

Survey of Public Opinion on Somalia's Provisional Constitution

Key messages

- The majority of the 1,422 citizens polled had positive perceptions about the constitution.
- More than half of the respondents believed politicians are not genuine about upholding the constitution or adhering to its authority.
- Most of those surveyed cited the lack of clarity about the powers and roles of the federal and regional governments as the source of the conflicts between the national and regional governments.
- Surveyed citizens consider the constitution as the proper tool for finding lasting solutions to Somalia's political problems.
- Parliament's Oversight Committee (OC), the Ministry of Constitution Affairs (MoCA) and the Independent Constitution Review and Implementation Commission (ICRIC) have legal mandates to the constitutional review process. The Upper House (Senate) and regional constitutional ministries are also now added into the mix and are vying for roles in the review process.
- In the past, citizens and civil society – two key stakeholders – were not adequately consulted in the review process and are still unable to provide meaningful contributions to the process.

Introduction

Despite many years of drafting and investing in constitution-making and review processes, Somalia does not yet have a finalized and citizen-centric constitution. The National Constituency Assembly (NCA), selected in June 2012 from Somalia's clans, approved the current provisional constitution in July 2012 without reviewing its contents. Parliamentary and independent commissions were then mandated to revise, finalize and organize a public referendum before the end of the four-year mandate of Somalia's first non-transitional parliament and government in 2016.

The process of reviewing the constitution involved numerous government organs, including a dedicated line ministry, an independent commission and a parliamentary committee. Competing strategies and lack of understanding of the respective roles of the Ministry of Constitutional Affairs (MoCA), the Independent Commission for the Review and Implementation of the Constitution (ICRIC) and the parliamentary Oversight Committee (OC) has inhibited the pace of the review and implementation processes. It is yet to be seen if the new actors under President Mohamed Farmaajo's administration are different and mature. However, the underlying factors that led to the rivalry remain potent. Each of the three state organs (MoCA, ICRIC and OC) views itself

as the undisputed lead actor, and the competition over resources is stiff. Previously, the three entities had worked in parallel and in a duplicitous fashion and had publically squabbled. They produced competing drafts and recently begun pushing various agendas into the public domain and, crucially, among the international community¹.

The parliamentary and the independent constitutional commissions hastily, and separately, reviewed some chapters of the constitution during the last months of the mandate of the then federal parliament and government. The OC submitted to the last [ninth] federal parliament a revised version of the constitution, which the independent and parliamentary commissions did not agree with. With the ninth parliament's mandate running out in late 2016, the process was then suspended until after the election of Somalia's tenth parliament. This new parliament, which started its constitutional term in late December 2016, has now (s)electd 10 members (five from each house of the federal parliament) to the OC. It was not helpful that all 10 are men, systemically excluding Somali women who represent half the population.

Somali citizens have not yet had much say about the constitution – the most important legal document in the country, which affects all aspects of their lives.

¹)MoCA circulated a draft master plan on the review process, which ICRIC branded as unconstitutional and a clear usurpation of its power. Puntland also rejected the ministry's master plan.

Meaningful input from citizens has been absent since the constitution-making process started. However, the input and buy-in of citizens is vital for the transition to a non-provisional constitution as they will have the final endorsement through a plebiscite.

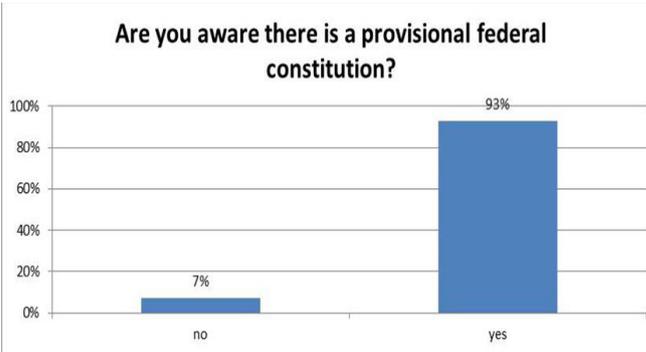
Methodology

The Heritage Institute for Policy Studies (HIPS) conducted a public opinion survey on the views of ordinary Somali citizens about the constitution with the aim of assessing the level of understanding of citizens. The survey was simultaneously conducted in January 2017 in five major cities, namely Bosaso in Puntland, Beledweyne in Hirshabelle, Baidoa in South West, Kismaayo in Jubaland and Somalia’s capital Mogadishu. Local graduates trained and supervised by HIPS conducted the survey in each of the five cities. The cities were selected to reflect the diverse views of those regions.

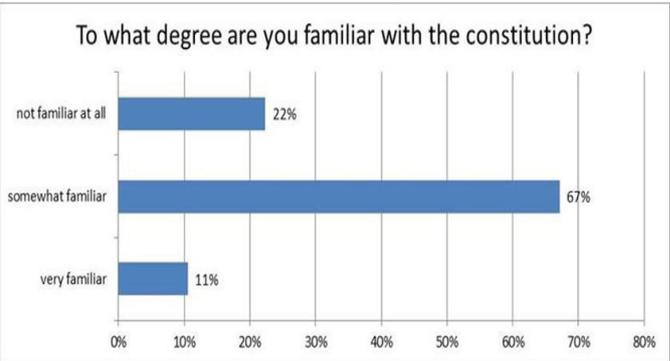
A total of 1,422 citizens over the age of 18 were surveyed. Half of those were reached in public places, while the others were surveyed in households. More than half of the respondents (59 percent) were male while the remaining 41 percent were female. Sixty six percent of respondents were below 35; 22 percent were between 35 and 44; and 12 percent were above 45. Almost 27 percent of those surveyed had a university education; more than 33 percent had completed secondary school; about 16 percent primary school; and more than 23 percent had no formal education. In terms of occupation, 31 percent were unemployed; 20 percent were housewives; 18 percent were self-employed; 19 percent worked in the private sector; eight percent worked in the public sector; four percent were in agriculture.

Familiarity with the constitution

An overwhelming majority (93 percent) of those surveyed across the five cities were aware that there is a provisional federal constitution. Only seven percent didn’t know it existed. The fact that respondents live in major cities and a considerable number of those surveyed were interviewed in public places may have contributed to this widespread awareness. Hyper politicization of Somali society due to pervasive insecurity and the ubiquitous use of online and traditional media (radios and televisions) outlets for news and information could also have contributed to their awareness. For whatever reason, it is positive that such a substantial numbers of citizens were aware of the existence of the national constitution. However, HIPS cannot extrapolate from this data that all of those interviewed understand that the constitution is provisional or have an understanding of its content.



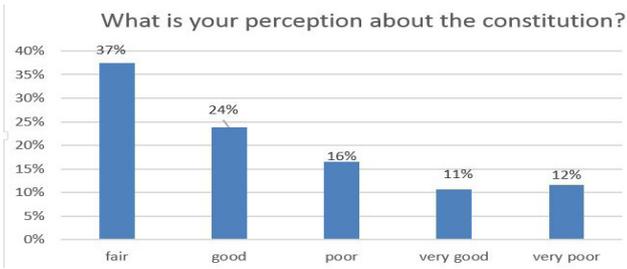
Of the 93 percent who knew that the country has a constitution, a clear majority (67 percent) said that they are somewhat familiar with it. Close to a quarter (22 percent) responded that they are very familiar with the constitution. Another 11 percent said that they are not familiar with it at all, despite being aware that there is a constitution.



The survey shows that familiarity with the constitution was related to the age, gender and educational backgrounds of the respondents. Those aged between 25 and 34 (35 percent) topped those that were very familiar with the constitution. One quarter (25 percent) of those aged 18-25 and 35-44 were also very familiar with the constitution. Only 15 percent of those older than 45 said they were very familiar. Moreover, there is a correlation between gender and familiarity. Male respondents (77 percent) were more familiar with the constitution than female respondents (23 percent). The educational background of respondents was also another determining factor. University graduates were the most familiar at 44 percent, compared with 35 percent of those who attended secondary school; 13 percent of primary school graduates; and only eight percent of those without any formal education.

Perceptions about the constitution

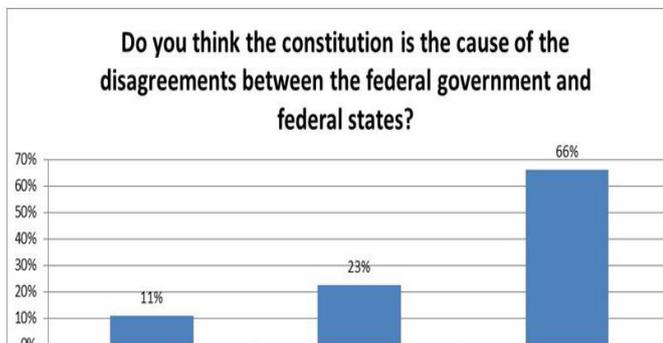
Of those that were somewhat familiar or very familiar, a solid majority (72 percent) had positive perceptions about the constitution, while 28 percent had negative perceptions.



As documented in HIPS’ 2017 report, engagement with the public on key constitutional issues was minimal in the past, which could have affected the perceptions of those surveyed. The fact that close to one-third of the respondents rated the federal constitution as substandard should prompt relevant institutions such as ICRIC, the OC and MoCA to expand public consultation and ensure citizens can make a meaningful contribution to the constitution-making process.

Authorities of the federal government and regions

One of the contested issues in the provisional federal constitution is the powers and responsibilities of the federal and state governments. A clear majority of those surveyed (66 percent) blamed the constitution as the root cause of the disagreements between the federal government and member states.

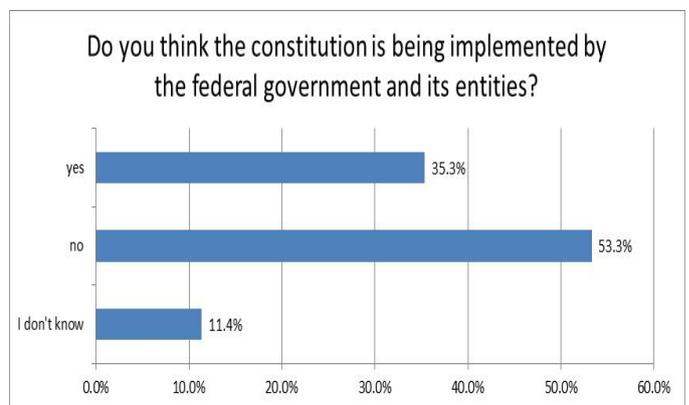


Somalia’s first transitional federal charter was adopted in 2004, but the actual federation of the country started as recently as 2013. Somaliland declared its secession in May 1991, and the future of Somaliland in a federal Somalia is not yet clear. Puntland, which was established 18 years ago, also predates the transitional federal charter. Four federal units were established in the past four years, namely Jubaland, South West, Galmudug and Hirshabelle. The status of the capital city Mogadishu is yet to be finalized. Although the constitution delineates certain powers between the federal government and member states, the vast majority remain unallocated. This has prompted an often-raucous schism between the center and the peripheries. The repeated squabbling between the national government and the regions over who should exercise what power may have contributed to the belief of 66 percent of those surveyed that the constitution is a source of conflict. Clarifying federal and state powers as well as agreeing

on other contentious issues such as fiscal and natural resources sharing and the judicial model will be among the critical matters in the constitutional review process that will determine the federal and state relationship. HIPS explained these issues in its report, which endorsed the OC’s recommendation that 24 responsibilities should be handled by the national government while the regions should take on seven areas and that the two levels of government should share other powers.

Implementing the provisions of the constitution

Respondents were asked if they think that the constitution is being fully implemented by the government and its federal member units. More than half (53.3 percent) responded that the provisions in the constitution were not adhered to, though 35.3 percent thought that the constitution was being put into practice by the authorities. Just over 11 percent had no opinion.

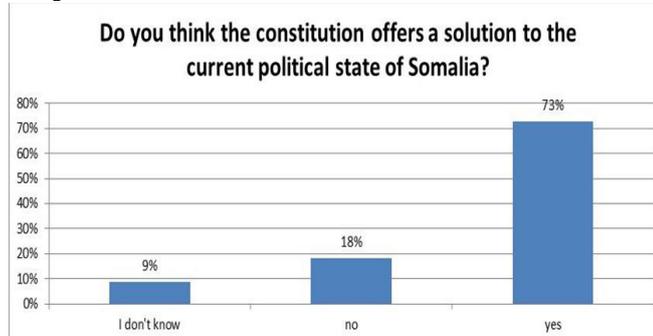


The federal constitution, though still provisional, is the highest law of the land. It guides the work of the federal institutions and defines terms of office for the presidency, the parliament and the powers of the three branches of the government. In late 2016, the National Leadership Forum (NLF), a self-appointed group of federal and regional political leaders, extended the term of office of the president and parliament. This act and other similarly expedient political decisions could be the reason why 53 percent of surveyed citizens believed that the politicians are not upholding the law of the land.

The power that the constitution allocates to the president and the Council of Ministers also creates controversies, confusion and contestation. Time and again power struggles between the two top office holders emerge that are rooted in the lack of clarity of the constitution. This in turn has crippled the functioning of state institutions and peace and state building efforts in the country. Since 2000 when the first transitional government was formed in Djibouti, rifts between the president and his prime minister have resulted in each of the last four presidents appointing three prime ministers over their four-year term. This ‘political culture’ has led to the permanent crippling of state functions. These and similar issues could have affected citizens’ perceptions on constitutional practice.

The constitution and the current political state

Respondents were asked if they think that the constitution offers a solution to the current political situation of Somalia. A significant majority (73 percent) stated that they believe the constitution is a good tool for forming a functioning and viable state. Only 18 percent responded they have no faith in the constitution, while nine percent did not know.



In fact, contested issues and related clauses in the constitution are critical matters in the review process and need consensus among citizens and not political side deals among a few politicians. Agreements on key political issues such as the type of government Somalia will have (presidential or parliamentary), the respective powers of the president and the prime minister, the roles and responsibilities of the national government and regional authorities, fiscal and natural resources sharing mechanisms, the structure and design of the judiciary and the status of Mogadishu are key issues that require citizen-wide agreement and acceptance.

Conclusion

In the past four years, citizens' views were not adequately reflected in the constitutional review process. This public opinion survey highlights that citizens in five major cities have different perceptions [mainly positive] about the constitution, despite only being marginally consulted by the politicians about their opinions. The majority of respondents believe that the lack of clarity within the constitution has resulted in power struggles and political conflict between the national and regional governments.

Likewise, surveyed citizens also contend that the political elite does not strictly adhere to the principles of the constitution. Nonetheless, citizens believe that utilizing the constitution could be a solution to Somalia's political issues. With a new federal institution and leadership in place, the prioritization of a proper constitutional

review process and allowing citizens and civil society to participate in that review are important steps towards a federal constitution that regulates the socio-economic and political interests of citizens and Somali state institutions.

Policy considerations

- For an optimal constitutional review process, the three relevant entities—MoCA, ICRIC and OC—should harmonize their efforts and work collaboratively. This is the only way to produce a semi-final draft that can either be put to the people in a referendum or be ratified through other means. Sustained competition among those three entities will, undoubtedly, significantly undermine the process, if not derail it altogether. Equally important is engaging federal member states' constitutional ministries, which have an important role to play in synchronizing the federal constitution with state constitutions.
- Government entities in charge of the constitutional review process should engage the public in a major way. The public holds largely positive views on the constitution, despite marginal consultation on its contents, and studies have shown that elite-driven constitutions are bound to fail.
- Only a handful of chapters of the constitution are sources of contention—namely power and resource sharing between the center and the periphery, security and justice architecture, the type of government (presidential or parliamentary) and the status of the capital. The three responsible entities should focus their energy and resources on those contentious chapters in the coming period.
- After years of neglecting the primacy of the constitution, senior politicians (national leaders) should lead by example – promoting the superiority of the constitution in their actions and creating an enabling environment for a constitution that promotes the rule of law.
- Since constitutions are supposed to be social contracts, the three responsible institutions should make reconciliation and social cohesion their guiding principles for the review process.
- Civil society should redouble its efforts to contribute to the constitution-making process as this document will affect the lives of citizens for generations to come. If the exclusionary practices of the past provide any guidance, civil society should understand that the only role that they will have in this process is one that they carve out for themselves.



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