article 8(1) must not, as I mentioned above, be looked at on its own but must be interpreted within the context of the other provisions in the Constitution which further entrench the fundamental rights and freedoms of women and EMG. It also overlooks the fact that reserved seats are one way of ensuring that women and EMGs also receive in reality the very equal rights which are guaranteed to them by Article 8(1) and so a holistic a more nuanced approach in reconciling these various rights in the Constitution is required.

8. These constitutional provisions, other than Article 8(1), that come into play in respect of this issue are:

- Article 8(2) which prohibits discrimination on grounds of, among other things, birth and status and makes it a national obligation that “*these long lasting bad practices*” should be removed. This applies particularly to discrimination

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<sup>5</sup> Investigating Directorate: Serious Economic Offences and others v Hyundai Motots and others (CCT 1/100) [2000] ZACC12, 2000(10) BCLR 1079 (available at: <http://www.saflii.org/za/cases/ZACC/2000/12.html> )

<sup>6</sup> The commitment is expressed in Article 21(2) of the Constitution, but in any case Somaliland accepts that is bound by [the international conventions acceded to by the pre 1991 Somali \(Democratic\) Republic](#). These included the ICCPR, (acceded to on 24 January 1990) but not the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which was never signed by the S(D)R.

against communities excluded because of their birth/descent and minority status, such as the EMGs.

- Similarly, for women, Article 36 re-affirms their constitutional rights and enjoins the state to legislate for their rights be free from practices that are contrary to Sharia and which are injurious to their person and dignity. Whilst clearly this covers matters which are physically harmful, it also extends to practices, such as discrimination and exclusion, which affect the dignity of women.
- Article 22 guarantees every citizen's right to participate in the political affairs of the country and the right to be elected to a public office.
- Article 21(1) makes it clear that the state (including the legislature, the executive and the judiciary) is specifically bound by the Constitution's provisions relating to fundamental rights and freedoms.

9. Constitutional (and Appeal) courts deal frequently with cases which may seemingly raise possible conflicts of two rights and the answer is often a balancing exercise which gives effect to principles of the constitution and follows the internationally accepted norms<sup>7</sup> when one right may have to be limited so that another right could be enjoyed. An example of an African Appeal court which dealt with a challenge on a law setting one third quota of local government seats for women on the basis that this discriminated against a man was the Lesotho Court of Appeal<sup>8</sup> which upheld in 2005 the constitutionality of law by considering the relevant international conventions and the rules relating to acceptable limitations of rights. In the Somaliland context, the modest reserved seats flow from the above constitutional provisions and are a justifiable measure to improve the rights of women and EMGs. In the 2002 local elections of the 332 local district sets contested, only one was won by women, and in the 2005 House of Representatives elections only one out of the 82 seats was won by a woman through the election<sup>9</sup>. As for EMGs, the picture is worse although of course they are smaller in number than the female population. One seat was held by an EMG person at the House of Representatives which was elected indirectly in 1997, but at the general election in 2005 no EMG person was elected to the House.

### **The 2012 bill**

10. Unlike the 2007 bill, the current bill is drafted as a standalone bill dealing with reserved seats for women and EMGs for both local district councils and for the House of Representatives. The bill came out of the recommendations of an advisory committee set up by the President on 7 September 2011 to advise on the raising of the participation of women and minorities in political life. The 9 member Committee included ministers and parliamentarians and was chaired by the Mr Ahmed Muhumad Madar. In March 2012, the President passed on the recommendations of the advisory committee to the House of Representatives for legislative action. The modest

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<sup>7</sup> The general test is that the limitation of the right is authorised by law and is reasonable and demonstrably justified in a free and democratic society.

<sup>8</sup> *Molefi Tsepe v the Independent Electoral Commission and others* (2005) C of A (Civ) No. 11/05, which upheld the legality of a 2004 Electoral Law amendment which introduced a one-third quota of all local government council seats for women for the next three elections.

<sup>9</sup> Another woman was appointed to a seat in one of the areas where no polling took place in some of the parts of the region.

recommendations of the advisory committee proposed the following reserved seats for women and EMGs:

<b>The Reserved Seats Bill (2012) as proposed by the Committee – Arts. 5 &amp; 6</b>			
	Local Councils Res. Seats	HoR Res. Seats	HoE Res. Seats
<b>Women</b>	Capital - 4 out of 25 A districts - 3 out of 21 B districts - 2 out of 17 C districts - 1 out of 13 D districts (unelected - not included) ? out of 9	8 out of 82 (10%)  Maroodi Jeex & Togdher – 2 each Awdal, Sanaag , Saaxil and Sool – 1 each	<i>If the House of Elders changes from its traditional character, then 10% of the seats (equivalent to 8)- same regional allocation as for the HoR</i>
<b>EMGs</b>	Capital - 1 out of 25 A districts - 1 out of 19	1 out of 82	1 out of 82

11. On 9 July 2011 The House Internal Affairs Committee submitted a bill titled “*the law the quotas for women and minority communities in the participation of the country's politics*” for first reading. The House had a brief discussion on the bill and the Committee to re-consider the text of the bill and the way it was submitted. It has been reported that some of the representatives have objected to the format of the bill and others, rather ominously, objected to its contents. The Deputy Speaker later confirmed that press reports to the effect that the bill was rejected were inaccurate and that the referral back to the Committee was simply to bring the bill in line with the House legislative technical procedures. On 17 July 2012, the House started a 6 week recess, for Ramadan. With the approaching local councils elections, women and EMGs have expressed their concerns about the delays and are campaigning for its adoption soon after the recess. The EMGs have specifically criticised the “single seat” allocation. The bill will be put to the House again after the recess, in early September 2012.

### **Comments on the bill**

12. The bill, as currently drawn up consists of 5 main articles. Leaving aside any criticisms of the number of reserved seats by women groups or by EMGs , the bill requires, in my view, some re-drafting and additional clauses to make it fit with the electoral laws. My comments therefore are as follows:

12.1 In view of the urgency of getting all the laws relating to the forthcoming local elections ready, I would recommend that rather than having one law covering the reserved seats allocations for all the elections, the priority now should be in drafting amendments to the 2001 Presidential and Local Elections Law (the 2001 Election Law).

12.2 It should be made crystal clear that women and EMGs candidates are also be eligible for election to the non-reserved seats and are not just consigned to competing for reserved seats. Conversely men and non-EMG candidates are not eligible to be considered for the reserved seats. This may seem self-evident, but in Afghanistan, there were reported allegations that women candidates were pressured not to stand for election after their candidacy was submitted and then the parties asked that men should then fill the reserved seats.

12.3 As there is not going to be a separate roll or voting for women candidates, there is no need for the current bill's Article 7(1) stipulation that the association/parties should forward a separate list for female candidates.

12.4 In contrast, there is a need for candidates eligible for the EMG reserved seats and willing to be considered for them<sup>10</sup> to be identified as such to the Election Commission ONLY but that information will not be on the ballot paper. Furthermore, the definition of who is eligible for consideration for the EMG reserved seats must be specified more clearly in the bill. The definition in the 2007 bill which is specifically mentioned as “the Madhiban, Muse Dheriyo, Yibro and the Tumal<sup>11</sup> communities” is, in my view, narrow enough and clear, but provision should also be made for tweaking of the definition in a Presidential Decree, if needed in the future.

12.4 The current Schedule 4 amendments to Article 22 of the 2001 Election Law are not adequate enough to explain the allocation of seats in the proportional representation open list system, where the votes for each candidate also count as a vote for the party/association so as to work out the number of seats won by each party/association. The seats are then allocated within each party/association on the basis of the highest votes garnered by each candidate on the list, regardless of whether the candidate is or is not eligible for consideration for a reserved seat.

12.5 Consequently, as it is only the non-reserved seats that are being allocated at the first stage, It should be made clear that when working out the quotient for each seat, the quotient formula that should be used is the total valid votes cast in the district divided by the total number of the non-reserved seats. This is not currently clear.

12.6 When it comes to the allocation of the reserved seats, the 2007 bill proposed that these will be divided among the parties/associations in proportion to the total votes that each party/association garnered at the election. If we retained the closed party/association list system, this would have been the only option. But the 2007 bill which also proposed an open list system for local district elections (in the same way that the 2005 Election Law introduced it for the House election) did not explore further the intricacies of the seat allocation process through the proportional representation (PR) open list system of a very small number of candidates (mostly 1 or 2, except at the capital city).

12.7 In view of the low number of reserved seats and the large number (9) parties/associations contesting the election, it is preferable, in my view, to allocate the few seats on the basis of the what is nowadays termed “the best winner” method (but was often referred to as the “best loser” method) i.e. the reserved seats go to the eligible women and EMG candidates who have not gained a non-reserved seats

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<sup>10</sup> There have been some reports that the leaders of one of the EMG communities do not wish to include in reserved seats provisions, but the leadership could change and candidates from all the EMG communities should be eligible for the seats but also free to choose to contest only the non-reserved seats should they wish to do so – hence the need for the candidates’ confirmation of their intention.

<sup>11</sup> I understand that the representatives of the Tumal communities informed the Madar Advisory Committee that they were not in favour of reserved seats, but their exclusion from the list will be disadvantageous to the future leaders or to those members who may wish to be considered for the seats.

but have secured the highest number of votes in comparison to other women or EMG candidates. With the open list voting, this system will keep the link between getting a seat and getting the highest number of votes<sup>12</sup>. When the number of reserved seats is increased to, say, 30% then the party PR system could work as well<sup>13</sup>.

12.8 Currently Article 22(3) of the 2001 Election Law states that any vacancies of elected councillors shall be filled by the next candidate in the party/association list, which shall apply equally to the reserved seats winners. If, however, the “best winner” method used for the reserved seats, then it follows that the vacancy will go to the next eligible women or EMG “best winner” who could belong to another party/association. The effect of these changes on the parties/associations will, however, be minimized after the local elections as all the successful candidates must then either belong to or join one of the new three national political parties.

12.8 The 2001 Law should also be amended to lay down an obligation on the parties/associations to include in their candidates’ lists of a minimum of women and EMG candidates which can be, as a minimum, the same number as reserved sets in each district council.

#### **Draft Bill – Annexe 5 of the 2001 Election Law**

13. I attach a bill in Somali which is 2001 Election Law Amendments – Annexe 5. It is my fervent hope that the House Committee will consider adopting some or all of the provisions of this draft bill when they return from the Ramadan recess. In the meantime, it is incumbent on both the NEC and the political parties/associations to add to their plans the passage of this Law.

14. A final word. The House of Elders objections the 2007 bill are no longer current and I trust that when the bill reaches them, they shall look at it with fresh eyes. When the women’s groups met the House last year about reserved seats, the speaker/deputy speakers and members of the House were very open in their support of reserved seats. The House itself has, since 2007, gained its first female member and one hopes that a bill limited to the more pressing issue of local council seats would get the support of the House.

20/07/2012

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<sup>12</sup> Distribution of reserved seats through the party total vote system could actually lead to women or an EMG getting a seat on the basis of the total votes of a party without attaining the highest number of votes in comparison to women or EMG candidates in other lists.

<sup>13</sup> In Tanzania, where currently the quota seats for the national assembly is 30%, the seats are distributed in proportion to the number of votes obtained under a closed party list; whilst the non-reserved seats are won under the first past the post system, indicating that different methods could be used in filling reserved or non-reserved seats.

**APPENDIX 1: Draft Bill Amending 2001 Election Law**

**Gogoldhig**

Mashruucan Xeer ee Qabyo Qoraalka ah waxa diyariyey Ibraahim Xaashi Jaama, [www.somalilandlaw.com](http://www.somalilandlaw.com) oo waxa loogu talo galay in Golaha Wakiilada iyo Gudigiisa, Ramadaan ka dib, ay dib u eegan **Mashruuca Xeerka Saamiga Kuraasta Haweenka iyo Dadka laga Tirada Badanyahay** (oo halkan ku lifaaqan) oo hadda hor yaala Gudida Arrimaha Gudaha ee Golaha. Mashruucaasi, sida uu hadda u dhigan yahay wuxuu ku saabsanyahay doorashooyinka Golayaasha Deegaanka iyo kuwa Baarlamanka.

Iyadoo laga fiirsanayo ahamiyada ay leedahay doorashooyinka golayaasha deegaanka ee inagu soo fool leh, waqtiganna ay Ramadanna soo galeyso oo Goluhu bilaabay fasax lix usbuuc ah ilaa bilowga Sebtabar, xeerarkii doorashooyinka baarlamaankana aan sanadkan cidibi eegeen, waa in mudnaan la siiyaa sidii Xeerka Doorashooyinka Deegaanada (Xeer 21/2001) deg deg wax looga bedeli lahaa si kuraasta saamiga hadda loogu daro, doorashan ka hor.

Waxa mashruucan xeer la socoto faalo dheer oo cadeynasa in saamiga kuraastu aanu ka soo horjeedin Distoorka Somaliland oo la jaanqaadayo distoorka iyo xeerarka caalimiga ah.

Wixii aaraa' ah ee ku saabsan mashruucan xeer fadlan nagala soo xidhiidh:

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20 July 2012

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**JAMHUURIYADA SOMALILAND  
MASHRUUC XEER (QABYO QORAAL)**

**WAX-KA-BEDDELKA XEERKA DOORASHOYINKA MADAXTOOYADA IYO GOLAYAASHA DEEGAANKA (Lr. 20/2001) - LIFAAQA 5AAD EE 2012**

**Golaha Wakiilada**

**Markuu Arkey:** Qodobka 8aad, 21(2)aad, 22aad, iyo 36aad ee Dastuurka Jamhuuriyada Soomaaliland;

**Markuu Arkey:** Tallo Bixinta Guddida Daraaseynta Xoojinta Kaalinta Haweenka iyo Dadka laga Tiro Badan Yahey ee Ka-qayb galka Siyaasada, oo uu Golaha u soo Gudbiyey Madaxweynaha Jamhuuriyada Somaliland, sumadeeduna tahay: REF: JSL/M/SHGW/081-944/022012 kuna taariikheysan 08/03/12;

**Markuu Xaqiiqsaday:** Xaqa ay Haweenka iyo Dadka Laga Tirada Badanyahay u leeyihiin in ay ka qayb-galaan siyaasada dalka iyo Golayaasha Qaranka Jamhuuriyada Somaliland;



**Markuu Ogaadey:** In dumarka iyo Dadka Laga Tirada Badanyahay aysan Saami ku filan ka helin doorashooyinkii Golayaasha Qaranka ee Jamhuuriyada Somaliland;

**Markuu ku Qancey:** In saami loo qoondeeyo Haweenka iyo Dadka laga Tirada Badan yahay ay xoojinaso sinaanta muwaadiniinta;

**Markuu Arkay:** In doorasha Golyaasha Deegaanada ee dhowaan dhacyesaa ahmiyad gaar leedahay oo xeerarka ku saabsan oo dhan si deg dega ah loo dhameystiro hadda, xeerarka doorashooyinka Baarlamaanka ku saabsanna waqtigooda wax laga beddeleyana lagu daridoono saamiga haweenka iyo dadka laga badanyahay;

Waxa uu soo Saarey

Wax-ka-beddelkan Xeerka Doorashooyinka Madaxtooyada iyo Golayaasha Deegaanada (Lr. 20/2001), Lifaaqa 5aad ee 2012

### **Qodobka 1aad: Macnaha Ereybixinta**

Qodobka 1 aad (Macnaha erey-bixinta) ee Xeerka waxa lagu daray ereyadan:

**“Dadka laga tirada badan yahay:** Waxa loola jeedaa dadka ka soo jeeda beelaha dadka dhaqan ahaan la heyb sooco oo ah oo ah Madhibaanka, muusedheriyo, yibro iyo tumaalo; haddii loo bahdo in erygan baaxadiisa wax laga bedelana, waxaa lagu soo saaridoona Xeer Madaxweyne.

**Saami Goyn:** Waxa loola jeedaa saamiga go’an ee looga qoondeeyo haweenka ama dadka laga tirada badanyahay.

**Kuraasta Saamiga ah (Reserved seats):** Waxa loola jeedaa kuraasta loo qoondeeyey Haweenka ama dadka laga tirada badan yahey oo ay murashixiinta iyaga ka mid ah oo keliya ay xaq u leeyihiin in ay ugu tartamaan sida ku xusan Xeerkan

**Kuraasta Guud:** Waxaa loola jeeda kurasta kale een saamiga aheyn oo murashixiinta oo dhammi ay u tartamaan.”

### **Qodobka 2aad: Tirada Golayaasha Degaanka**

Qodobka 4aad ee Xeerka sidan ayaa loo bedellay:

1. Weedha hadda Qodobka 4aad ku jirta ee tirada xubnaha Golayaasha Deegaanada waxey noqneysa Faqradda 1aad ee Qodobkan.
2. Waxaa Qodobka lagu kordhinayaa labadan Faqaradood:

“2. Kuraasta saamiga ah ee loo qoondheeyey murashixiinta dumarka ah waxay noqonayaan sidan:

b.	Golaha Deegaanka Caasimada	4 Mudane
t.	G/Deegaanka Degmooyinka Darjada A	3 Mudane
j.	G/Deegaanka Degmooyinka Darjada B	2 Mudane
x.	G/Deegaanka Degmooyinka Darjada C	1 Mudane
kh.	G/Deegaanka Degmooyinka Darjada D	1 Mudane

3. Kuraasta saamiga ah ee loo qoondheeyey murashixiinta dadka laga tirada badan yahyey waxay noqonayaan sidan:

b.	Golaha Deegaanka Caasimada	1 Mudane
t.	G/Deegaanka Degmooyinka Darjada A	1 Mudane

4. *Doorashooyinka Deegaanada ee la qabanayo sanadkan 2012 waa kuwa Golayaasha Caasimada iyo Deegaanada darajadoodu tahay A, B iyo C. Iyadoo la tixgelinayo Qodobka 7aad ee Xeerka Ismaamulka Gobollada iyo Degmooyinka (Xeer Lr. 23/2002), codbixiyaasha ku nool Degmooyinka darajadoodu tahay “D” waxay u codeynayaan, haddii aaney Koomishanku qaarkood si kale u cayimin, golayaasha degmooyinkii darajada A, B ama C ee degmadoodu ka faracmatay<sup>14</sup>.”*

### **Qodobka 3aad: Habka Doorashada**

Qodobka 22aad ee Xeerka, marka laga reebo Faqradda 1aad ee lagu cayimey Lifaaqii 5aad, waxaa Faqraddaha kale loo beddelay sidan:

“2. In kastoo warqadda coddeynta ay ku qoranyihin dhamaan murashixiinta xisbiyada iyo ururada oo dhan ee u tartamaya kuraasta deegaan kasta, cod bixiyuhu wuxu u codeynyaa hal murashax oo keliya, codkaasna ayaa loo tirinayaa murashaxa iyo xibigiisa/ururkiisa.

3. Kuraasta guud ee degmo-doorasho kasta, oo aany ku jirin kuraasta saamiga ah, waxay xisbyadu/ururadu ku kala helayaan habka saami qeybsiga (Proportional Representation) ee kuraasidaas guud iyo codadka xisbi/urur kasta ka helo deegaankaas.

4. Marka la tiriyo wadaarta guud ee codadka ansaxay ee deegaan kasta, waxaa loo qaybinyaa cadadka kuraasta guud oo deegaankaas, oo laga reebay kuraasta saamiga, si loo ogaado qadarka cododka ee hal kursi lagu heli karo. Waxaa markaas

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<sup>14</sup> Faqradani ma khuseyso kuraasta saamiga ah ee laakin waa mid ku jirtey Xeerka 23/2002 intii aan le bedelin 2006kii oo suurta gelisey in si sharciysan degmooyinka ay u codeynayaan dadka ku nool deegaanada darajadoodu tahay D. Waa laga saari haddii Komishanku ku taliso in aan loo baahneyn Faqradan.

laysu qaybinayaa tirada codadka xisbi/urur kasta uu deegaankaas ka helay iyo qadarka codadka ee hal kursi lagu heli karo, oo ay ka soo bixi doonto cadadka kuraasta xisbi/urur kasta. Wixii jajab codad ee qaybsigaas ka soo hadha, waxaa kuraasta hadhey loo kala qaadanyaa sida jajabkaasi u kal badan yihiin (largest remainders).

5. Kuraasta guud ee xisbi/urur kastaa uu ka helo degmo-doorasho kasta, oo aaney ku jirin weli kuwa saamiga ah, waxaa loo qaybinaya dhamaan murashixiinta deegaankaas ee liiska furan ee xisbigaas/ururkaas sida ay u kalo cod badanyihiin. Haddii ay labo murashax ama in ka badan oo isku xisbi/urur ah ay ka helaan deegaankaas codad siman oo uu hadhey kursi kali ah, waxa lagu kala saaraya murashixiinta hab nasiib ah oo ay Kommishanku abaabusho, xisbiyada/ururada iyo muraashixiintaasina ay goob joog ka ahaadaan.
6. Si aan shaki u gelinba, dhamaan murashixiinta ku jira liiska xisbi/urur ee deegaan wey u siman yihiin in ay u tartamaan kuraasta guud ee aan samiga aheyn.
7. Marka la dhameeyo talaabooyinka ku xusan Faqrada 3aad, 4aad iyo 5aad ee Qodobkan ayaa loo gudbayaa qaybinta kuraasta saamiga ah. Kuraasta saamiga ah ee dumarka ee deegaan kasta waxaa u tartamayaa oo keliya murashixiinta dumarka ah ee aan helin kursi guud. Sidoo kalena kursiga saamiga ah ee dadka laga tiro badan yahay waxaa u tartimi kara oo keliya murashixiinta aan helin kursi guud, horeyna xisbigiisa ama ururkiisa uu Kommishanka u cayimey doorashada ka hor in uu yahay qof ka mid ah dadka laga tirada badanyahay.
8. Iyadoo la tixgalinyo yaraanta Kuraasta saamiga ah iyo badnaanta xisbiyada/ururada iyo habka liista furan ee doorashada, waxaa loogu qaybinayaa murashixiinta dumarka ah ama dadka laga tirade badan yahay kuraasta saamiga degmo doorasho ee midba khuseysa sida ay murashixiintaasi aan ku guuleysan kursi guud ay codadkooda u kala sareeyaan<sup>15</sup>. Haddii ay labo murashax ama in ka badani oo kursi saamiga ah loo eegayo kan helayaa ay cododka ay helaan isla siman yihiin, waxaa lagu kala saaraya murashixiintaas hab nasiib ah oo ay Kommishanku abaabusho, xisbiyada/ururada iyo muraashixiintaasina ay goob joog ka ahaadaan.
9. *Haddii ay deegaan ama goobihiisa doorasho qaarkood, duruufu gaar ah awgeed, doorashada degaanka ka dhico weydo oo Kommishanka, iyadoo la tashatay xukuumada, xibiyada/ururada ay sidaas ku cayimiso, waxaa sidii ay suurtagel tahayba loogu qaybinayaa xisbiyada/ururada kuraasta saamiga ah si la mid ah qaybista kuraasta guud oo ku saleysan boqoleyda (percentage) wadaarta guud ee*

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<sup>15</sup> Waa habka loo yaqaan "best loser" method, marka lala eego cida kuraasta guud heshay; ama "best winner" method, marka lala eego murashixiinta kuraast saamiga u taratmaya.

*codadka ay deegaanka intiisa kale ama dalka intiisa kale xisbiyada/ururadu ka helaan, marba kii la door bido ee leysku raaco doorashada ka hor. Xisbi/urur kastaa markaas ayuu u bedelaya liiska murashixiinta mid xidhan oo kuraasta ay helaan loo qeybinayo sida magacyada liisasku u kala horreeyaan <sup>16</sup>.”*

### **Qodobka 5aad: Buuxinta Kurisaada Banaanaada**

Waxaa lagu daray Xeerka Qodob cusub oo lambarkiisu noqonaya Qodobka 22B oo ku xiga Qodobka 22aad:

#### **“Qodobka 22Baad: Buuxinta Kuraasida Banaanaada**

1. Murashixiinta ku guuleysan waaya doorashada Deegaanka, waxay gidigood kuraasta guud ee aan saamiga aheyn u noqonayaan keyd iyadoo kursigii banaanaada uu buuxinayo murashaxaa liiska xisbiga/ururka kursigaa horey doorasada ugu guuleystay ku xiga xagga tirada codadka.
2. Murashixiinta dumarka ahi iyo kuwa dadka laga tirada badan yahay ee aan ku guuleysan doorashada deeganka waxay keyd u ahaanyaan kuraasta saamiga ah ee khuseysaa. Kursigii saamiga ah ee banaanaada, waxaa buuxinyaa murashaxa helay doorashada tirada codka ee ku xigta tiradii uu helay murashixii guuleystay, iyadoo oo aan la tixgelineyn xidbiga/urur murashaxaas.
3. Haddii murashixiinta keydka ahi ee buuxinaya kursiga banaanaada sida ku xusan fagrada 1aad iyo tan 2aad ee Qodobkan aanu horey isaga soo sharaxin xisbi/ama urur doorashada deegaankaas ka dib noqday Xisbi qaran:

b) waa in, haddii uu buuxinayo kursi guud, ku biira xisbiga qaran ee uu qofkii kursiga banaaniyey, isagoo u hogaansan habka ku xusan Qodobka 24(1)aad ee Xeerka Nidaamka Ururada iyo Xisbiyada Siyaasada (Xeer Lr. 14/2011), ku biirey doorashada ka dib, waxaanu ogeysiinaya Kommishanka bil gudaheed marka uu jagadaas buuxiyo;

t) waa in, haddiise uu buuxinayo kursi saami ah uu, isagoo tixgelinya habka Qodobka 24(1)aad ee Xeerka Nidaamka Ururada iyo Xisbiyada Siyaasada (Xeer Lr. 14/2011), ku biira sadexda xisbi qaran mid ka mid ah, ogeysiyaana Kommishanka bil gudaheed marka uu jagadaas buuxiyo.”

### **Qodobka 4aad: Qaabka soo Bandhigada Murashixiinta**

Qodobka 23aad, Faqaradiisa 2aad, ee Xeerka waxa lagu daray labadan xaraf (kh) iyo (d) oo ku xiga xarafyada b, t, j, x:

“kh) Caddeyn uu saxeexay mas’uul xisbiga/ururka gudigiisa degmada ka mid ah oo xaqiijinaya in liiska murashixiinta ay ku jiraan dumar iyo dadka laga hayb soocdo oo

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<sup>16</sup> Qodob kan la mid ah ayaa ku jirey Xeerki Doorashada Wakiilada (2005). Haddii Kommishanku qabaan in aan loo baahaneyn Faqradan, waa laga saari karaa wax ka bedelkan.

tiradooddu aanay ka yareen tirada kuraasta saamiga.

d) Caddeyn uu saxeexay mas'uul xisbiga/ururka gudigiisa degmada ka mid ah oo xaqiijinaya magaca murashax kasta oo liiska ku jira oo xaq u leh in uu u tartamo kursiga saamiga ee dadka laga tiro badan yahay oo uu murashaxaasina saxeexay. Caddeymadaas waa mid u gaar ah Komishanka oo isticmaalya maculuumaadkaas doorasha ka dib marka cida ku guuleysatay tartanka kuuraasta saamiga ah lasoo saarayo oo lagumo darayo waraaqaha codbixinta.”

### **Qodobka 5aad: Laalis**

1. Waxaa la titirey Faqradda 3aad ee Qodobka 27aad ee Xeerka Ismaamulka Gobolada iyo Degmooyinka (Xeer Lr. 23/2002) oo ku saabsan habka buuxinta kuraasta banaananta.
2. Waxa la laaley qodobada xeer ama xeer nidaamiye ee ka soo horjeeda Wax ka bedelkan Xeer Lr. 20/2001 (Lifaaqa 5aad).

### **Qodobka 6aad: Dhaqan-Galka**

Wax ka bedelkan Xeer Lr. 20/2001 oo ah Lifaaqii 5aad wax uu dhaqan-gelayaa marka ay Goleyaasha Xeer-dejintu ansixiyaan, Madaxweynuhuna saxeexo.

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*Lifaaq: Qabyo Qoraalaka Xeerka Saamiga ee Gudida Golaha Wakiiladu soo saartey ee hadda dib u eegayaan.*

**APPENDIX 2: House Committee Reserved Seats Bill**

**GOLAHA WAKIILADA JAMHUURIYADA SOOMAALILAND**

**Guddida Arimaha Gudaha Nabad-gelyada iyo Difaaca**

**Xeerka Saamiga Haweenka iyo Dadka Laga Tirada Badan Yahey ee Ka  
Qayb-Galka Qabyo Qoraal  
Xeer Lr. XXXX/2012**

**Golaha Wakiilada Jamhuuriyada Soomaaliland:**

**Markuu Arkey:** Qodobka 36aad ee Dastuurka Jamhuuriyada Soomaaliland.

**Markuu Arkey:** Tallo Bixinta Guddida Deraaseynta Xoojinta Kaalinta Haweenka iyo Dadka laga Tiro Badan Yahey ee Ka-qayb galka Siyaasada, oo uu Golaha u soo Gudbiyey Madaxweynaha Jamhuuriyada Soomaaliland, sumadeeduna tahay: REF: JSL/M/SHGW/081-944/022012 kuna taariikheysan 08/03/12.

**Markuu Xaqiiqsaday:** Xaqa ay Haweenka iyo Dadka Laga Tirada Badanyahay u leeyihiin in ay ka qayb- galaan siyaasada dalka iyo Golayaasha Qaranka Jamhuuriyada Soomaaliland.

**Markuu Ogaadey:** In dumarka iyo Dadka Laga Tirada Badanyahay aysan Saami ku filan ka helin doorashooyinkii Golayaasha Qaranka ee Jamhuuriyada Soomaaliland.

**Markuu ku Qancey:** In saami loo qoondeeyo Haweenka iyo Dadka laga Tirada Badan yahay ay xoojinaso sinaanta muwaadiniinta.

**Waxa uu soo Saarey Xeerkan:**

**Qodobka 1aad  
Xadka Adeegsiga Xeerka**

Xeerkan waxa loo adeegsan doonaa doorashooyinka Golayaasha Deegaanka ,Wakiilada iyo Guurtida ee Jamhuuriyada Soomaaliland ka dhaca, iyada oo looga faa'iideyn doono Haweenka iyo Dadka Laga Tirada Badan Yahay.

**Qodobka 2aad:**

Xeerkan, erayadan soo socda waxa loo macneyn doonaa:

**Dadka laga Tirada Badan yahay:** Waxa loola jeedaa dadka ka soo jeeda beesha adka dhaqan ahaan la heyb sooco.

**Degmooyinka (A+,A,B,C iyo D):** Waxa loola jeedaa darajada degmooyinka ee ku cad Xeerka Maamulka Gobolada Degmooyinka Xeer Lr. 23/2002.

**Golayaasha Qaranka:** Waxa loola jeedaa Golayaasha Deegaanka iyo Wakiilada.

**Saami Goyn:** Waxa loola jeedaa saamiga go'an ee looga qoondeeyo haweenka iyo dadka laga tirada badanyahay Golayaasha Qaranka.

**Si Guud:** Waxa loola jeedaa kuraasta ka baxsan saamiga loo qoondeeyey Haweenka iyo Dadka laga tirada badan yahey.

**Si Gaar Ah:** Waxa loola jeedaa saamiga loo qoondeeyey Haweenka iyo dadka laga tirada badan yahey.

### **Qodobka 3aad: Magac Dhaw**

1. Xeerka waxa magaciisu noqonayaa Xeerka Saamiga Haweenka iyo Dadka Laga Tirada Badan yahay ee Ka Qayb-Galka Siyaasada Dalka.
2. Qodobada Xeerkan waxa lala akhriyaa Xeerka Doorashooyinka Golayaasha Deegaanka iyo Madaxtooyada.

### **Qodobka 4aad Ujeedooyinka Xeerka**

1. Ujeedooyinka Xeerkan waxa ka mid ah:
  - a. In saami go'an oo ay dhexdooda ku tartamaan loo qoondeeyo Haweenka iyo Dadka laga tirada badanyahay golayaasha Qaranka ee Jamhuuriyada Soomaaliland.
  - b. Kobcinta iyo kor u qaadista haweenka iyo dadka laga tirada badan yahay ee ka qayb-galka talada dalka.
  - c. Xoojinta Kaalinta Haweenka iyo dadka laga tirada badanyahay ee ka qayb galka siyadaasada dalka.

### **Qodobka 5aad Saamiga Go'an ee Haweenka ee Gobolada iyo Degmooyinka**

1. Saamiga Haweenka ku lahaan doonaan Golayaasha Qaranku waxa uu ahaan doonaa sidan soo socota:

a) Golayaasha Deegaanka ee Darajada	A+	4 XUBNOOD
b) Golayaasha Deegaanka ee Darajada	A	3 XUBNOOD
c) Golayaasha Deegaanka ee Darajada	B	2 XUBNOOD
d) Golayaasha Deegaanka ee Darajada	C	HAL XUBIN

- 2) Saamiga Haweenka ee kuraasta Golaha Wakiilada wuxuu ahaanayaa 10% tirada guud ee Golaha Wakiilada oo u Gobolaysan sidan hoos ku qoran:-

- a) Gobolka Madoori Jeex 2 xubnood.
- b) Gobolka Togdheer 2 xubnood.
- c) Gobolka Awdal 1 xubin.
- d) Gobolka Sanaag 1 xubin.
- e) Gobolka Saaxil 1 xubin.
- f) Gobolka Sool 1 xubin.

3) Saamiga Haweenka ee kuraasta Golaha Guurtida wuxuu ahaanayaa 10% tirada guud ee Golaha Wakiilada oo u Gobolaysan sidan hoos ku qoran:-

- g) Gobolka Madoori Jeex 2 xubnood
- h) Gobolka Togdheer 2 xubnood.
- i) Gobolka Awdal 1 xubin.
- j) Gobolka Sanaag 1 xubin.
- k) Gobolka Saaxil 1 xubin.
- l) Gobolka Sool 1 xubin.

### **Qodobka 6aad**

#### **Saamiga Dadka Laga Tirada Badan Yahey ee Gobolada iyo Degmooyinka**

1. Saamiga go'an ee dadka laga tirada badan yahey ku lahaan doonaan Golayaasha Qaranku waxa uu ahaan doonaa sidan soo socota:

- a) Golayaasha Deegaanka Darajada (A) Hal Xubin
- b) Golaha Wakiilada Hal xubin
- c) Golaha Guurtida Hal Xubin

2. Xubnaha Golaha Wakiilada iyo Guurtida ee Beelaha laga Tirada Badan yahay Gobolada ay ka soo kala bixi doonaan waxa lagu go'aaminayaa Labada Gobol ee ay ugu codka badan yihiin Doorashooyinka Golayaasha Deeganka .

### **Qodobka 7aad**

#### **Habka Doorashada ee Murashaxiinta Saamiga Haweenka iyo Dadka Laga Tirada Badan Yahay**

1. Xisbi/urur kastaa waxa uu si gooni ah ugu soo gudbin doonaa Komishanka Doorashooyinka Qaranka murashaxiinta haweenka iyo dadka laga tirada badan yahay ee u tartamaya Golayaasha Wakiilada,Guurtida iyo Deegaanka saamiga looga qoondeeyay gobolkaasi/Degmadaasi.

2. Iyada oon lagu xad-gudbeyn Qodobka 40aad ee Dastuurka JSL, Qodobka 10aad ee Xeerka Doorashada Golaha Wakiilada Farqadiisa 2aad, (Xeer Lr. 20-2/2005), Qodobka 22 ee Xeerka Doorashooyinka Madaxtooyada iyo G/Deegaanka Xeer Lr. 20/2001, iyo Lifaaqyadiisa 1aad, 2aad, 3aad iyo 4aad, guud ahaan kuraasta golayaasha deegaanka , Golaha Wakiilada iyo Golaha Guurtida ee gobol/degmo kasta waxa loogu tartamayaa laba qaybood, oo kala ah;



- a. Si guud;
  - b. Si gaar ah.
3. Kuraasta saamiga Haweenka iyo dadka laga tirada badan yahey dhexdooda ayay ku tartami doonaan, waxana loo soo kala bixi doonaa sida ay u kala cod badan yahiin.
4. Kuraasta aan ahayn saamiga Haweenka iyo Dadka laga tirada badan yahay waxa loogu tartami doonaa si guud.

**Qodobka 8 aad  
Laalis**

Xeer kasta oo ka soo horjeeda Xeerkani waa waxba kama jiraan (null and void).

**Qodobka 9aad  
Dhaqan-Galka**

Xeerkani waxa uu dhaqan-gelayaa marka ay Goleyaasha Xeer-dejintu ansixiyaan Madaxweynuhuna saxeexo.