



Commentary

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Finding a Way Out of Somalia's Manmade Electoral Crisis



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In July 2019, the Heritage Institute for Policy Studies (HIPS) published a seminal report on elections in Somalia and concluded that the notion of a credible and transparent one-person-one-vote (OPOV) election taking place on time was “highly improbable – if not impossible”. We cited a confluence of factors, including the deepening political rift between the Federal Government of Somalia (FGS) and Federal Member States (FMS), the lack of laws governing elections and worsening insecurity across the country. In May 2020, we reiterated in a new policy brief the need for negotiated electoral modalities in the unlikelihood of a timely OPOV election. Many stakeholders, particularly the FGS, the National Independent Electoral Commission (NIEC) and key donors, criticized our studies as “pulling the trigger too soon”.

Nevertheless, the 27 June 2020 statement by the NIEC chairwoman before the federal parliament has vindicated our assessments. In her remarks, Halima Ismail declared for the first time that the NIEC was not in a position to hold a timely OPOV election, citing “a political rift among key stakeholders, insecurity and incomplete electoral laws”.

Troublingly, both options for a way forward that the NIEC has presented to the parliament entail some type of term extension for incumbents. Furthermore, only one of these options (biometric-based voter registration) is compliant with electoral legislation. The NIEC claims that it can implement this option in 13 months at the cost of nearly \$70 million. The other option presented by the NIEC (manual, paper-based, same-day registration and voting) is more problematic because it lies outside of the scope of the current electoral law, which clearly requires biometric-based registration. It is possible to amend the law, but this would surely lengthen the process.

For years the NIEC has repeatedly reassured a weary Somali public and restless political stakeholders that an OPOV election would take place as scheduled despite mounting evidence to the contrary. As late as May 2020, Ismail publicly insisted that the NIEC was ready to deliver a universal-suffrage election on time. A cacophony of voices, including HIPS, have sounded alarm bells about the potential political crises that could stem from any unconstitutional mandate extension, but to no avail.



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Furthermore, the key international donors, who for years insisted on credible, transparent and consensus-based OPOV elections, are now endorsing (via tweets) the NIEC’s “paper-based option,” which would be tantamount to industrial-scale rigging of the national elections and a recipe for avoidable conflict. Presumably, they are being influenced by funding constraints which has led them to disregard the likelihood and consequences of fraudulent elections.

Understandably, Somalis and their international partners are frustrated with the slow progress of state-building and democratization projects. However, abandoning the incremental approach that is central to those processes will only complicate an already complex situation. By endorsing an illegal, paper-based option, international partners are further contributing to political disputes among Somali institutions.

All of the four amendments to the electoral law have been approved by the Lower House (amid much controversy), while the final one, concerning political parties law amendment, is still being debated. According to the joint parliamentary committee which is finalizing the electoral law, the Upper House must also approve these amendments before they are submitted to the president for his signature.

Unfortunately, the two houses of parliament are at loggerheads and the Lower House is now signaling that the amendments it has approved are merely “resolutions” that do not require the Senate’s consent. The constitution empowers the two chambers to collectively legislate and their cooperation is even more essential now.

We at HIPS strongly believe that the window of opportunity is rapidly closing. We propose two courses of action to arrest an electoral crisis and find a pathway to truly inclusive solutions based on a workable compromise among the key stakeholders.

Politically negotiated indirect elections

As we outlined in July 2019 and May 2020, it is likely that a broad-based negotiated process would ultimately result in indirect elections, the electoral modality that is most acceptable to key stakeholders (FGS, FMS and registered political parties). Understandably, many Somali and external actors are deeply uncomfortable with yet another indirect election, given the odious aftertaste of the 2016-2017 process. But the much-touted OPOV has proven elusive, and a unilateral extension by the current officeholders would have dire legal, political and stability implications.

We must also emphasize that the current state of affairs is a collective failure. The FGS aside, the member states and opposition groups have also failed to demonstrate leadership. Instead, some have engaged in harmful practices that have continuously undermined national institutions and impeded state-building efforts. They have been dismissive or selective in accepting the decisions of national institutions, even while their representatives – senators, lower house parliamentarians, cabinet ministers—have been included in these decisions.

There are several compelling reasons to pursue politically negotiated indirect elections.

First, the constitutional mandate of both the federal parliament and the FGS will expire within a few short months (27 December 2020 and 8 February 2021 respectively). The provisional constitution is unequivocal in its prohibition of term extensions for elected officials beyond their four-year mandates, and so the parliament and the executive lack any legal basis for staying in office beyond their current terms.

Second, even if all stakeholders accept the NIEC’s only credible proposal (biometric-based voter registration) for an OPOV election, the 13 months requested by the commission (whose own mandate expires in the middle of next year) is insufficient. Best practice requires 18 months to two years for the implementation of a biometric voter registration system, and this assumes that everything is in place beforehand regarding laws, finance and security. It took Somaliland many years between the approval of a biometric-based system (2007 fingerprints) and its first use in 2014 (iris) for the 2017 presidential election, all within a political entity facing far fewer security and logistical issues than the FGS. The second proposed model (paper-based same-day registration and voting) may turn out to be no less corrupt than the indirect selection processes that Somalia has used in the past. Anything other than a consensus-based electoral modality amounts to adventurism.



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Politically negotiated term extension



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A politically-negotiated delay of the election similar to the Kampala Accord of June 2011 may be a viable and necessary alternative. In this scenario, the key stakeholders (FGS, FMS and registered political parties) would agree to delay national elections by at least two years in order to complete legislation governing elections and political parties and to address other structural issues. This would require all stakeholders to press the reset button and form a Government of National Unity (GNU) as part of a larger national reconciliation.

The GNU would pursue a comprehensive roadmap with five pre-defined objectives:

- Restore a working relationship between the FGS and all FMS;
- Expedite the review of the provisional constitution and prepare for a referendum to coincide with national elections;
- Establish the Constitutional Court and the Judicial Services Commission to strengthen the rule of law and the capacity for oversight;
- Finalize legislation governing elections and political parties, including amendments to the law establishing the NIEC, in preparation for an OPOV election in two years; and
- Revive the National Security Architecture in order to address the menace of Al-Shabaab and ISIS.

The GNU, which would reflect Somalia's political diversity, would work closely with the two houses of parliament to complete the required legislation, while the FMS, registered political parties and civil society groups would marshal the required support. The international community would provide political and financial backing for the agreed roadmap, insisting that all political stakeholders agree on a grand bargain to overcome the manmade political gridlock that is currently crippling Somalia's fledgling democracy.

Conclusion



It is high time for Somalia's national stakeholders to restore common sense to electoral politics and pursue a negotiated settlement. The Somali people are closely watching their action or inaction

The options that we present here are far from ideal, and we at HIPS understand that many people may find them unpalatable. This crisis could have been averted long ago if the FGS and FMS had effectively collaborated and done their jobs, and if the NIEC had warned the Somali public much earlier that an OPOV election is impossible on the original timetable.

Keeping in mind the incremental approach and do-no-harm principles, HIPS has always advocated for consensus-based decision making in Somalia based on our firm belief this profoundly reduces the risk of conflict. We have a unique understanding of Somalia's socio-political context, which is marked by deepening mistrust and fragile reconciliation among the people, and especially between the FGS and FMS. President Mohamed Farmaajo's hardline stance against the member states has not yielded positive results for the country or for himself. His upcoming meeting with FMS leaders is a golden opportunity to build consensus on contentious issues such as elections.

It is high time for Somalia's national stakeholders to restore common sense to electoral politics and pursue a negotiated settlement. The Somali people are closely watching their action or inaction.



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