

**THE POISONED, PUTRID POLITY OF SOMALIA**  
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**Nov 26, 2014**

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**Introduction**

President Hassan Sheikh Mahmoud, unlike any of his predecessors, was an unknown quantity when he was elected by the Somali Parliament on September 16, 2012; he had been unknown even to the great majority of those members who voted for him. There were many candidates, but, being the highest bidder, he defeated the incumbent Sheikh Sharif Sheikh Ahmed in the final round of an election characterized by vote buying. Many highly qualified and deserving candidates fared so poorly that they could not make it beyond the first round because they were either averse to buying the necessary votes, as a matter of principle, or were merely impecunious by comparison to the two finalists – the incumbent and the man who defeated him.



Politics has been defined, *inter alia*, as a ‘Marketplace where resources are exchanged for support’. But does that really mean that parliamentary votes have to be bought with cash and that such political corruption is a necessary and defining ingredient of politics? The late President Reagan had said that politics was the second oldest profession and that it bore strong resemblance to the oldest. The electoral process is generally expensive and money is spent on campaigns and campaign literature, advertisements, invitations, rallies and so on. But we have to draw a line between what is legitimate expenditure and what is not.

In a way, President Hassan was merely following the footsteps of his immediate as well as distant predecessors in buying parliamentary votes in order to be ‘elected’ to the highest office in the land. But, what does this mean for democracy, clean administration, stable government and, above all, peace and security?

## Lessons from The Past

Somali democracy breathed its last when all the MPs representing the opposition parties (about sixty of them) joined the ruling SYL immediately after that fraudulent general election of 1969, and Somalia became, in effect, a one-party state, with Abdirazak Haji Hussein as the solitary MP in opposition. Money – and illicit money at that - played a decisive, destructive part. Following the assassination and internment of President Sharmarke in October 1969 the Government of Prime Minister Egal was, on the eve of the military takeover, openly distributing large amounts of money – unashamedly, and in full view of an indifferent public – to the members of Parliament so that these latter would ‘elect’ the Government candidate in the morning by acclamation. But, ‘Man proposes and God disposes’; for little did they know that in the wee hours of the morning they would be rounded up by the Military and whisked off to heavily-guarded detention centers in which they would languish for many years. The vote rigging in the general election in March, the assassination of the President of the Republic in October, and the military coup of that same month, all happened in that fateful year of 1969 which ushered in a long and dictatorial rule of the gun – a gun leading to many guns, and deaths, and devastations, and the disappearance of the State itself for two decades and more.



Prior to all this, a bitter conflict between President Aden Abdulle Osman and Prime Minister Abdirashid Ali Shermarke divided the ruling party (SYL) into two implacably hostile camps with, as we shall see, far-reaching and destructive consequences. That conflict, however, had nothing to do with corruption or clan politics, but everything to do with the military agreement with the USSR. The Agreement was signed by the then Speaker of Parliament (Jama Abullahi Ghalib), in his capacity as Acting President, *in lieu* of the substantive President (Aden Abdulle) who was out of the country in Rome at the time. Aden was deeply hurt and consequently lost trust in Abdirashid. But, unlike Hassan, he did not dismiss him; he just waited, and when the occasion arose after the general election of 1964 to appoint a prime minister (which was required of him by the Constitution) he simply appointed Abdirazak Haji Hussein against all expectations and advice to return Abdirashid to his post as Prime Minister. Abdirashid, being highly popular after the war with Ethiopia at that time and enjoying the confidence of SYL and the Parliament, did not expect to be dropped. Space does not allow me to go into the details of the unfortunate ramifications of that development and how

Abdirashid was treated. Suffice it to say, however, Abdirashid defeated Aden in the 1967 presidential election. But, his group proved to be vindictive by rigging the general election of 1969 and using foul means to deny parliamentary seats to the other group (now Abdirazak's group). Aden was, however, treated with respect.

It is a matter of historical record that, President Aden, unlike President Hassan, was well aware of his being a ceremonial president and as such he desisted from interfering in the cabinet or parliament or the judiciary. Under the constitution of 1960 the President had the power to appoint and dismiss the prime minister (Article 78.3) as he had also the power to dissolve Parliament. However, such powers were merely ceremonial and could be exercised only after due process of advice and recommendations, or, routinely, when the mandate of Parliament or Government expired and elections were called for. To emphasize the ceremonial nature of his functions it was stated in Article 76.1: *“The president of the republic shall not be responsible for acts performed in the exercise of his functions, except for crimes of high treason, or attempts against the constitutional order, as provided by law”* (Italics mine). Who then was responsible for his functions? The next Article (76.2) made it clear, for it stated that *“The responsibility for acts of the president shall rest with the prime minister and the competent ministers who subscribe to them”*. (Italics mine).

Political leaders need to learn from history and to remember that the first conflict between the President and Prime Minister was the first to sow the seeds of the aggravated discord that progressively led to the final destruction of the Somali State. I doubt whether the current political players who are quarrelling in Mogadishu have any sense of such history as many of them, including President Hassan, were too young at the time to understand what was going; I daresay they do not understand now that they are making history repeat itself.

## **The Present**

The Independence Constitution was made for the parliamentary, unitary state that Somalia was. The current constitution, which is still in draft, is for the federal, but nevertheless parliamentary state, which Somalia has become. The draft Constitution is followed when convenient and flouted when convenient. It is something that is present and absent at the same time. Whenever departures from the Constitution are challenged, lame excuses are put forward as to why the Constitution is not, in its draft, contradictory form, a living document as yet. We have been told for a long time that finishing touches, such as weeding out the

contradictions, still remain and that the Constitution will only then be put to a popular referendum and go into full effect, if ratified. None the less, references are often made to its provisions, every now and then, as it supposed to be binding.

We may then ask ourselves whether it is too early, if the Constitution is in such limbo, we can talk about ‘Constitutionalism’ and the ‘Rule of Law’, particularly when the judiciary has not been properly established. Much work needs to be done and much time is wasted on cheap politics. Of course one might say ‘Rome was not built in a day’ and that rebuilding the institutional infrastructure for a constitutional democracy from scratch is by its nature, slow and painful owing to the politics involved. But, in this day and age of speed a great deal of institution building could have been accomplished. An undue proportion of the blame for failure is assigned to the security situation in Mogadishu which is disruptive – even life threatening – which discourages many MPs from taking up residence in the city; in fact, most of those who do are in hotels and often keep personal bodyguards.

The draft Constitution provides for a ceremonial president. But when President Hassan, a native of the city, bought the presidency of the republic from Parliament he did not do so for the pleasure of just sitting in Villa Somalia, signing routine papers and conducting the formalities pertaining to the office. Yes, he likes the pomp and ceremony of the office like anyone else would, but he bought the office to exercise substantial executive powers. And when he did so, he knew that he was dealing with a venal Parliament which, would more likely than not, dance to his tunes as long as he was willing to pay.

He appointed Abdi Farah Shirdon (Saacid), his own personal choice, as Prime Minister and told Parliament to approve him. Parliament went along. A year later he asked him to resign for reasons best known to him. It was a big surprise because Saacid had surrendered his functions to him, and the President was acting as an executive president who was choosing his own cabinet and dictating policy. Saacid categorically refused to go, arguing that only Parliament could dismiss his government by denying it the vote of confidence. At the behest of President Hassan Parliament voted out the Government. This was remarkable in two respects: first, there was no debate on the performance record of the Government; and secondly, the Prime Minister’s request to be heard was flatly rejected and in so doing Parliament ignored the most elementary principle of justice, *audi alteram partem* (listen to the other side too). It is an open secret that those who voted against the PM had been bought out. PM Shirdon stayed in office from October 6,

2012 to December 5, 2013 (a year and two months) and he moved on, having heard the verdict of the Kangaroo court that passed for a parliament.

In his place President Hassan appointed Abdilweli Sheikh Ahmed on December 12, 2013, and he went to Parliament in person, strongly recommending his approval; Parliament obliged. However, the President asked him to resign last month (October, 2014) and, like his predecessor, he refused to go and is still adamant in his refusal to resign.

Again the President and PM are locked in a bitter conflict which divided Parliament and the Government (Council of Ministers). The watchful International Community, the UN as well as the neighboring countries could not idly stand by and there was a flurry of activities aimed at reconciliation. All these activities came to naught because President Hassan was intransigent and kept reiterating that he could not work with Prime Minister Abdilweli, being confident that Parliament would dismiss him. Parliament is divided and stalemated between those who support the President and those who support the PM. But, it is no small consolation that the division is not along clan lines.

I think reconciliation or mediation, if you like, is out of place because the conflict between the President and the Prime Minister raises fundamental constitutional questions concerning the need to uphold the rule of law and ensure the supremacy of the law, instead of supporting the personal rule of a president whoever he or she may be. But, how can the law be held to be supreme if members of Parliament are treating their votes as a commodity to be sold and bought with cash? How will corruption be fought if it is the Head of State who is buying the votes and corrupting Parliament?

In the interest of good governance there should be legal and constitutional means to resolve matters relating to the management of State affairs. President Hassan told those offering to mediate that they should give time for the 'institutions of the State' (by which he meant Parliament) to resolve the matter. He would have been right if Parliament was above corruption. If it was, and had sent a message to the President last time by refusing his request to sack Saacid, the country would have been saved from the dispute currently paralyzing its administration. Recourse could also have been made to the Constitutional Court, had it been established. Mediation will not only be a slap on the relevant State institutions, but will also sweep serious constitutional problems under the carpet where they will accumulate over time, only to resurface later with greater ferocity.

PM Abdilweli is constitutionally on a firm and sure ground because the Constitution clearly states that, the Prime Minister is, *inter alia*, the “Head of the Federal Government” (Article 100a), and that as such it is his duty to “Appoint and dismiss members of the Council of Ministers” (Article 100b). As if to underscore this and provide further clarity, Article 90(e) states that the President’s job is, among other things, to: “Dismiss ministers, state ministers and deputy ministers *on the recommendations of the Prime Minister*” (Italics mine).

I have never heard President Hassan contest this. What really precipitated the crisis, as is commonly known, is his anger about and vehement opposition to the reshuffle made by the Prime Minister on October 25, 2014 because it touched ministers personally very close to him. His reaction was not only un-presidential, but also malevolent. For he did not only annul the reshuffle in public, but he went so far as to instruct the ministers to disregard it and stop working with the Prime Minister. Abdullahi Yusuf, when president, acted in like manner towards the prime ministers who served with him (Ghedi and Nuur Adde), only to succumb to internal and external pressures to resign. But then, there was no constitution to restrain him: common sense proved him wrong.

The President protests that he was not ‘consulted’, which I think the PM should have, as a matter of courtesy to the man who appointed him in the first place, and in the interest of cordial relations and the smooth functioning of State affairs, even though he was not constitutionally obliged to do so. If the PM had deliberately tried to ignore or sideline the President of the country he was wrong, and he is not much of a politician. But, if, on the other hand, the President expected the PM to act merely on his *ipse dixit* at all times, then I daresay he brought whatever happened upon himself.

President Hassan has, in his incumbency thus far, plunged the country into serious constitutional crises twice within a short span of only two years, contrary to Article 87(c) of the Constitution which requires him, instead, to act as “*the guardian and promoter of the founding principles of the Constitution*” (emphasis added). It is time to establish the Constitutional Court, and for him to understand that he is **not** the Head of the Federal Government, but the Head of State.

In this current crisis Parliament has broken into two blocks (one supporting the President and another supporting the PM), and so it is a ‘House divided against itself’. Three attempts have so far been made by the President’s group (the majority group) to table a motion – cooked up in Villa Somalia – to dismiss the PM summarily, and they all ended in failure, having been blocked by the group of

the PM (the minority group) which now calls itself ‘Badbaado Qaran’ (National Salvation Group). As I said in the foregoing, the President also divided the Council of Ministers so as to fail the Government and force the resignation of the PM. Ministers have taken sides and there is no collective responsibility which should be the hallmark of Cabinet Government in which the PM is *primus inter pares* – first among equals.

Interestingly, the President has also provoked a dispute with the Chief Justice who threatened to resign. The latter protested the other day the President’s action to suspend or dismiss, judges on the recommendations of his Attorney-General. I understand that the essence of the quarrel is the effort of the Minister of Justice and Constitutional Affairs, Mr. Farah Abdulqadir (the closest ally of the President) to bring the courts, with the approval of the President, directly under the wing of his ministry. This is certainly a clear violation of the separation of powers and therefore another serious infringement on the Constitution by the President. Indeed the reason for the reshuffle, which was the genesis of the current crisis, was to bring to an end to the encroachment of the Executive upon the Judiciary. All this taken together, make it evident that President Hassan has turned the constitutional order of the country on its head.

### **The Remedy**

Learned Somalis have tried in discussions on various radio and TV channels to pontificate on solutions to the perennial issue of the crippling quarrel between presidents and prime ministers.

Naturally, opinions and assessments differ, but it is clear that the solution is still elusive. I think we are all looking for solutions in the wrong places, for they are not anywhere else, except within ourselves. One might say that because we have been basically reared in oral and nomadic settings the written word has no meaning to us, and therefore constitutions, laws, regulations, etc. do not, in their written form, mean anything to us. While there is an element of truth in this, it is also generally true that a written document has no greater force than what those in authority are willing to ascribe to it. Thus, if the written word does not mean much to us the Constitution and the laws will not carry much force in our midst. For us it is unconceivable that the President ‘of the whole country’ – the man who is sitting on the apex of the State structure – should be restrained by some ink on a piece of ‘paper’.

My point here is that there is a Constitution, albeit in draft, which is crying out for attention and finalization. The respective roles and duties of the President and the PM are right there in clear and unequivocal language. Why are we not addressing ourselves to it? You cannot blame the deficiencies and inefficiencies of Parliament on the Constitution. Nor can you blame the excesses of the President on it. Corruption, embezzlement and graft are rampant at the highest levels of society and government.

Some have said that it may be better to adopt the presidential system. How would Mogadishu have coped with the grave gridlock we have been seeing in the United States these past few years? In the presidential system, the vice-president's duties and powers depend on the president and the attractiveness of his/her post is due to a chance that he or she might succeed to the presidency if the president dies or is permanently incapacitated. In Mogadishu they would have called him/her "bakhti-suge" or "bakhti-sug'a" (somebody waiting to inherit). I am quite sure that in Somali setting the president and his vice-president would have endlessly been at each other's throat, just like Hassan and Abdiweli, and the ones before them.

I have said so many times that: (a) there is no perfect system on earth; it is only people who make the difference between success and failure; and (b) the cure for dishonesty and moral degradation is through a process of personal reform/ the purification of the soul, not through changing the system of government. Remember Confucius: "To reform a nation is to reform the individual".

***Good governance is not possible without good people.***

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