

**The Emergence of the New Somaliland Three National Parties**  
**Part one: The Election and the RAC Determination**  
**25 November 2012**  
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**(Part two: Election over - the three parties and floor crossing (to follow))**

## **Introduction**

1. Somaliland's laws relating the political parties and associations are found mainly in the new [2011 Regulations of the Political the Regulation of Political Associations and Parties Law](#) (Law No. 14/2000) and its amending law of the same year, which I shall refer to as the 2011 Law and in the two electoral laws ([2002 Law dealing with the presidential and local elections](#) – as amended five times since – and the [2005 Law](#) dealing with the House of Representatives election). There are also codes of practice<sup>1</sup> during elections negotiated by the National Electoral Commission (NEC) and instructions/codes issued by Registration of the Political Associations and Approval of National Parties Committee (the RAC). The Laws are grounded on and shaped by the constitutional limit on the maximum number of political parties set out in Article 9 of the Somaliland Constitution<sup>2</sup>. This unique constitutional requirement in a constitution committed to multi-party democracy and to the full range of fundamental human rights and freedoms, has shaped the Somaliland political parties and electoral laws. It explains the unique division of political organisations into 'political parties' which can number no more than three, at any time, and 'political associations' which, though equally protected by the rights and freedoms enshrined in the constitution<sup>3</sup> can only exercise them in full and in tandem with the political parties at specified periods<sup>4</sup>, now set in the 2011 Law, as being once every 10 years<sup>5</sup>. It also explains the various mechanisms which ensure that, with the exception of the permitted periods when political associations can come into play, the elected representatives at both local and national levels should only belong to one of the three national parties. Both these issues will now come to the fore at this last stage of the current 2012 nation-wide local elections to be held on 28 November 2012 which is contested by 5 new political associations and two of the current three national parties<sup>6</sup>. *In these two articles, I shall be covering, in the first one, the process of the determination of the winning three out of the seven political*

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<sup>1</sup> The latest Code is for [the 2012 local elections](#).

<sup>2</sup> Article 9:

'1. The political system of the Republic of Somaliland shall be based on peace, co-operation, democracy and plurality of political parties.

2. The number of political parties in the Republic of Somaliland shall not exceed three (3).

3. A special law shall determine the procedures for the formation of a political party, but it is unlawful for any political party to be based on regionalism or clanism.'

<sup>3</sup> Such as the right of association, the right of assembly, the right of expressions and the right to political participation in Articles 22, 23 and 32 of the Somaliland Constitution.

<sup>4</sup> For all practical purposes, the political associations which reach the final stage of contesting the local elections are acting as 'parties' and there were cogent arguments for ending formally the three parties' term as national parties when the new political associations are licensed to participate in the local elections and recognising them as political associations competing on a level ground with the other associations. After all, Article 9 only sets an upper numerical limit. The three existing parties were already very apprehensive about the opening up of the political space for newcomers when the legislation was being mooted and an early loss of 'party' designation before the outcome of the actual election would not have been welcomed.

<sup>5</sup> The 2011 now sets this period as starting, at the latest, six months before the nationwide elections, once every 10 years – Article 6(5) of the 2011 Law.

<sup>6</sup> The third national party, UDUB, which was the ruling party from 2003 to 2010 suffered internal disagreements since its defeat at the last presidential election in 2010 and despite various attempts to reinvigorate itself, it was not able to rally itself again in time for the submission of the candidates' lists.

*associations/parties that can be crowned as the new three national parties and, in the second one, the mechanisms to ensure that all the newly elected councillors and the current sitting elected members of the House of Representatives and the incumbent President and Vice-President belong to only one of the new three national parties.*

### **The November 2012 election as the final stage**

2. The 2012 nation-wide local elections to be held on 28 November 2012 will involve the election of local district councillors in 23<sup>7</sup> districts (the capital city and the districts<sup>8</sup> graded A to C<sup>9</sup>) which cover all the (pre 2007) six principal regions<sup>10</sup> of the country. The NEC oversees the conduct of all elections and the RAC has to wait for the formal declaration of all the results, in line with Article 63 of the 2001 Election Law, by the NEC. When the REC receives the formal nation-wide results, it can then undertake its duty of 'approving' the three contesting political associations/parties which will, henceforth, be recognised for the following ten years as the three national parties allowed under Article 9 of the Somaliland Constitution. The REC shall issue them a certificate of recognition<sup>11</sup>. In the 2002 local elections which were held on 15 December 2002 and were contested by only 6 political associations in a closed party list system in which the votes were cast only for the 6 associations, the provisional<sup>12</sup> results were announced by the NEC on 22 December and the then RAC announced their determination of the winning three associations on 23 December 2012. It is likely, however, that the results on the 2012 local elections will take longer to conclude

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<sup>7</sup> The districts graded D (which are now 59 in number!) were all formed out of the territory of the other districts A to C and have, as yet, not been formally approved by the Parliament and will not have their own elected representatives until their borders are delineated and they are assessed and approved by Parliament (Article 6 of the Regions & Districts Law – Law No 23/2002, as amended in 2007). Their residents will however still continue to vote in the 2012 nation-wide local elections for the A to C district they belonged to previously. The 2001 Law (Article 9(4 to 6)) also provides for the procedures to be followed in the parts of the far eastern districts where the polling may not take place in some or all of the polling stations in a district. In such cases, the seats will be apportioned on the basis of the proportions of votes gained by the associations/parties in areas where the polling does take place or, where polling is not possible in the whole district, on the basis of the proportions of votes cast in the region. NEC reports indicate that, with the exception of two districts, polling will take place in a larger number of polling stations in the far eastern districts than was the case in the 2001 local elections. The final results will therefore show the polling results for 21 of the 23 districts (source: NEC Spokesperson interview- VOA Somali Broadcast, 25/11/2012).

<sup>8</sup> A total of 1055 polling stations covering the whole country were originally planned (NEC Website: <http://www.necsomaliland.com/totalpolcenters.html> (accessed 07 November 2012), but the number has since been increased to more than 1700 polling stations with some polling stations sharing the same premises.

<sup>9</sup> The capital city is electing 25 councillors; Districts A - 27; Districts B – 21 and Districts C – 13.

<sup>10</sup> The seven new regions formed by Presidential decrees in 2007 (the initial 6 – Gabiley, Odweyne, Seel, Sarar, Buhodle, and Badhan, as well as the later seventh, Hawd) are disregarded, for electoral purposes, as confirmed in the relevant 2007 presidential decrees.

<sup>11</sup> Article 6(1) of the 2001 Law.

<sup>12</sup> The results are usually provisional because until all the outstanding legal challenges at the Regional courts and any Supreme Court cases are finalised. Briefly, under Article 59 and 60 of the 2001 Election Law, the count is undertaken at the polling stations and then the District Electoral Office (DEO), on undertaking its confirmations of the district polling, declares the district results. These are confirmed by the Regional Court Chairman who shall also deal with any claims which reach the court within 7 days of the announcement of the results by the DEO. The Court must reach decisions about these claims within 10 days of their receipt. Appeals directly to the Supreme Court (leap frogging the Appeals Courts) may be submitted within 2 days of the Regional Court's decision and the latter must forward any such appeals to the Supreme Court within 2 days. In turn, the Supreme Court must make a decision within 10 days. These deadlines are aimed at speeding up the decision making on any electoral challenges.

because of the fact that the electorate is larger<sup>13</sup> and also because the voting system has been changed<sup>14</sup> to an open list system and now involves the counting of the votes cast for the 2368 individual candidates<sup>15</sup>. As the electoral system is still based on proportional representation, each elector's single vote on a ballot counts for the candidate chosen and for his association/party and the NEC's tally of all the votes for each association/party serves to identify the proportion and number of seats<sup>16</sup> won by each association/party.

### **Article 6 of the 2011 Law**

3. The formula to be used for determining the three national parties is broadly similar to the one used in the 2002 local elections, but, as we shall see, is different in a very important aspect and is set out in Article 6(1) to 6(4) of the 2011 Law as follows:

#### Differentiating the parties/associations contesting the local elections

1. The three parties/associations which gain in the local government election 20% of all the votes cast in every region shall be recognised as national political parties, and shall each be issued with a certificate of recognition as a national party.
2. If only one party [*or association*<sup>17</sup>] succeeds in gaining 20% of the votes in every region, the Committee shall recognise as national political parties that party [*or association*] and the other two parties [*or associations*] which come next in the total percentage of votes cast for them in every region.
3. If the percentage of the regional votes cast for two or more associations [*or parties*] are equal, they shall be differentiated on the basis of the total number of votes cast for each of them.
4. If no political association [*or party*] gains 20% (*of the votes in every region*), the Committee shall recognise as national political parties the three parties [*or associations*] that have gained the highest percentage of votes cast in the regions of the country.

4. To reduce any post-election disagreements about the various provisions of this Article and foster an acceptance of the outcome, the RAC and the 7 associations/parties signed, on 9 October 2012, a Code of Conduct on the conditions for determining the three national parties (the Article 6 Code). (A copy of the Code, in Somali, is [available at this link](#)). Article 3 of the Code states that its purpose is to elucidate Article 6 of the Law and to re-affirm the competing political associations/parties' commitment to abide by the outcome of the RAC' determination which is based on the 2011 Law. Article 4 sets

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<sup>13</sup> The total votes in 2002 were 440,067. The total votes of following 2003 presidential elections were 4,88,639 and by 2010 presidential election, the recorded figure were 538,247. (source: various NEC election results announcements).

<sup>14</sup> Article 22 of the 2001 Presidential and Local Election Law (Law No. 20/2001).

<sup>15</sup> For example, the 25 seats at the Hargeysa, alone add up to 175 candidates. The total figure of 2368 candidates contesting 353 seats was given by the NEC Spokesperson on 25/11/2012 in a VOA (Somali) broadcast marking the end of the campaigning period for the election on 28 November 2012.

<sup>16</sup> Each Association /party's seats are then given to the candidates in accordance with the votes they have secured whilst in 2002 closed list system, the seats were allocated on the basis of their position in the Association's list of candidates.

<sup>17</sup> I have added "association" because it follows from clause 1 of this Article, and have done the same in respect of "party" in the following two clauses. The November 2012 local elections will be contested by both registered political associations and the current three national parties. This will not be the case in the following 2017 local elections as the new national parties "exclusive" licence will last for 10 years - see Article 4(3)(h), 5(3)(c) and Article 6(5) of this 2011 Law.

out the associations/parties' commitment to comply with the provisions of the Code and the 2011 Law; work with the RAC; prevent contraventions of the Law and abide by the outcome of the election and, if dissatisfied with the determination of the RAC, to mount a legal challenge at the appropriate court. As the RAC's decisions are administrative, in character, the relevant court for any such legal challenges relating to the determination under Article 6 is the Supreme Court<sup>18</sup>. The standard time limit for such legal actions is 30 days<sup>19</sup>, but in view of the fact that electoral claims are usually expedited by laws abridging the time limits so as to speed up the adjudication of the claims, it is hoped that the Supreme Court shall deal with any challenges expeditiously<sup>20</sup>.

### **Achieving 20% or more in every region**

5. Article 9 of the Code simply re-states the provisions of the four clauses of Article 6 of the 2011 Law, which are set out above. But it also explains the policy basis for these provisions as being that of ascertaining the three associations/parties that better represent all the regions of Somaliland by attracting the highest percentages of votes in each region. Therefore, the first step, as set out in clause 6(1), is determining the three associations/parties, if any, which gain 20% of all the votes cast in every region of the six principal pre 2007 regions<sup>21</sup> which shall be recognised as national political parties. There is no reason why even, at this first stage, the RAC should not produce the ranking/points table attached to the Code and explained below (para. 15) as even if only three associations/parties reach the 20% threshold, that table will show more clearly their ranking. Also, although it is not set out in this clause, if by chance, more than three associations/parties reach the 20%, then it stands to reason that the top ranking three in the sense of how far each of one of them has surpassed the threshold in every region shall be chosen. When necessary also, using more than the usual two decimal percentage points would reflect better in the ranking any narrow differences between two or more associations in their percentages within each region. Furthermore, in the highly unlikely situation where two or more associations/parties are vying for third and final place as they are tied in their overall ranking, then there are cogent arguments<sup>22</sup> for using the tie breaker in Article 6(3), i.e the total number of votes cast for each tied association/party (see below). Having said all of this, none of the six contesting political associations in the 2002 local elections reached the 20% threshold in all the six regions, and with seven associations/parties contesting the 2012 elections in the newly adopted open party list system, it is highly likely that there will not be three associations/parties reaching the 20% threshold.

### **One (or two) achieving 20% or more**

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<sup>18</sup> See Article 10(4)(c) of the Organisation of the Judiciary Law (law No. 24/2003 – the 60 Articles version). Incidentally, in the 49 Article version of the same Law, the same article numbered 9(4)(c).

<sup>19</sup> Article 18(1), Organisation of the Judiciary Law 2003 (the 60 Articles version).

<sup>20</sup> The Court has a general power to deal with cases, as appropriate, where there are no previously laid procedures. The 2011 Law does not set any time limits for such Supreme Court hearings, but the court may take note, as an example, of Article 62(4) 2001 Election Law dealing with appeals to the Supreme Court in respect of the local council election results, which must be concluded within 10 days.

<sup>21</sup> As compiled by the Commission after the declarations of the results in each district (of the 23 A to C districts) under Article 61 of the 2001 Election Law on the basis of the six pre 2007 principal regions (Awdal, Maroodijeex, Saahil, Togdher, Sool and Sanaag).

<sup>22</sup> Nothing in clause 3 confines its application only to the preceding clause 2

6. If only one association/party<sup>23</sup> succeeds in gaining 20% of the votes in every region, the RAC shall recognise as national political parties that party/association and the other two associations/parties which come next in the ‘total’ percentage of votes cast for them in every region – Article 6(2). Again, although it is not stated in the Law, the third party will, presumably by analogy<sup>24</sup>, be chosen in the same way if only two associations/parties reach the 20% threshold. The deciding factor in this second scenario is still the percentage of votes in every region and is a change from the similar provision in the 2000 Law which referred to “the number of votes cast in every region” for each association/party. The use of the word ‘total’ (isugeyn) in the text of this clause, however, does not mean in, my view, that the number of national votes in all the regions will be added up to produce a national percentage of the votes cast for each association/party as that would, in effect, reinstate the repealed provision in the 2000 Law. This also does not mean that the percentage in each region for each association/party shall be totalled up (see below the differences that would make). Indeed Article 10 of the Code makes it clear that ‘the methods for separating the associations/parties shall not utilise adding up percentages’. The ranking and points system in the Code (explained below) will equally be useful in determining the ranking of the associations/parties in this Article 6(2) scenario.

### **Parity of the percentages in all the regions**

7. Thirdly, under Article 6(3), if the percentage of the regional votes cast for two or more associations [or parties] are equal<sup>25</sup>, they shall be differentiated on the basis of the total number of votes cast for each of them. A tie is particularly relevant when it involves the top three places, and especially the last third place. The first question is, therefore, the definition of ‘equality of percentages of regional votes’ in the six regions i.e the parity situation when it can be said that there is a tie between two or more associations/parties’ percentages. It cannot be, in my view, only in the unusual circumstance when there are identical percentages in every region of the six regions that a tie arises, but it can and is more likely also to arise where having used the ranking in the Article 6 Code ranking and points system (see Table 6 below), two or more associations/parties achieve parity in their overall ranking based on their comparative positions (from 1 to 7) in each region. Where there is such parity between two or more associations/parties, the Article 6(3) tie breaker would give precedence to the one with the higher (or highest) total number of votes of the tied organisations. The Article 6 Code does not explicitly state this point, but this interpretation is in line with Article 6(3).

8. Again, although Article 6(3) does not state clearly whether it applies to both scenarios described in the preceding clauses 6(2) and 6(1), it remains the case that both clauses relate to the 20% threshold and there is a strong presumption that the legislature intended it to apply to both scenarios. Could the same assumption be made in respect of the clause 4 scenario which follows it? This is the only tie breaker formula in Article 6 and, other than importing a chance based tie breaker (such as sortition – drawing lots) which is not set out anywhere in this Law, there are cogent grounds for

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23 Article 6(2). I have added “association” because it follows from clause 1 of this Article, and have done the same in respect of “party” in the following two clauses. The forthcoming (2012) local elections will be contested by both registered political associations and the current three national parties. Unless the Law is amended in a few years’ time, this will not be the case in the following 2017 local elections as the new national parties’ “exclusive” licence will last for 10 years - see Article 4(3)(h), 5(3)(c) and Article 6(5) of the 2012 Law.

24 It will, no doubt, have been preferable if this was set out in this clause or, at least covered in the Code.

25 In my view, terms of both the number of regions and the decimal points.

arguing that the clause 6(3) tie breaker should also be applied to the final linked scenario described in clause 6(4) when such a similar parity of ranking arises, especially for the third position<sup>26</sup>.

### No one reaching the 20% threshold

9. Fourthly, under Article 6(4), if no political association/party gains 20% (of the votes in every region), the RAC shall recognise as national political parties the three associations/parties that have gained the highest percentage of votes cast in the (six) regions of the country. In the 2000 Law the comparable clause referred to the highest “total number” of votes in all the regions and not the highest “percentage” of votes in all the regions as this clause now states. It is therefore feasible that an association/party with higher percentages of votes in more regions may come ahead of another which has amassed a larger overall total number of votes concentrated in fewer regions. As stated above and in Article 9 of the Code, the rationale behind the percentage threshold in every region is to gauge the national support that an association/party has across all the six regions. A proper understanding of these issues on the part of the associations/parties and the public will minimise the chances of any disagreements over the outcomes. In this respect, the Article 6 Code has an annexure which sets out an illustration of an election outcome scenario where no association/party reaches the 20% threshold. Before I turn to that, however, it might be helpful to examine the outcomes of the 2002 elections, the actual application of the comparable but different provision of the 2000 Law and an illustration of the application of the 2012 provisions to the 2002 results so as to highlight the differences.

### The examples of the 2002 elections

10. The full 2002 Election results were as follows:

Table 1: Local council elections results by region and percentages

Political Assoc.	W/G Region	Sahil Region	Togdheer Region	Awdal Region	Sanaag Region	Sool Region	TOTAL	%
<b>UDUB</b>	70,989 38.087%	13,502 49.577%	18,330 27.523%	58,939 58.648%	16,574 31.215%	1,055 16.850%	179,389	40.76
<b>KULMIYE</b>	29,923 16.054%	5,309 19.494%	17,476 26.241%	13,679 13.611%	13,701 25.804%	3,070 49.033%	83,158	18.90
<b>UCID</b>	30,676 16.465%	2,900 10.648%	4,821 7.238%	7,422 7.385%	3,401 6.405%	224 3.577%	49,444	11.24
<b>SAHAN</b>	14,748 7.912%	2,054 7.542%	15,234 22.874%	4,499 4.476%	11,356 21.387%	51 0.814%	47,942	10.89
<b>Hormood</b>	29,104 15.615	1,188 4.362%	1,454 2.183%	7,229 7.193%	1,409 2.653%	154 2.459%	40,538	9.21
<b>ASAD</b>	10,943 5.71%	2,281 8.375%	9,283 13.938%	8,727 8.684%	6,655 12.533%	1,707 27.264%	39,596	9.00
<b>TOTAL</b>	186,383	27,234	66,598	100,495	53,096	6,261	440,067	100.00

(Source: CIIR – Very Much a Somaliland-run Election, 2003 – with percentages changed to 3 decimal points)

As none of the political associations reached the 20% threshold, the relevant clause (3(13)) in the 2000 Law which stated the three associations which garnered the highest number of votes in all the regions would be chosen was applied to give the lead to UDUB, Kulmiye and UCID, as shown in this table:

<sup>26</sup> An agreed reference to these tie breaker issues in the Article 6 Code would have been helpful but does not detract from the interpretation set out paragraphs 7 and 8 above.

Table 2: The Top three Associations based on their total number of votes

Association	Total Regional Votes	Percentage	No. of regions over 20%	No. of Seats Won Through balloting
UDUB	179,389	40.8	5 out of 6	102
KULMIYE	83,158	18.9	3 out of 6	67
UCID	49,444	11.2	0 out of 6	45
Nationwide Votes/seats	440,067	100	N/A	332 (contested)

(Based on: [Somaliland Local Elections 2002 – Final Report](#) of the EU/GTZ Technical Advisory Team Dec 2002)

11. Looking at both tables above, it can be seen UDUB reached the 20% threshold in 5 and Kulmiye in 3 regions, and just missed the region by a fraction. UCID did not reach that threshold level in any of the regions. Sahan which came fourth (out of the six associations) in the total number of votes (with 47,492 votes) reached the threshold in 2 regions (but came last in the total contested seats won<sup>27</sup>) and ASAD which came last of the six associations in total votes (39,596) reached the threshold in one region but gained more contested seats (53)<sup>28</sup> than each of the three associations (including UCID) which came ahead of it in their respective total votes.

12. Using a slight variant of the Article 6 Code ranking points formula<sup>29</sup> (see below), if we apply the 2011 Law “highest percentage” per region formula of a ‘Borda count’ type<sup>30</sup> ranking method of allocating 1 to 6 points to Table 1 (2002 election) six associations (6 points being awarded for the highest percentage ranking in each region and 1 for the lowest – the reverse of the Article 6 Code ranking), one can note, in table 3 below, that UDUB, for example having come 1<sup>st</sup> in 5 regions (30 points) and 3<sup>rd</sup> in one (4 points) gained overall 34 points which would put it on the top. In contrast, Hormood (and not ASAD) would come at the bottom because it came 4<sup>th</sup> in one 1 region (3 points), 5<sup>th</sup> in 2 regions (4 points) and 6<sup>th</sup> in 3 regions (3 points), which would give it a total of 10 points, and Sahan, with 14 points would be ahead in the 5<sup>th</sup> place. The same formula would give Kulmiye a total of 30 points, putting it second to UDUB. When it comes to third position, however, the percentage ranking would give both UCID and ASAD the same total of 19 points<sup>31</sup>. A tie breaker based on the total number of votes would give the third position to UCID, but despite the ‘total vote’ based tie breaker

27 The contested seats numbered 332 and the remaining 47 in the far eastern districts where the elections did not take place were distributed among the associations which submitted candidates in proportion to their other votes. Of these contested votes UDUB won 102, Kulmiye 67, ASAD 53, UCID 45, Hormood 37 and Sahan 28 –Source: [Somaliland Local Elections 2002 – Final Report](#) of the EU/GTZ Technical Advisory Team Dec 2002 (Note that there is a typing error in the Original table as the UDUB seats were incorrectly noted as 36, instead of 102, but the % of 27 of all the seats for UDUB was correct).

28 See the preceding footnote.

29 The Article 6 Code ranking points would give the 1<sup>st</sup> place 1 point and the last 6<sup>th</sup> place 6 points and the top three will be the ones which get the least total. The outcome is exactly the same if the ranking points are reversed 6 to 1 with the top ones getting the highest total points. I have just chosen the latter for the illustration as it is more intuitive for the higher points to be winners. I have added both in the Article 6 Code illustration form (see table 6).

30 Borda count Ranking systems are used for ranking candidates in order of the preference chosen by each voter in some preference voting systems, so that where a voter lists 3 candidates for one seat in the order of his choice of preference, as 1, 2, 3, the first choice is given 3 points, the 2nd, 2 points and the last 1 point.

31 UCID: 2nd once (5), 3rd once (4), 4th twice (6) and 5th twice (4): ASAD 2nd once (5), 3<sup>rd</sup> once (4), 4<sup>th</sup> three times (9) and 6<sup>th</sup> once (1).

coming into play, ASAD would still rank below UCID but ahead of Sahan and Hormood even though coming fourth is equally a ‘miss’ as the other last two places<sup>32</sup>.

Table 3: Ranking of the 2001 Election Six Associations with a “Borda Count” type ranking [Ranking: 1<sup>st</sup>: 6 points; 2<sup>nd</sup>: 5 points; 3<sup>rd</sup>: 4 points; 4<sup>th</sup>: 3 points; 5<sup>th</sup> : 2 points; 6<sup>nd</sup>: 1 point which, for this exercise, is the reverse ranking used in the Article 6 Code]

Assoc.	Hargeisa	Sahil	Togdher	Awdal	Sanag	Sool	Total Points
<b>UDUB</b>	1 <sup>st</sup> - 6	3 <sup>rd</sup> - 4	34				
<b>Kulmiye</b>	3 <sup>rd</sup> - 4	2 <sup>nd</sup> - 5	1 <sup>st</sup> - 6	30			
<b>UCID</b>	2 <sup>nd</sup> - 5	3 <sup>rd</sup> - 4	5 <sup>th</sup> - 2	4 <sup>th</sup> - 3	5 <sup>th</sup> - 2	4 <sup>th</sup> - 3	19
<b>ASAD</b>	6 <sup>th</sup> - 1	4 <sup>th</sup> - 3	4 <sup>th</sup> - 3	3 <sup>rd</sup> - 4	4 <sup>th</sup> - 3	2 <sup>nd</sup> - 5	19
<b>Sahan</b>	5 <sup>th</sup> - 2	5 <sup>th</sup> - 2	3 <sup>rd</sup> - 4	6 <sup>th</sup> - 1	3 <sup>rd</sup> - 4	6 <sup>th</sup> - 1	14
<b>Hormood</b>	4 <sup>th</sup> - 3	6 <sup>th</sup> - 1	6 <sup>th</sup> - 1	5 <sup>th</sup> - 2	6 <sup>th</sup> - 1	5 <sup>th</sup> - 2	10

Tie breaker: The total number of votes, as suggested in Article 6(3) would give UCID the third position.

13. Adding the percentages of votes of each association was not acceptable under the 2000 Law and is not acceptable either under the 2011 Law. As illustrated by a press article, published in *Haatuf* in 2003, adding the percentages would have brought out a different outcome as it would have put both ASAD and Sahan ahead of UCID. This does not reflect the correct ranking of the associations in each region. In any case, as stated above, in the 2000 Law, the percentages, at this stage, were superseded by the highest number of votes for each Association.

Table 4: Adding the Percentages was unacceptable in the 2000 Law (and the 2011 Law)

Region	ASAD	Hormood	Kulmiye	Sahan	UCID	UDUB
<b>Hargeysa</b>	5.87%	15.6%	16.05%	7.91%	16.45%	38.08%
<b>Awdal</b>	8.68%	7.19%	13.61%	4.47%	7.38%	58.64%
<b>Saaxil</b>	8.37%	4.36%	19.49%	7.54%	10.64%	49.57%
<b>Togdheer</b>	13.93%	2.18%	26.24%	22.87%	7.23%	27.52%
<b>Sanaag</b>	12.53%	2.65%	25.80%	21.38%	6.40%	31.21%
<b>Sool</b>	27.6%	2.45%	49.03%	0.81%	3.57%	16.85%
<b>Total</b>	<b>76.64%</b>	<b>34.43%</b>	<b>150.22%</b>	<b>64.98%</b>	<b>51.67%</b>	<b>221.87%</b>

(Source: *Haatuf*, Issue 232, (online edition) 25 December 2002: <http://haatuf.net/Archive2002/00023200.htm#top> , accessed 06 November 2012))

### The Article 6 Code (2012) Illustration

14. The Article 6 Code contains annexure which is an illustrated table (Table 5) setting out hypothetical election outcomes for seven associations/parties (A to G) and another table setting out the ranking system based on the percentage votes in each region.

<sup>32</sup> Currently, as the state of the law stands, ‘a miss is as good as a mile’, but having seen the demise of one of the last 3 national political parties, albeit at a politically turbulent period, it could well be that if in the next 5 years and specially before all the national elections are held one of the new three parties implodes or dissolves, then one option of bringing in a new party may be to change the Law and allow the 4<sup>th</sup> place association/party to contest the remaining national elections. There will be no point in doing that, however, if there are no more national elections left to be held before the 2022 local elections.

Table 5: Annexure to the Code on Article 6: Illustration based on hypothetical Results

Region	A	B	C	D	E	F	G	Total
<b>Awdal</b>	16,242 19.40%	4,566 5.45%	5,322 6.36%	9,796 11.70%	21,252 25.39%	3,945 4.71%	22,589 26.98%	83,706
<b>Maroodi-jeex</b>	53,606 22.26%	13,816 5.74%	27,717 11.51%	36,771 15.27%	37,399 15.53%	21,748 9.03%	49,767 20.67%	240,824
<b>Saaxil</b>	4,832 16.17%	9,125 30.53%	5,443 18.21%	2,979 9.79%	3,011 10.07%	1,576 5.27%	2,924 9.78%	29,890
<b>Togdheer</b>	21,198 18.65%	14,149 12.45%	13,004 11.44%	23,140 20.35%	11,952 10.51%	15,768 13.87%	14,481 12.74%	113,692
<b>Sool</b>	1,800 8.46%	7,668 36.06%	1,151 5.41%	684 3.22%	6,362 29.91%	380 1.79%	3,222 15.15%	21,267
<b>Sanaag</b>	11,388 18.86%	14,754 24.44%	14,316 23.71%	5,540 9.18%	5,513 9.13%	3,900 6.46%	4,956 8.21%	60,367
<b>Total Votes</b>	<b>109,066</b>	<b>64,078</b>	<b>66,953</b>	<b>78,910</b>	<b>85,489</b>	<b>47,317</b>	<b>97,939</b>	<b>549,746</b>

(Source: Annexure to Article 6 Code signed by all the 7 associations/parties and the RAC)

15. In this Code illustration, no party/association reaches the 20% threshold in all the six regions. E and G each did that in two regions only. We are therefore looking at a scenario that falls within Article 6(4) of the 2011 Law where the RAC has to ascertain the three associations/parties that have gained the highest percentage of votes cast in all the regions of the country. As mentioned above, the Article 6 Code adopts a 'Borda count' type ranking of the positions of each of the 7 associations/parties between 1 to 7. The form below is similar **but not the same** as the ranking form in the Article 6 Code. The difference is that the RAC Code form uses the ranking [R] as the points [P], as well, so that coming 1<sup>st</sup> is 1 point and 7<sup>th</sup> is 7 points (see the [R] columns below). This means that the top three will be the ones that have the lowest total points. The results are the same, but I have added a second column and an explanatory note which give the association/party coming first out of the seven, 7 points; and the last, 1 point and so the ones with highest points are the winner/s. This is a bit more intuitive, but it comes up with the same result as that used by the RAC in the Code. The points system simply gives a better picture of the ranking of the percentages in every region and highlights better the national support for each association/party in proportion to the votes cast in each region.

Table 6: Ranking and points – modified Article 6 Code table

Ranking based on percentages (%) gained at every region and <b>points</b> for each Association Party		Associations/Parties															
		Regions		A		B		C		D		E		F		G	
		R	P	R	P	R	P	R	P	R	P	R	P	R	P		
<b>Ranking [R]</b>	<b>Points [P]</b>	<b>Awdal</b>	3	5	6	2	5	3	4	4	2	6	7	1	1	7	
		<b>Maroodijeex</b>	1	7	7	1	5	3	4	4	3	5	6	2	2	6	
1 <sup>st</sup>	7	<b>Saaxil</b>	3	5	1	7	2	6	5	3	4	4	7	1	6	2	
2 <sup>nd</sup>	6	<b>Togdheer</b>	2	6	5	3	6	2	1	7	7	1	3	5	4	4	
3 <sup>rd</sup>	5	<b>Sool</b>	4	4	1	7	5	3	6	2	2	6	7	1	3	5	
4 <sup>th</sup>	4	<b>Sanaag</b>	3	5	1	7	2	6	4	4	5	3	7	1	6	2	
5 <sup>th</sup>	3	<b>Total points</b>	16	32	21	27	25	23	24	24	23	25	37	11	22	26	
6 <sup>th</sup>	2	<b>Successful 3 Parties</b>	<b>1st</b>		<b>2nd</b>										<b>3rd</b>		
7 <sup>th</sup>	1																

[Note: The RAC Code uses only the first column headed R and so the winning three have 16, 21 and 22 points totals which are the lowest three.]

The Ranking/Points show that **A** comes top, followed by **B** and then **G**. Both **E** and **C** gained more total votes than **B**, but the latter came top in ranking in 3 regions, albeit the three regions with the lowest total number of votes. Again it is this ranking that also puts **B** before **G** which received over 50% more total votes than **B**. This may be difficult to grasp in situations where supporters of associations/parties expect the higher total votes to bring favourable results not only in seats gained but also in this process of the emergence of the three new national parties. By adopting and publicising the Code, the RAC has done some work in explaining the ranking process, but how far this has been successful remains to be seen.

16. One final point on the ranking. Where the total votes received by two associations/parties in a region are extremely close, the use of more decimal points than the usual two should, in my view, ensure that any small numerical difference is reflected in the percentages and hence in the ranking. Secondly, as discussed above (para. 8) and not mentioned clearly, in the Code, where there is a tie in the final ranking for the third and final place between two or more associations/parties, then resort may be had to the total number of votes, as set out in Article 6(3), as this will avoid using 'sortition' - drawing lots- which is not in the law but would be the only other tie breaking option. For example, in Table 5 above, one ranking point separated **G**, the third party, from **E** and with slightly different percentages in different regions, they could have ended up with the same ranking in which case, having confirmed that they both achieved the percentages in all the regions to signify wide regional support, separating them by the total number of votes does not undermine the underlying principle of Article 6.

### **Concluding remarks**

17. A few concluding remarks:

- a) The RAC is to be commended for drafting the Article Code and publicising it. It will be worthwhile addressing also the parity scenarios and the relevant tie breakers with the associations/parties.
- b) The RAC should prepare detailed and reasoned explanations and tables before announcing the determination relating to three parties and provide full written and verbal feedback to every association/party. The NEC provisional results would be available to all the associations/parties anyway and full RAC explanations before announcements would head off any misunderstanding.
- c) Associations/parties may pursue legal action relating to aspects of the outcome of the election under Article 62 of the 2001 Election Law. The REC should, even when the provisional results come out consider whether any outstanding legal claims may affect their Article 6 determination. There is no time limit set by Law for the RAC to announce its determination and whilst such announcement should be not be delayed unduly, regard must be had to any on-going claims and if they are unlikely to make any difference to the determination, that should be specifically mentioned in the written decision/s.
- d) The Supreme Court would, it is hoped, issue a timetable for dealing with expedited Article 62 electoral appeals from the Regional Courts and with any possible appeals, if any, against the RAC determination.
- e) Associations/parties have already committed themselves to accepting the outcomes of the electoral process and the Article 6 determination. Such positive attitude in our fifth nation-wide election reflects well on their leaders and members.

**(Part two: Election over - the three parties and floor Crossing – to follow)**

For more information about the 2011 Political Parties Law and the 2001 Election Law (as amended) see the following webpages:

[Somaliland Political Parties Law](#)

[Somaliland Electoral Laws](#)

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