

## African Governments: Can the continent have a free and fair Election?

By Dr.Ali Abdullahi M Barkhadle 1<sup>st</sup> January, 2011

In 2011, there is going to be five Elections in Africa one being a referendum in South Sudan that is most likely going to become the 54<sup>th</sup> state in Africa and the world's 193<sup>rd</sup> State. Nigeria, Egypt, DR Congo, and Malawi are all going to the polls but most leaders want to be still in power by force or through proxy. Ivory Coast leaders are in the middle of a power struggle between Laurent Gbagbo, the president who lost the election but refuses to leave office, and Alassane Ouattara, the opposition leader who won the official count.

In the 2007 Kenyan elections it was a contest of serious power struggle between President Mwai Kibaki and his challenger Raila Odinga. I was an observer in those elections and there were many shadowy players in that election and the then President Mwai Kibaki and his party saw a way of holding onto power as the only means of saving Kenya from a civil war. The opposition with the help of many foreign countries saw power slipping away from them when their numbers did not add up properly. The opposition walked away in protest and claimed that the elections were rigged a mini-civil war ensued that was cooled down when many leaders from the African continent came to the rescue of Kenya. A government of national unity was created that consisted of both the opposition and the ruling party. A dual polar power bases was created by the Kofi Annan team to satisfy the leaders but in reality government operations were paralyzed and a bloated government ensues up to today. The Kenyan people and leaders learnt a big lesson from that crisis and I hope in 2012 the same division is not created by the leaders in the quest of garnering more power.

Puntland state was created in 1998 when the people of Puntland came together in a large gathering that took close to three months to finalizing a draft constitution. That constitution which involved the people, elders, and leaders was accepted as the blue print for a government of Puntland. The constitution created the three tiers of government in article 42 mainly the Parliament, Judiciary and Executive and further stipulated that '...The President shall be elected by the parliament and the tenure of Presidency shall not be more than three years.'

President Abdullahi Yusuf created the first constitutional crisis when he refused to go to elections in 2001 and opted for an extension of one more year, that act was unconstitutional, undesirable and flagrant from both the then leaders. Parliament was sidestepped and a constitutional crisis erupted. I was one of the leaders who was involved in saving Puntland from the abyss – I suggested that both Abdullahi Yusuf and Jama Ali Jama should be thrown out by the people and the elders. The Puntland Peace Mission (PPM) was created by the leaders, intellectuals and the European Union. The committee that was created included Abdirahman Farole who was vehemently against the extension of Abdullahi Yusuf's tenure. Today, it is tragic that it is him who is advocating for an extension.

In 2004, the Adde Muse administration also opted for an extension of one more year this time using a compromised parliament who were corrupted with money from shadowy oil companies. The people of Puntland just kept quite and did not challenge that unconstitutional mantra.

On December 25<sup>th</sup> 2010 we heard and seen that the Farole administration has also done the same political manipulations his predecessors have done by opting for an extension of one more year to his rule. If we go by the Puntland constitution of 1998 the Farole administration comes to an end before December 2011.

A question begs! How can a constitution be amended and what is the role of the people in that amendment process? In the case of Puntland was the first amendment that stipulated the

extension of the duration of the Presidency to four years legal and valid? And also does that mean the recent Farole amendments are also illegal?

I will try to answer some of the questions here and my learned legal experts will agree with me that constitutions are legal documents that require minimal changes and in the case of the first Puntland constitution the only presumed amendment in 2004 was unconstitutional and illegal since it did not pass into a referendum what the parliament proposed.

In the case of the United States:

'When an amendment to the constitution is proposed, it must be passed by both houses of the legislature by a two thirds majority. Then it goes on to be passed by the legislatures or conventions of the states where it must have a 3/4 majority. This is the first method. The second method is to get 2/3 of the legislatures of the states to call for a constitutional convention at which one or more amendments are proposed. If passed any and all amendments from this convention would then have to be passed by 3/4 of the state legislatures or conventions again. This method has only been used to repeal the 18th amendment (prohibition).'

In the case of Puntland that requires both the approval of the Parliament and the 'Elders' which the Farole administration has not done if the people's referendum is circumvented.

If we go back to the original constitution of Puntland that was of a 'Rigid' nature any amendments will have triggered a referendum which was not done in 2004 by the Adde administration and currently by the Farole Administration.

Further means and case studies on analysing how a constitution might be amended follows:

'A **constitutional amendment** is a change to the constitution of a nation or a state. In jurisdictions with "rigid" or "entrenched" constitutions, amendments do require a special procedure different from that used for enacting ordinary laws.

In some states a decision to submit an amendment to the electorate must first be taken by the legislature. In others a constitutional referendum may be triggered by a **citizen's initiative**. The constitutions of the **Republic of Ireland, Denmark, Japan and Australia** are amended by means of a referendum first proposed by parliament. The constitutions of **Switzerland** and of several states in the **United States** may be amended through the process of popular initiative (means in some jurisdictions you need the signatures of as few as 100 to a 1000 people to the **initiative** also known as **popular** or **citizen's initiative** provides a means by which a petition signed by a certain minimum number of registered voters can force a public vote (**plebiscite**) on a proposed statute, **constitutional amendment**, charter amendment or ordinance, or, in its minimal form, to simply oblige the executive or legislative bodies to consider the subject by submitting it to the order of the day. It is a form of **direct democracy**).

Some jurisdictions require that an amendment be approved by the legislature on two separate occasions during two separate but consecutive terms, with a general election in the interim. Under some of these constitutions there must be dissolution of the legislature and an immediate

general election on the occasion that an amendment is adopted for the first time. Examples include the constitutions of **Iceland, Denmark, the Netherlands, Norway and Sweden**. This method is also common in subnational entities, such as the US states of Wisconsin, Iowa, and Vermont.

The Puntland Constitution of 1998 further stipulates that three months before the forthcoming elections an election committee should be in place to manage the affairs of elections. In the case of the 2008-2009 elections power was smoothly transferred to the elders and a committee of seven election commissioners who were elected by the then government (four nominees) and the Presidential candidates (three nominees) who gathered in the 2008/9 elections. A Military General with close to a thousand troops was proposed by the elders to secure the Capital for elections and that was the way we had a smooth transfer of power in 2009 from the Adde Administration to the Farole Administration.

I appeal to all Puntland leaders, intellectuals, elders, and civil society to hold a major gathering similar to the one that created Puntland in **December 2011** so that a **FULL WORKING CONSTITUTION** and a new government might be created. I would also suggest that this issue be given to **neutral international legal experts** to deliberate on the current Puntland constitutional crisis.

Finally and further learning from the above case studies on elections and constitutional amendments in my humble view as one of the founding fathers of Puntland we require caution on procedural matters pertaining to constitutional amendments. In the case of Puntland which is considered to be a non recognized regional state in a poor African country any amendments to the constitution should require the approval of the **parliament, elders, and people of Puntland** in a referendum before a doggy piece of document can be called a constitution or else a situation of chaos similar to the one in Mogadishu might crop-up in Puntland.

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