

## MAXKAMADAHA GUDAHA DACWO MA LOOGA OOGI KARAA HAWLWADEENNADA IYO CIIDANKA AMISOM IYO UNSOM?

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Faalladan kooban waxa ay ku doodaysaa in maxkamadaha Soomaaliya ayna awood qaanuun(jurisdiction) u lahayn in ay qaadaan dacwadaha dhanka ka ah askarta iyo hawlwadeennada AMISOM iyo UNSOM ee ku xusan heshiisyada Dowladdu la gashay AU iyo UN. Halka mar oo ay qaadi karaan waa marka dadka xasaanadda leh laga qaado oo ama dalkii soo dirsaday ka qaado ama Qaramada Midoobay. Askarta iyo hawlwadeennada waxaa iyagana waajib ku ah in ay dhowraan qawaaniinta iyo shuruucda dalka ay joogaan.

1. Heshiiska (Status of Mission Agreement) oo ay Dowladda Soomaaliya la gashay Midowga Afrika oo ku taariikhaysan 06/03/2007, iyo midkii ay Qaramada Midoobay la gashay taariikhdu markii ay aheed Febraayo 26/2/2014kii waxa ay khuseeyeen wada shaqaynta ururradaas caalamiga ah iyo Soomaaliya. Heshiisyada nuucaas ah waa lagu daraa xasaanadda iyo in aan maxkamadaha gudaha qaadi karin dacwadaha khuseeya askarta iyo hawlwadeennada ururrada caalamiga ah oo qaybta ka ah ciidamada Nabad Ilaalinta iyo hawlgallada Qaramada Midoobay ansixisay.<sup>1</sup>Heshiisyadaas iyo xasaanadda (immunities and privileges) ay leeyihiin askarta iyo hawlwadeennada aan kor ku soo xusnay waxa ay ku salaysan tahay heshiisyo iyo qawaaniin caalami ah. Haddii aad fiirisid heshiiska Qaramada Midoobay iyo Soomaaliya , Qodobkiisa 13aad waxaa uu sheegayaa maadaama UNSOM tahay qayb ka mid ah Qaramada Midoobay ay leedahay xuquuq ay ka mid yihiin xasaanad marka la raaco "The Convention on the Privileges and Immunities of the United

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<sup>1</sup> Magacyo badan ayay leeyihiin ciidamada ay Qaramada Midoobay u dirto dalalka khilaafku ka jiro sida nabad ilaalin, nabad abuurid ,nabad dhisid, iyo nabad taageerid iyo kuwo kale. Laakiin xasaanadda askarta iyo shaqaalaha dhammaantood waa isku xeer.

Nations” oo Golaha Guud ee QM ansixiyey, Soomaaliyana xubin ka noqotay, in Dowladda Soomaalioya aqoonsanayso xuquuqdaas qodobkani taxayo...”

Askarta iyo hawlwadeennada Qaramada Midoobay iyo Midowga Africa ee Golaha Ammaanku soo diray waxa ay leeyihiin xasaanad ka celinaysa in aan maxkamadaha gudaha dacwo looga soo oogi karin, taas oo ku salaysan heshiisyo iyo customary international law.<sup>2</sup> Axdiga Qaramada Midoobay, Qodobka 105(1) waxa uu leeyahay “ururrada waxa ay u heli doonaan oo isticmaali doonaan xanaanad (immunities and privileges) dhul kasta oo ka mid ah dal xubin ka ah Qaramada Midoobay, kuwaas oo muhiim u ah gudashada shaqadooda (functional immunity). Midowga Africa waxaa jira iyadana heshiisyo xasaannadahaas filmaamaya oo iyana markooda qayb ka noqonaya customary international law arrinkanna khuseeya.<sup>3</sup>

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<sup>2</sup> The Privileges and Immunities of the United Nations, adopted by the General assembly of the United Nations, 13 February 1946, (Somalia became a party to this convention on 9 July 1963); The Convention on the Privileges and Immunities of the Specialised Agencies (Somalia is not a party to this convention). However, this convention now forms part of customary international law). For more information on immunities and privileges of the personnel of the United Nations peacekeeping missions, see Dieter Fleck, The Legal Status of the Personnel Involved in United Nations Peace Operations, International Review of the Red Cross, 95(2013), available at: <https://international-review.icrc.org/sites/default/files/irrc-891-892-fleck.pdf>.

<sup>3</sup> OAU, General Convention on the Privileges and Immunities of the Organisation of African Unity, available at: <https://au.int/sites/default/files/treaties/7760-treaty-0001-general-convention-on-the-privileges-and-immunities-of-the-oau-e.pdf> ; Additional Protocol to OAU General Convention on the Privileges and Immunities, 1980, available at: <https://www.au.int/web/sites/default/files/treaties/7761-file-protocol-en-additional-oau-general-convention-on-privileges-immunities-freetown-june1980-4.pdf>

2. Waxaa xitaa mararka qaar dhacda iyada oo aan dalalka heshiis lala gelin in Golaha Ammaanka ee Qaramada Midoobay(QM) ciidan u diro, markii xaaladda dalkaas loo arko in ay qatar ku tahay nabadda iyo ammaanka adduunka sida ku cad Cutubka 7aad ee Qaramada Midoobay. Waxaana hadda ka hor dalal sidaas loogu diray iyada oo aan oggolaasho laga haysan ka mid ah Soomaaliya iyo Haiti.<sup>4</sup> Ciidamadaasna waxa ay leeyihiin xasaanad ku salaysan heshiisyo caalami ah iyo customary international law.<sup>5</sup>
3. Ciidamada Midowga Afrika waxa ay dalka ku jooogaan go'aan Golaha Ammaanka ee Qaramada Midoobay, go'aankaas oo la gaaray iyada oo la isticmaalayo Cutubka 7aad ee Qaramada Midoobay.<sup>6</sup> Sidoo kale United Nations Mission in Somalia (UNSOM) waxaa ay ku timid go'aan Qaramada Midoobay.<sup>7</sup>
4. Ciidamada iyo Howlwadeennada loo diro nadab ilaalinta oo la geeyo dalalka kale waxa ay leeyihiin xasaanad aan dacwo lagu soo oogi karin, waana arrin aad la iskugu raacsan yahay.<sup>8</sup> Dalalka ay ka yimaadeen ayaa iska leh masuuliyadda wixii qalad ama dambi ay galaan. Haddii ciidanka iyo howlwadeennada ay soo diraan ururro caalami ah ama kuwo goboleed, xasaanadda waxa ay ka ku salaysan tahay ururradaas.<sup>9</sup> Waxaa muhiim ah in la isla ogaado,

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<sup>4</sup> UN Security Council Resolution 751 (1992) of 24 April 1992; UN Security Council Resolution 794, 3 December 1992; UN Security Council Resolution 814, 26 March 1993; UNSC Res. 940, 31 July 1994.

<sup>5</sup> William Thomas Worster, Immunities of United Nations Peacekeepers in the Absence of Status of the Force Agreement, *Military Law and the Law of the War Review*, 47, 2008

<sup>6</sup> UN Security Council Resolution 1744(2007), 20 February 2007, *Acting* under Chapter VII of the Charter of the United Nations "decides to authorize member States of the African Union to establish for a period of six months a mission in Somalia, which shall be authorized to take all necessary measures as appropriate to carry out the following mandate..."

<sup>7</sup> UN Security Council Resolution 2102(2013), 2 May 2013

<sup>8</sup> Dieter Fleck, *The Legal Status of the Personnel Involved in United Nations Peace Operations*, p.614,615

<sup>9</sup> Terry D. Gill, 'Legal Aspects of the Transfer of Authority in UN Peace Operations', in *Netherlands Yearbook of International Law*, Vol. 42, 2011, pp. 37-68

“ciidamadaas iyo hawlwadeennada xasaanaddu waxa ay mihiim ugu tahay si ay u gutaan waajibaadkooda si dhexdhexaad ah, taas oo guusha hawgalku ku xiran yahay.”<sup>10</sup> Sida aan ognahay ciidamada Midowga Afrika waxaa dalka loo keenay in ay caawiyaan Soomaaliya oo kooxo u kala taagan. Haddii hal dhinac (dowladda) ay yeelato awood ay ku maxkamadayn karto askartaas iyo hawlwadeennadaas, ma awoodayaan in ay howshooda hufnaan iyo dhexdhexaad u gutaan.

5. Heshiisyadada caalamiga ah in baarlamaanka Soomaaliya ansixiyey iyo in kale hirgelintiisa kuma xirna mana saamaynayso sharci ahaantiisa. Dalka heshiiska galaya ayaa laga rabaa in uu shuruudda qawaaniinta dalkiisu qorayo sida ansixinta baarlamaanka ku xusaan heshiiska. Haddii aan sidaas dhicin heshiiska dalkii ama ururkii aad la gashay waxa uu kaaga fadhiyaa in aad hirgeliso. Qodobka 66aad ee Heshiiska Midowga Africa iyo Soomaaliya waxaa ku xusan in uu heshiiska dhaqangalayo markii dhinacyadu saxiixaan.<sup>11</sup> Sidoo kale, isla Qodobka 66aad ee heshiiska Qaramada Midoobay iyo Soomaaliya waxa uu caddeynayaa in heshiisku dhaqan galayo markii dhinacyadu saxiixaan. Tusaale, heshiiskii is-afgaradka ee ay wada galeen Soomaaliya iyo Kenya waxaa diiday Golaha Shacabka ee Soomaaliya. Hase ahaatee, Maxkamadda Caddaaladda Adduunka waxa ay heshiiskaas u aqoonsatay heshiis caalami ah.
6. Heshiiska Vienna Convention on Diplomatic Relations ma xusayo ciidammada nabad ilaalinta iyo hawlgallada Qaramada Midoobay amartay. Laakiin hordhaca heshiiska waxaa ku cad in xeerarka customary international law ay sii xukumi doonaan ama hagi doonaan su'aalaha aan si cad loogu xeerin qodobbada heshiiskan. Midda kale waxaa jira mabda' qawaaniinta caalamiga ah iyo kuwa gudahaba loo isticmaalo oo ah “lex specialis derogate legi generali” oo macnaheedu yahay sharciga khaaska

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<sup>10</sup> Dieter Fleck, *The Legal Status of the Personnel Involved in United Nations Peace Operations*, p. 616

<sup>11</sup> <https://amisom-au.org/wp-content/uploads/2011/09/Status-of-Mission-Agreement-on-AMISOM.pdf> , Article 66

ah waxa uu mudnaanta ka leeyahay kan guud. Marka heshiisyaga ku saabsan xasaannada ee Qaramada Midoobay iyo Midowga Afrika iyo customary international law ayaa lagu dhaqayaa arrinkan taagan.