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## **The Sheikh Concordat – Settling Constitutional Disputes in the Somaliland Way?**

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### **Overview**

The relationship between Somaliland's newly elected House of Representatives and the Government never saw a honeymoon period and quickly descended into an all time low for both institutions within the first session of the House. The House of Elders' (Guurti) term of office extension decided, on 28 May 2006, by the Guurti and the President without the involvement of the Representatives added fuel to the fire and, as many commented, put the Guurti firmly on the side of the President<sup>1</sup>. The Representatives and the opposition parties threatened not to accept the legitimacy of the Guurti after their original term ends on 31 October 2006<sup>2</sup>. However, October 31<sup>st</sup> came and passed without too much political upheaval and both Houses are now in their new session conducting their business, all thanks to the three institutions agreeing to embark on a traditional dispute resolution method used by Somaliland communities and known in Somali as "turxaan-bixin" or "airing of all grievances with a view to their global settlement". This article examines the major disputes/grievances, the choice of a "turxaan-bixin" exercise for constitutional matters and the lessons for the future.

### **Party control of the Legislature and the Executive**

On 30 September 2005, the first Somaliland parliamentary elections since the "Somali Republic" 1969 National Assembly elections saw the President's party, UDUB, gaining the largest number of seats, 33 out of the 82, but being outnumbered by the combined total of the two other parties (KULMIYE, 28 and UCID, 21). Almost immediately, many people who remembered the 1969 elections thought that this will bring about real changes in the Government, forgetting that the Somaliland presidential constitutional system is totally different from that of the 1969 mixed presidential/parliamentary

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<sup>1</sup> Even prior to this event, it was rumoured that many of the GUURTI members joined the ruling party, UDUB in droves when the party was formed by the late President Egal.

<sup>2</sup> It is not surprising that the Somaliland press has given different dates for this event because the Guurti term of office has already been extended before as their original six year term from 1997 expired in 2003. As the last extension was based on a formula which linked their term to that of any extensions given to the Representatives plus one year, and since, in accordance with Article 42(1) of the Constitution, the term of the newly elected House of Representatives started on 1 November 2005 (the date when their election result was declared formally by the Supreme Court ), then the Guurti term expired on the 31 October 2006 – a year after the expiry of the term of the outgoing House of Representatives.

system of the Somali Republic and no changes, for example, in ministerial posts<sup>3</sup> will automatically follow the election.

The Somaliland House of Representatives is described in Article 39 of the Constitution as “the first part of the country’s legislature, passing laws and approving and overseeing the general political situation and the direction of the country”. The exclusive powers of the House to control financial bills and the budget<sup>4</sup>, to approve any changes to the national symbols, such as the flag, the emblem and the anthem under Article 7(4) of the Constitution, and to deal with presidential appointments<sup>5</sup>; its power to push through legislation even if the House of Elders refers it back once<sup>6</sup>; and its pre-eminent position in both the oversight of the functions of the Executive and the process of the amending the Constitution all show that the House is not just the first but is also the main legislative chamber. In this respect, the House resembles more the British House of Commons than the US House of Representatives. The campaign for the control of the House of Representatives therefore started in earnest almost immediately after the provisional election results were declared by the Electoral Commission on 15 October 2005, and rumours started that the Government and its party were working hard to pull in support from some of the opposition House members. The Somaliland Political Parties Law<sup>7</sup> does not allow elected members to cross the floor and the best that the Government was hoping for was for some of the opposition party members to vote with them or to abstain in the crucial election of a Speaker. The two opposition parties, in turn, concluded, on 9 November 2005, a comprehensive 13 point Memorandum of Understanding which included, among other things, a commitment that the two parties will agree on the nomination and election of the House Speaker and his two deputies. It was widely commented that part of the reason why the President convened the new House on 29 November 2006 (two days before the 30 day<sup>8</sup> deadline set under the

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<sup>3</sup> Somaliland ministers cannot be members of the Legislature and are appointed (subject to confirmation by the Representatives) and dismissed by the President.

<sup>4</sup> Article 54, 55 and 61(2) of the Constitution

<sup>5</sup> Articles 53(1) of the Constitution.

<sup>6</sup> Article 78(1), but even where the House of Elders refuses to pass a bill on a point of principle by a vote of two thirds and refers back to the House of Representative (which they can only do once by the way – see Article 77(2)), the House of Representatives can trump them by passing the bill again on a two thirds majority.

<sup>7</sup> See Article 3(9) of the Regulation of Political Associations and Parties Law (as amended) - Law No: 14 of 2000. This and the limit, under Article 9 of the Somaliland Constitution, of three in the number of political parties is aimed at avoiding the repeat of the Somali Republic 1969 National Assembly elections when the 123 seats were contested by 1002 candidates fielded by no less than 62 parties (many of them formed along sub clan lines) which fielded 1,002 candidates for only 123 parliamentary seats (see Lewis, I (1980) *A Modern History of Somalia*, Longman, London, at page 204). Shortly after the election, all but one of the successful candidates joined the ruling party SYL.

<sup>8</sup> Under Article 44(1) of the Constitution, the President shall convene the inaugural meeting of the House within 30 days of the declaration of the results by the Supreme Court, which took place on 1 November 2006.

Constitution) was to see if his party could make any inroads into the opposition agreement<sup>9</sup>.

### **The first constitutional crisis**

With these undercurrents in tow, the unexpected decision by the temporary chair of the inaugural meeting of the House to order the closure of the meeting and the mass exit of all his fellow UDUB Party members from the meeting hall triggered the first constitutional crisis. Under Article 44(3) of Constitution, the sole function of the temporary chairman, who is only picked because he is the oldest member of the House, is simply to see that the election of the Speaker is conducted, whereupon the Speaker takes over the chair and oversees the election of the Deputy Speakers and the rest of the meeting. The opposition members, on receiving legal advice, proceeded with the meeting by choosing the next<sup>10</sup> oldest member of the House and then conducted the election of the Speaker and, later, his deputies. Some saw the action of the UDUB temporary chairman as a partisan abuse of an honorary position accorded to him on the basis of Somaliland's traditional respect for an "oday" (a senior citizen), but the Minister of the Parliamentary Affairs accused the two opposition parties of turning the House of Parliament into "their party headquarters"<sup>11</sup> and the Government party, UDUB, promptly submitted a complaint to the Constitutional Court on 1 December 2005. The Court issued, on 2 December 2006, an interim injunction restraining the House from holding its planned second meeting on 3 December 2006. The opposition parties immediately questioned the legality of the court order.

### **Enter the Guurti**

ON 1 December 2006, a panel of 14 members of the Guurti led by their Speaker started talking to both sides and finally secured their agreement to act as mediators. As a goodwill gesture, the newly elected Speaker and his colleagues agreed to postpone the date of their next meeting, and UDUB agreed to withdraw its Supreme Court proceedings. On 5 December 2006, the Guurti mediation panel announced that they have brokered an agreement to the effect that the election of the Speaker and his

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<sup>9</sup> An UCID newly elected member from Sool Region, Said Mohamad Elmi, refused to accept the MOE with Kulmiye and expressed support for the government party contrary to the rules of UCID and had his membership of the party withdrawn formally on 20 November 2006. UCID then sought to stop him from being sworn in as a Representative and the Constitutional Court ruled on 28 November 2005 that the member has the right to be sworn into office. The decision did not examine the varied and complicated issues involved in this complex matter and leaves open the possibility that members once elected can, for all intents and purposes, support another party in practice even though the Somaliland Political Parties Law (14/2000) does not allow any members to cross the floor.

<sup>10</sup> The argument was that the first member chosen has disqualified himself by not following the procedure and refusing to undertake his single duty of overseeing the election of the Speaker. Although there was some unrest and shouting, this was caused by the decision to close the meeting and could not have been the reason for the decision. Indeed the member announced that the meeting shall be adjourned to another day, when there was no such motion for the House to decide.

<sup>11</sup> Press conference held by Minister Abdi Hassan Buni on 30 November 2006, reported in [www.Qaran.com](http://www.Qaran.com) on 1 December 2006.

Deputies will stand and that the “working relationship between the House and the Government must be one based on the public interest and should not be one which impairs the proper conduct of the affairs of the state”<sup>12</sup>. The Guurti determination also recommended that co-operative working relationship between the organs of the state (the Executive and the two Houses) must be strengthened.

In presidential systems of government, like Somaliland, separate control of the presidency and parliament is often a possibility, and, in the United States, for example, happens fairly often, as it has just done so in the last November 2006 Congress elections. This is all new though to the Somaliland President and his cabinet who until September 2005 enjoyed almost full control of both Houses<sup>13</sup>. One of the pre-requisites for a good working relationship between the various institutions of the state is an understanding of their respective powers and duties which are set out in the Constitution. Simple statements that the House (and the Elders), as the legislature make the law and the President (and the Executive) execute or implement the law are broadly correct but do not cover the complicated relationship between the two branches of the state. It is the checks and balances in the largely US style Somaliland Constitution which dictate that, in a period of cohabitation between a President of one party and a House of Representatives controlled by another party or coalition of parties, there has to be a degree of co-ordination and co-operation between the two sides for the machinery of government to work. This was exactly what the Guurti exhorted in their December 2005 determination, but the events took a different turn.

### **Confrontation and crises**

A series of incidents led to further confrontation. On 23 December 2006, there was an incident at Hargeisa Hospital when government forces intervened in a land dispute and a person was killed and others were injured at the hospital. A House Committee considered the incident and made recommendations to the Government, which, it was said, were ignored. Next, the budget process became acrimonious as, for the first time, the Government faced a House which was determined to fulfil its oversight duties properly. The budget was presented to the House in February 2006 (rather than in October of the previous year) and no Annual Accounts of the preceding year (or for that matter, the two years before that) were presented to the House, contrary to Article 55(6) of the Constitution which expressly states that such accounts be submitted within six months of the end of the financial year that they relate to. It was alleged that the Auditor General, who under Article 55(7) of the Constitution is expressly responsible for the presentation of the annual accounts, failed to appear before the appropriate committee (the Economy, Finance and Commerce Committee). The Committee visited the main customs and tax offices and made recommendations for changes in the budget

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<sup>12</sup> The full text of the Guurti determination was reported widely – see, for example, Haatuf, 7 December 2006.

<sup>13</sup> It was rumoured that the majority of the Guurti joined the Government UDUB party shortly after its creation by the last President, Mohamad I Egal, and the current Speaker was a prominent UDUB politician.

as they thought that the incomes from various sources were understated. In the end, the House agreed to approve the budget but added a rider increasing the salaries of public workers. The fact that the rider was disregarded for months by the Government was much resented by the House which has already come under considerable criticism for approving the budget, which according to its own analysis, was seriously deficient. In this tug of war, the Guurti had no role at all, as, under the Somaliland Constitution, all financial matters and bills fall within the exclusive powers of the Representatives.

Another area which only the Representatives deal with is the confirmation of presidential appointments<sup>14</sup>. Both the incumbent President and his predecessor failed now and again to submit their ministerial and other appointments for confirmation before the three month deadline set under Article 114(3) of the Constitution. To signify their displeasure with these late submissions, the Representatives returned on 5 June 2006 the submission by the President on 28 March 2006 of the appointments of seven ministers and deputy ministers for confirmation on the basis that all of them have already held office in an unconfirmed capacity longer than they should have done so. On 6 August 2006, the President made a number of changes to his cabinet including the appointment of six new ministers and a two new deputy ministers and the re-appointment of at least five ministers to different ministerial portfolios. The President submitted to the House eight of the new appointees and on 7 September 2006, the House confirmed their appointments. The House, is, however, still waiting for the submission of the re-appointments; its view is that whilst the President has a right to nominate a person to a specific ministerial office and the right to dismiss that person, and in both cases, without any permission for anyone else, he still requires the approval of the House for any such nomination to be confirmed even if the nominee held a different ministerial post previously. The President apparently disagrees with this view. In the 1960 Somali Republic mixed parliamentary/presidential system, the prime minister could reshuffle his cabinet and the Assembly's control was exercised through a vote of confidence for the whole cabinet whilst in Somaliland's presidential system the House exercises its power through confirmation of each and every ministerial appointment. So, yet again it is the perception and understanding of each other's powers under the Constitution which is leading to disagreements and the unusual refrain that the President was contravening the Constitution, or that the House is inexperienced<sup>15</sup> and partisan.

The patience of both sides was further taxed by a series of discussions and resolutions in the House relating to various issues such as the long standing complaints about the monopoly of importation of fuels by Total Mere Rouge, the alleged government involvement in the withdrawal of an NGO job offered to the wife of a prominent

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<sup>14</sup> The exceptions are the appointment of the Chairman of the Supreme Court which is confirmed at a joint meeting of both Houses and the appointment of the members of Ulema Council which is dealt with by the Guurti (see Articles 105(1) and 119 of the Constitution).

<sup>15</sup> Of the 82 newly elected members, only 13 served as members of the previous House.

opposition leader, the week long debate in the House from 15 to 23 May 2006 on the state of the nation, which dissected the failings of the Government and the unsuccessful attempt, in mid June, by 23 Government party (UDUB) House members and 7 UCID supporters to change the House Rules for unseating<sup>16</sup> the Speaker.

### **The second constitutional crisis**

On 6 May 2006, the Guurti considered a presidential decree extending their term of office for another 4 years up to October 2010 and promptly voted to endorse it. The President's decree had attached to it an advisory opinion from the Supreme Court (sitting as the Constitutional Court), which the President apparently sought secretly on 22 April 2006, and was given by the Court, in the same fashion, on 24 April 2006. The way this decision was made does not accord with exhortation of co-operation made by the Guurti in December 2005, and as term extensions have always proved very controversial in Somaliland, the Guurti practice in the past has been to consult as widely as possible. This sudden change in procedure was contrary to both the traditional "xeer" concept of avoiding undue departure from previous precedents and to the important principle in administrative law that public bodies are, on the whole, expected to act in accordance with the legitimate expectation of consultation and ways of acting in a particular situation which they, themselves, have set before. Above all, the Supreme Court's opinion and the Guurti decision totally disregarded the fact that the previous extensions of the Guurti term were actually effected through a one clause law passed by the House of Representatives, the Guurti and the President<sup>17</sup>.

The opposition parties announced that as they considered the Guurti term extension unlawful, they would not recognise the Guurti after the expiry of its term at the end of October 2006. The President, it was reported<sup>18</sup>, rejected an offer of conciliation in a meeting with prominent traditional leaders on 25 May 2006, and on 26 June 2006, four committees of the Guurti issued a statement that the term extension issue is not negotiable. The House of Representatives voted<sup>19</sup> formally on 13 June 2006 to reject the Guurti term extension and, in a press conference on the following day<sup>20</sup>, the Guurti Speaker described the House vote as mischief-making and aimed at creating public unrest. He added that the House had no right to debate the matter which has been concluded with the approval of the Constitutional Court.

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<sup>16</sup> Under Article 16 of the Standing Rules of the House, a motion to unseat the Speaker must be supported by a minimum of 27 members, must be put to the House for debate and voting within three days and must be passed by at least 55 of the 82 members.

<sup>17</sup> Clause 19 of the Guurti Law of 2003. For an explanation of the legal issues involved in this matter, see "A Term Extension Too far: Guurti Resolution is Unconstitutional and Unacceptable" Somaliland Forum position paper 9 May 2006, at [www.somalilandforum.org](http://www.somalilandforum.org) or [www.somalilandlaw.com](http://www.somalilandlaw.com).

<sup>18</sup> Wargeyska Geeska Afrika (Horn of Africa Newspaper) 27 May 2006.

<sup>19</sup> There were 43 members (and the Speaker) present when the vote was taken and 34 voted for the motion and 9 abstained.

<sup>20</sup> See, for example, the report of the press conference in [www.somaliland.org](http://www.somaliland.org) 24 June 2006.

By the end of their second session in July 2006, the House of Representatives indicated clearly their disapproval of the Guurti Indirect Election Bill and their preference for a system of direct elections<sup>21</sup> and circulated for wider discussion a bill mirroring their own election law. The debates on the bill were picked up at the start of the new session of the House in mid September 2006, and, after fairly acrimonious debates, the bill was passed by the House on a close vote of 35 for and 30 against (with 66 members and the speaker being present). Almost immediately, the Guurti rejected the Bill (on a vote of 68 for the rejection motion and none against) and added that it did so on a point of principle, which meant that under Article 78(5) of the Constitution, the Representatives will have to pass the bill again by a two thirds majority to get it through, failing which the bill will lapse. Among the reasons given for rejection, the Guurti relied on Article 62 of the Constitution relating to the inaugural meeting of the newly Guurti which, as stated therein, shall take place within 30 days of the date when their selection (xulasho) is completed. In contrast, the Representatives relied on the more relevant Article 57(1) dealing with election of the Guurti and which states that they will be “elected” in a manner to be determined by law. Here again is another constitutional dispute which still remains unresolved.

By the beginning of October 2006, the Guurti returned, unusually, three other bills - the Organisation of the Judiciary Bill, the District & Regions (Amendment) Bill, and the Care of Livestock Bill- to the Representatives in the summer. On 14 November 2006, the Representatives voted to return all three bills to the following session of the Guurti after having agreed to make only some minor changes. This now means<sup>22</sup> that even if the Guurti reject them again, the bills cannot be returned to the Representatives and must be forwarded to the President for his signature. The confrontation game was no longer just between the Representatives and the Government, thus sparking “conspiracy theories” that the Guurti term extension was done the way it was so as to bring about this outcome!

### **The Sheikh Concordat**

And yet, 31 October which marked the end of the Guurti term came and went without the predictions of unrest coming true. This was all because of the events in neighbouring Somalia and the decision by the Somaliland President on 10 October 2006 to call for the formation of a tri-partite committee with the sole task of undertaking “turxaan-bixin” between the Government, the Guurti and the Representatives. The Somaliland saying that “if we pull each other’s hands, we will only end up with tired arms” (*ijjiid oo aan ku jiido, waa gacmo-dalis*) was often quoted by all and sundry. The President, on his part, appointed 9 ministers led by the Minister for Parliamentary Affairs, Mr Abdi Hassan Buni; the Representatives appointed 13 members led by the

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<sup>21</sup> At some age the opposition parties were advocating selection of the new Guurti by the three parties on the basis of their current representation in the House of Representatives.

<sup>22</sup> See Article 78(1) (b). This shows that the Guurti has only a delaying power and can refer back a bill only once to the Representatives (except when they play the “point of principle” and two thirds majority rejection card in Article 78(5), as they have done in the case of their Election Bill).

Chairman of the Economy, Finance and Commerce Committee of the House, Mr Mohamed Haji Mohamoud Omer Hashi and the Guurti, 13 members, led by Mr Mohamoud Aw Muhumad. It was never made clear whether the Guurti term extension was being dealt with by this group or by another group which, it was rumoured, met in Hargeisa in October and may have reached a yet unannounced agreement on this main specific issue. By all accounts, however, the main impetus for exploring a settlement of this dispute was the external threat posed by the triumph of the Islamic Courts in Somalia and their avowed policy to re-constitute the Somali Republic and to pursue the irredentist dream of Greater Somalia, all under the control of their own brand of Islamic Courts.

On 16 November 2006, the first meeting of the special tri-partite conflict resolution meeting opened at the hill town of Sheikh. The agenda was agreed quickly and the Chairmen announced early on that they will be deliberating for up to a week at Sheikh. A bizarre allegation that two of the Guurti delegates sought financial inducements from the Berbera Mayor which was denied by the latter, did not derail the talks as the Guurti delegation asked both members to leave the meeting. On 21 November 2006, the Committee announced that an agreement has been reached on the first part of the talks and issued a formal Concordat agreed upon by all the delegates. Although the talks were carried out in a tri-partite fashion, the Concordat starts with the statement that the talks were essentially between the Government and the House of Representatives and that the Guurti were there as observers. Following the format of the traditional “turxaan-bixin” agreements, the Concordat does not reach any conclusions about the rights and wrongs of the disagreements nor does it apportion any blame. Instead it concentrates on commitments on future action. The main part of the Concordat reiterates the commitment on the part of both sides to follow strictly the provisions of the Constitution which set out their respective powers and duties of the three branches of the state – the Executive, the Legislature and the Judiciary. It exhorts everyone to work together in good faith and for the common good. Any resolution or action taken must be grounded on the relevant constitutional and legal provisions. Any disagreements will be settled in a co-operative manner without undue publicity. There should be access for all to the publicly owned media; no one should use his public office for private gain.

All of these commitments were based on clear legal provisions, the meaning of which was not in dispute, but as as the two sides could not agree on the limits of their respective powers in connection with the making and ratification of international agreements, they decided to refer to the Constitutional Court the issue of the full import of Article 90(6), which gives the President the power to sign “international agreements<sup>23</sup> (*and treaties*)” and Article 53(3) which states that:

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<sup>23</sup> The phrase used is “heshiisyada caalamiga ah” – international agreements. See also Article 53(3) which sets out the House of Representatives’ power to approve “heshiisyada dawliga” – Governmental agreements. The two Arabic based adjectives are likely to mean the same in most instances.



“The House of Representatives shall ratify governmental<sup>24</sup> (international) agreements (*treaties*) such as political, economic and security agreements or those agreements which impose new financial burdens which have not been covered in the Budget, or which will involve the promulgation or amendment of legislation.”

The reason why this issue is controversial is that the House has often accused the President and his predecessor of entering into agreements with international companies (such as the secret deal with Total Mere Rouche concerning the monopoly of importation of fuel concluded by President Egal) without reporting to parliament. Agreements between state organs and companies are unlikely to be classified as international agreements/treaties<sup>25</sup>, which require ratification, but the underlying issue is accountability to and oversight of government action by the elected parliament, especially when these agreements have a considerable impact on the budget and the finances of the state.

The second part of the Concordat states that the following action will be taken, and, where it is not clear, I have added the mischief that, in my view, is being addressed by the Concordat:

1. All semi-independent public bodies (or agencies)<sup>26</sup> created by the Government and not yet submitted to the Parliament shall be so submitted for approval. *This is likely to refer to bodies such as the Public Television, the Somaliland News Agency, the National Secret Service (Sirdoonka Qaranka) etc.*
2. The Government shall stop issuing Circulars (ministerial orders) which are in not in accord with the Constitution. *An example of this could be Ministerial Circular banning the importation and setting up of privately owned radio stations.*
3. The Government must submit the Annual Accounts.
4. The Government must respect the independence of the other branches of the state, such as the Houses of Parliament and the Judiciary.
5. All laws which have been passed should be published urgently.
6. The House Representatives shall, in line with the Constitution and the House Rules, consider bills in the order of their priority.

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<sup>24</sup> I have also added the word “treaties” in parenthesis because the Somali text uses the phrase “heshiisyada dawliga” which means literally “governmental agreements”, but can also be translated as “international agreements”. This Clause is aimed at bilateral or multilateral treaties of whatever nature and mirrors Article 67 of the 1960 Somalia Constitution headed “International Treaties” and which stated that the Assembly “shall authorise by law the ratification of political, military and commercial international treaties or treaties which involve a modification of the law or financial commitments not included in the budget.”

<sup>25</sup> See for example, the definition in Article 2 of the Vienna Convention on the Law of Treaties 1969.

<sup>26</sup> Article 113 of the Constitution states that special agencies state may be created, if deemed necessary, in accordance with the law. No such law has been passed yet but new agencies have been created by the President and presumably require budgetary allocation.

7. The House shall forward to the Government under Article 53(4) of the Constitution comments and suggestions about the general state of the nation and the Government shall give these due consideration.
8. Ministers who have been confirmed in post should have the oath of office administered to them in line with Article 94(3) of the Constitution.
9. The Government should present to the House, in line with Article 53(2) of the Constitution, its programme for action and the House shall accordingly approve it.
10. The Government shall ensure that the law concerning the Independent Press<sup>27</sup> shall be implemented.
11. The Regional Security Committees must follow the provisions of the Public Order Law 1963. *This Law which the Government prayed in aid when it allows these Regional & District Security Committees to detain people without recourse to the courts of law does not actually give such powers to them and these draconian powers are rooted in Siyad Barre security practices.*<sup>28</sup>
12. The Central Bank must be strengthened.
13. Action must be taken to improve the airport of the capital, which is the gateway to the country.

The “turxaan-bixin” exercise has not yet finished and the delegations returned to the capital city after a few days to move on to the second phase of the process. Since then they have held a number of meetings, but it has been reported<sup>29</sup> that some of the ministers left for trips abroad and the exercise may be losing its momentum.

### **Settling the Guurti term extension controversy**

Running parallel with the “turxaan-bixin” exercise was another bi-partite process (this time involving delegates of the two Houses only) looking at the Guurti term extension issue, which met in late October 2006. In contrast to the “turxaan-bixin”, these talks were and are still being conducted secretly, but the Somaliland press carried a number of articles<sup>30</sup> on 2 November 2006 where it was reported that the two sides may have reached an agreement. The opposition parties have already indicated, by this stage, that an extension of the Guurti term was a fait accompli, but were concerned about how the extension is effected, how long the term extension should be and, above all, how a binding commitment can be made to the effect that the next local elections in 2007 and the next presidential elections in 2008 will be held on time. A possible compromise which has been leaked was said to be that the extension of the Guurti term of up to 4

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<sup>27</sup> The Press Law (Law No: Law No: 27 of 2004).

<sup>28</sup> For an in-depth examination of these Public Order Law and the legalities of the activities of these Security Committees, see Jama, I H (2004) *Public Order Law in Somaliland: Learning the Lessons of Democracy*, available at: [http://www.somalilandlaw.com/Articles\\_Commentaries\\_/PUBLIC\\_ORDER\\_LAW\\_IN\\_SOMALILAND\\_Article.htm](http://www.somalilandlaw.com/Articles_Commentaries_/PUBLIC_ORDER_LAW_IN_SOMALILAND_Article.htm)

<sup>29</sup> See, for example, Codka Shacabka 17/12/2006 article reproduced in <http://www.somlilandfuture.com> .

<sup>30</sup> See, for example, Haatuf and Jamhuuriya of 2/11/2006.

years will be endorsed by a joint meeting of both Houses and that there will be a commitment by both Houses that all the forthcoming elections will take place on time.

This latter issue is important to the opposition parties because the President, in proposing the Guurti term extension, explicitly referred to in his decree<sup>31</sup> to the fact that the country has undergone a referendum and three elections since 2001 and added that “it was not possible to continue being involved in elections for 10 years”. In a democracy, where continuous elections are part of life, this has been read as a signal of election fatigue. The Guurti has no role under the Somaliland election law in the timing of the local elections, but the Constitution does give them power under Article 83(5) to extend the term of the President if, “because of security considerations”, the presidential election cannot be held. The Guurti has already used that Clause on 12 January 2002 when the 5 year term of President Egal which was to due to expire on 23 February 2002 was extended for one year. There were no security problems at that time, but as the political parties and elections laws were not yet fully place, there was, by the time the decision of an extension was made, a real fear of an interregnum. Again, as the Presidential election was to be held in April 2003, and the extended inherited term of office of President Rayaale was due to end in February 2003, the Guurti exercised its power under Article 83(5) on 18 January 2003 and extended the presidential term to 15 May 2003. The election laws are all in place now, although there is, as yet, no voter registration; Somaliland is in peace; foreign support and funding for elections is now much more readily available and barring any external aggression, there is no reason why all future elections should not take place on time. The stakes are a bit higher this time, also, because there are constitutional arguments that President Rayaale is not entitled to stand for another term as his first inherited short term could well count as one of the two maximum terms that he can hold<sup>32</sup> the office under Article 88(2) and 89(2) of the Constitution.

### **The lessons so far**

It is too early yet to assess whether the “turxaan-bixin” exercise will work and prove to be an alternative model of resolution of disputes between the branches of the state or whether the governance and constitutional issues concerned are so far removed from the traditional disputes between clans and communities in which this exercise has been deployed in Somaliland to good effect. Leaving aside the gloss put on all these issues by party politics, they are all fundamentally about the powers and duties of the Legislature and the Executive which are all set out in a poorly drafted Constitution. The single mechanism that the Somaliland Constitution offers for the resolution of these constitutional disputes is the Supreme Court sitting as the Constitutional Court. Yet in all these disputes, it was only the Government Party which sought the Court’s

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<sup>31</sup> See the preamble to the Presidential Decree dated 2 May 2006 which proposed the Guurti term extension.

<sup>32</sup> Article 88(2): “No person may hold the office of President for more than two terms.”. President Rayaale inherited the office, not as a caretaker, but as a President, under Article 89(2) on 3 May 2002 when President Egal died. He was then elected to the office nearly a year later.

intervention and not the House of Representatives or the two opposition parties, whose grievances far outnumber those of the Government. The numerous changes in the leadership and composition of the court, its failure to give detailed reasons for its controversial decision in the presidential elections and, above all, its highly controversial secret and, as widely accepted, incorrect advisory opinion to the President about the Guurti term extension unfortunately meant that opposition parties no longer felt that they could turn to the Court for adjudication<sup>33</sup>. In the event, the House and the opposition parties saw no point in formally asking the Court to review its advisory opinion. The fact remains, however, that some of the constitutional disagreements, as we have seen, often revolve around the interpretation of the specific legal provisions and are much suited to adjudication by a court which can issue definitive rulings. Such adjudication may well settle the issue once and for all, although if one side, specially the government, is hell bent on breaking the law, the Court can only do so much. Court decisions will also assist in the formulation of changes in the Constitution or laws and will help the Court itself in developing a body of constitutional jurisprudence.

In contrast, “turxaan-bixin”, like all traditional mediation efforts, takes great care not to comment on the rights or wrongs of the issues or of the disputes between two parties and its single aim is to arrive at a solution that is accepted by (even if it is not always acceptable to) both parties. Often these exercises are undertaken after the two sides have both committed hostile acts against each other, and the search is for a “win-win” solution that will not only put an end to the conflict, but will lessen drastically any chance of re-conflagration of violence or disputes after the global agreement has been reached. Whilst some political disputes may lend themselves to such an exercise, there is a danger of storing trouble for the future if other types of disputes are settled in this way. The Guurti determination on the House Inaugural incident was not dealing with the kind of issue which can be solved as being six of one and half of a dozen of another – there was a stark decision to be made about the validity of the 29 November election of the Speaker. The Guurti’s written determination did not shed any light on how the Government was convinced to accept the outcome, but there were mutterings by the Guurti at a press conference that it was the Government’s “turn to yield” - this time! In short, if in constitutional issues, the method of preferred settlement is seen to be one in which one yields when one’s turn comes up, this will encourage blatant breaches of the constitution or the law. The ultimate sanction for contravention of the Constitution by members of the Executive or the Legislature is impeachment, but even that is dependent on qualified majority decisions.

Not every “constitutional crisis” is based on an interpretation of the law and the dispute resolution mechanism offered by the Guurti, if agreeable to all sides, is very much a

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<sup>33</sup> The opposition parties have written publicly to the Court on various occasions over the last few years about the constitutionality of, for example, the government’s use of security committees, but were ignored by the Court, presumably because they have not issued proceedings properly,

Somaliland way of taking the heat out of issues that have the potential of creating wider public unrest. Constitutions have been likened<sup>34</sup>

“ to a sharp pencil of light which illuminate a limited area of a country’s political life before fading into a penumbra where the features are obscured – even if that surrounding darkness may conceal what are the most potent and significant elements of the political process”.

In Somaliland, foremost among these potent forces is the clan composition of the society and the need for some form consociational arrangements to ensure that all communities have a stake in the state, traditional “turxaan-bixin” conducted by the Guurti or other traditional leaders is therefore best suited to settle disputes in these aspects of the political process. The difficult questions are, however, how Somaliland can have a Guurti that not only acts, but is also seen as acting as an honest broker and, when and how it will be decided that a “turxaan-bixin” exercise or a traditional settlement of a dispute is the right option for the right dispute. Without these crucial “horses for courses” decisions the overuse of “turxaan-bixin” will stunt the growth of the Constitutional Court and other administrative law remedies, and may simply offer short term solutions for a nation that is committed, above everything else, to guarding its internal security and peace. In these circumstances, the nation will judge harshly any side which is seen as reneging from its commitment to settle disputes globally and to move forward. As 2006 comes to an end, the signs are that the current “turxaan-bixin” process is losing momentum, and is unlikely to lead to a global settlement; the business of government is far too complicated for such a holistic exercise, but there may well still be time for a unique Somaliland solution that can address some of the major issues facing the parliament and the President in these last 17 months of their co-habitation.

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<sup>34</sup> Finer S E et al (1995) *Comparing Constitutions*, Oxford University Press, page 2.