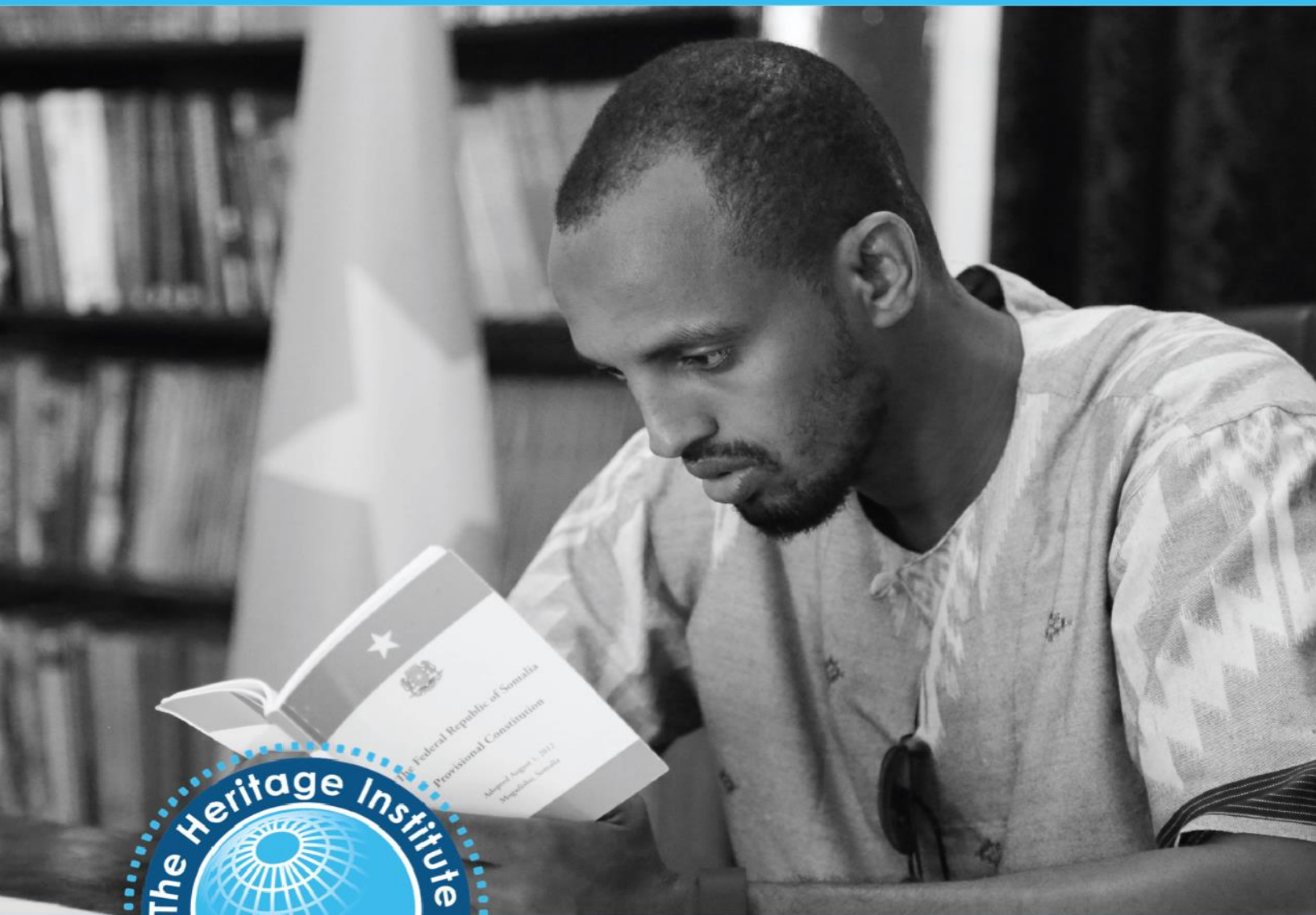


# Somalia's parliament should produce a constitution by and for the people



February 2017

Published in 2017 by the Heritage Institute for Policy Studies, Mogadishu, Somalia

### **The Heritage Institute for Policy Studies (HIPS)**

HIPS is an independent, nonpartisan, non-profit policy research and analysis institute based in Mogadishu, Somalia.

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## Executive Summary

The politics of constitution making in Somalia is as messy, contested and removed from citizens as was the case when the process first began in the early 2000s under the stewardship of transitional governments. In 2012, Somalia's post-transitional government pledged that it would oversee a democratic election, decentralize power, finalize the constitution and organize a national referendum during its mandate. But these promises all remain unfulfilled. Although the Parliamentary Oversight Committee (OC) was established in 2012, the Independent Constitutional Review and Implementation Commission (ICRIC) was created two years behind schedule. Both committees were deprived of the basic resources needed to complete the review of the constitution. These two bodies, however, scrambled in the six months before the end of the mandate of the government in 2016. The ICRIC and OC somewhat reviewed the constitution but did so separately.

The four-year mandate of the 2012 government has ended and the majority of Somali citizens are neither aware of nor were consulted on the country's constitution making process and the work of the two committees. Besides the presidents of regional governments, that of the federal government, the prime minister and the speaker of the parliament, the political elite including the ninth parliament and other opinion makers have not had the chance to weigh in on the recommendations of the OC and the ICRIC.

Consequently, key constitutional questions concerning the nature of citizenship in Somalia, the distribution of powers and responsibilities between national and sub-national authorities, the status of Mogadishu and the design of the judiciary system are far from settled. Given the time constraints and disagreements, the National Leadership Forum (NLF), a body of regional and national political leaders, decided to postpone the contentious issues until the selection of the 10<sup>th</sup> parliament is completed and a government is formed.

Since the tenth parliament is being formed, the constitution making process should be genuinely brought down to the citizens whose buy-in and participation are necessary for it to be legitimized and endorsed. Efforts and draft outputs of the OC and ICRIC should not be monopolized by a self-serving few such as the NLF. Instead, the new Somali parliament should address the issue of the constitution in consultation with civil society and the Somali public. The ninth parliament had no option but to pass the constitution review and ratification process to the next parliament and government, and the new leadership should also strive to make the process citizen-centered and bipartisan.

For 25 years, Somalia's political elite failed to produce a constitution by and for the Somali people. The consequences of such exclusion was problematic on many fronts. For one, advancing peace and state building in Somalia has become an ever-elusive odyssey. Drawing on experiences of the past – where Somalia's elite failed to produce a fitting constitution and foreigners often had more influence on the constitution making process than citizens – this time citizens need to become genuine stakeholders in the process. Civil society also needs to spearhead demystification of the process and the content of the constitution. The era of citizens feeling content with being guests in their own country must end. The constitution is too important a document to be left in the hands of few.

## Introduction

Constitutions by nature regulate the political, social and economic interests of citizens and state institutions. As a result of a long and contested process, Somalia's leading national and regional politicians agreed on an incomplete provisional constitution in 2012. However, the country's post-transitional government failed to complete the constitution making process. In late 2016, new legislators were selected and inaugurated.

As Somalia's tenth parliament began its work in early 2017 and elected Mohamed Abdullahi 'Farmaajo' as president, the Heritage Institute for Policy Studies (HIPS) hopes lawmakers, national and sub-national politicians and civil society organizations will re-focus and prioritize the finalization of the constitution. HIPS is, therefore, presenting the first in a series of papers on constitutional questions. This paper explains the history and the process of constitution making in Somalia. It also discusses and analyzes some of the contested issues among national and regional actors in the content and the process of constitution making. In particular, the paper will look at four issues: the federation process, the relationship of the executive institutions (presidential vs parliamentary systems), the bicameral legislature and the status of the capital city Mogadishu. The paper will conclude with policy recommendations.

## Background

As a nation-state, Somalia was born in 1960 out of the union of the British Somaliland and Italian Somaliland. Since 1960, the country has had three constitutions (1960, 1979 and 1990), two charters (2000 and 2004) and one provisional constitution (2012). Although the 1960 constitution was largely prepared by the trusteeship administration (1950-1960), it was adopted by the new Somali state as a provisional

constitution.<sup>1</sup> In 1961, the government presented the constitution for a referendum, and it was ratified by the people.<sup>2</sup> It was suspended in 1969 when the military led by General Mohamed Siad Barre took over the country in a coup.<sup>3</sup> In 1979, the military government drafted a constitution, and it was ratified through a dubious referendum that same year. Several factions took up arms against the regime, calling for an end of the dictatorship and demanding genuine democratization. In response, the military regime drafted a new constitution in 1990.<sup>4</sup> Before it was adopted, the government fell and the state collapsed in 1991, paving the way for 10 years of warlordism.

## Constitution Making Process: Transition Phase

After a number of unsuccessful reconciliation conferences in the 1990s, the Arta Peace Process in Djibouti produced the first Somali National Charter. The charter proposed a decentralized system through regional autonomies as a means to devolve state powers. It divided power equally among four major clans and gave half to minorities (the 4.5 formula). However, the Transitional National Government (TNG) which came out of the process failed to function.

Before the mandate of the Transitional National Charter expired, the Inter-Governmental Authority for Development (IGAD) sponsored

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<sup>1</sup> *The Constitution of the Somali Republic*, adopted in 1960, [http://www.ilo.org/dyn/travail/docs/2176/Constitution\\_1960.pdf](http://www.ilo.org/dyn/travail/docs/2176/Constitution_1960.pdf)

<sup>2</sup> *Official figures of 1961 Referendum on the 1960 Somali Republic Constitution*, 20 June 1961, [http://www.somalilandlaw.com/The\\_1961\\_Referendum\\_Table\\_1.pdf](http://www.somalilandlaw.com/The_1961_Referendum_Table_1.pdf)

<sup>3</sup> Ismail I. Ahmed and Reginald Herbold Green, "The heritage of war and state collapse in Somalia and Somaliland: local-level effects, external interventions and reconstruction", *Third World Quarterly* 20(1) (1999): 113-127, [http://cja.org/cja/downloads/Heritage\\_of\\_war\\_state\\_collapse.pdf](http://cja.org/cja/downloads/Heritage_of_war_state_collapse.pdf)

<sup>4</sup> *The Constitution of the Somali Republic*, adopted in 1990, <http://aceproject.org/ero-en/regions/africa/SO/somalia-constitution-1990/view>

another reconciliation conference in Eldoret and Mbagathi, Kenya in 2002. During the conference, a committee was assigned to draft a new transitional federal charter. The committee broke up into two groups. A third committee consisting of 13 Somali experts was then formed to harmonize the documents of the two groups. However, the recommendations of the harmonization committee were not considered in the final charter. Instead, the organizers (IGAD, Ethiopia, and Kenya) endorsed one of the drafts.<sup>5</sup>

The Transitional Federal Charter (2004) mandated the formation of an Independent Federal Constitution Commission (IFCC) to draft a constitution within two and half years.<sup>6</sup> The 15-member commission was formed in June 2006 by presidential decree with parliamentary approval and tasked with drafting a federal constitution.<sup>7</sup>

In 2008, the TFG and the armed Islamist-led opposition group, Alliance for the Re-liberation of Somalia (ARS), agreed to share power. President Abdullahi Yusuf resigned in December 2008 and was replaced by Sharif Sheikh Ahmed in January 2009. The new government added 15 new members to the IFCC in January 2010, bringing the number of the IFCC to 30.

The commission produced its first draft constitution in July 2010 for public consultation. Issues of federalism, citizenship and the structure of the government were some of the highly-contested provisions. In 2011, a new committee of experts was formed to assist the IFCC in re-drafting the constitution. Mohamed Sheikh Osman Jawaari, who subsequently became

speaker of Somalia's ninth Federal Parliament, was the chairperson of the nine-member Committee of Experts.<sup>8</sup> On 11 January 2017, Jawaari was again re-elected as the speaker of Somalia's tenth parliament.<sup>9</sup>

The United Nations Development Programme (UNDP) and the United Nations Political Office for Somalia (UNPOS) played important roles in the constitution-making process. They provided financial and technical support to the two commissions; organized visits for commission members to post-conflict countries to learn from other experiences; and organized working retreats in Nairobi.

Somali and international stakeholders met in Garoowe in December 2011 and in February 2012.<sup>10</sup> At the Garoowe I conference, the national and regional politicians agreed to form a national constituent assembly that would adopt the constitution temporarily and to the formation of an upper house of parliament.<sup>11</sup> However, it was at Garoowe II when substantial political decisions on the content of the constitution were reached, including the adoption of a parliamentary system.<sup>12</sup>

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<sup>5</sup> Antonios Kouroutakis, "The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives", *Cambridge Journal of International and Comparative Law*, (2014).

<sup>6</sup> ILO, *The Transitional Federal Charter of the Somali Republic*, Nairobi, February 2004, <http://www.ilo.org/dyn/travail/docs/2177/Transitional%20Federal%20charter-feb%202004-English.pdf>

<sup>7</sup> Somali Talk Radio, *Progress Report of the Independent Federal Constitution Commission*, May 2010, [http://somalitalkradio.com/2010/may/draft1\\_dastuur.pdf](http://somalitalkradio.com/2010/may/draft1_dastuur.pdf)

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<sup>8</sup> Afyare Elmi, *Revisiting the UN-Controlled Constitution-Making Process for Somalia*, September 2012, <http://www.e-ir.info/2012/09/02/revisiting-the-un-controlled-constitution-making-process-for-somalia/>

<sup>9</sup> VOA, "Somali Lawmakers Re-elect Parliament Speaker, 11 January 2017, <http://www.voanews.com/a/somalia-lawmakers-re-elect-speaker-of-parliament/3672019.html>

<sup>10</sup> The Garoowe I and II and Gaalkacyo constitutional conferences were a series of UN-facilitated conferences aimed at finalizing and adopting the 2012 provisional constitution.

<sup>11</sup> The first Somali National Consultative Constitutional Conference, known as Garoowe I, was held between 21 and 23 December 2011, <http://unpos.unmissions.org/LinkClick.aspx?fileticket=HGL2Wx5OstE%3D&tabid=9705&language=en-US>

<sup>12</sup> The second Somali National Consultative Constitutional Conference, known as Garoowe II, was held between 15 and 17 February 2012, <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RhnQqHTAfCA%3D&tabid=9705&mid=12667&language=en-US>

The two constitution commissions presented the revised version, known as the Harmonized Draft Constitution, to the six signatories of the 2011 Roadmap and the Special Representative of the Secretary General (SRSG) Ambassador Augustine Mahiga in April 2012. The six Roadmap Signatories were President Sheikh Sharif Sheikh Ahmed, Speaker Sharif Hassan Sheikh Aden, Prime Minister Abdiweli M. Ali of the TFG, President Abdirahman M Farole of Puntland State, President Ahmed Alin of Galmudug State and Abdulkadir Moallim Nur of Ahlu Sunna Wal Jamaaca (ASWJ).

The signatories switched the planned constitution meeting in Mogadishu to Addis Ababa and did not invite members of the IFCC and the CoE. A Technical Review Committee, whose members were not disclosed<sup>13</sup>, revised some articles secretly and the signatories announced that they had agreed on key contentious issues. The Technical Review Committee again revised the constitution during a two-week meeting in Nairobi before they submitted the final version to the signatories.

In June 2012, the signatories signed the provisional constitution and four protocols including the protocol establishing National Constituent Assembly (NCA), the protocol establishing the Somali Federal Parliament (SFP), the protocol establishing the Technical Selection Committee (TSC) and the protocol establishing the Signatories Technical Facilitation Committee (STFC).<sup>14</sup> This was preceded by a Somali Transitional Government decree that dissolved the IFCC and the CoE.<sup>15</sup>

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<sup>13</sup> According to interview with a politician that was close to the signatories the commission was composed of three members from each of the Roadmap signatories.

<sup>14</sup> Afyare Elmi, *Revisiting the UN-Controlled Constitution-Making Process for Somalia*, September 2, 2012, <http://www.e-ir.info/2012/09/02/revisiting-the-un-controlled-constitution-making-process-for-somalia/>

<sup>15</sup> Somali Republic Office of the President, *Somali Transitional Government Decree Providing for the Transition to a new Federal Government For the Somali Republic*, June 23, 2012,

The Technical Facilitation Committee then presented a published draft provisional constitution to the National Constituent Assembly in July 2012. The Constituent Assembly, composed of 825 delegates, was asked to vote for the constitution as it was, without any changes. On August 1, 2012, they adopted the new provisional constitution.<sup>16</sup>

## Constitution Making Process: Post-Transition Phase

The provisional constitution left many key issues unsolved. Both the new government's New Deal Compact<sup>17</sup> and Vision 2016<sup>18</sup> envisaged finalizing key issues in the provisional constitution before the mandate of the federal parliament and government expired in August 2016. The job of finalizing the provisional constitution was tasked specifically to the OC and ICRIC. The federal Ministry of Constitution, federal member states, interim regional authorities, community leaders and civil society were also expected to play important roles in the review process.

Although the provisional constitution and Vision 2016 recommended the formation of ICRIC at the beginning of the government's mandate, it was actually established in June 2014, 21 months after Hassan Sheikh became president. According to the Vision 2016 document, the commissions have the mandate to review the constitution.<sup>19</sup>

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[http://unpos.unmissions.org/LinkClick.aspx?fileticket=eMt6HEc\\_gaA%3d&tabid=9705&language=en-US](http://unpos.unmissions.org/LinkClick.aspx?fileticket=eMt6HEc_gaA%3d&tabid=9705&language=en-US)

<sup>16</sup> Global Legal Monitor, *Somalia: New Constitution Approved*, August 2012, <http://www.loc.gov/law/foreign-news/article/somalia-new-constitution-approved/>

<sup>17</sup> The Federal Republic of Somalia, *The Somali Compact*, September 16, 2013, [http://eeas.europa.eu/delegations/somalia/documents/press\\_corner/20130916\\_the\\_somali\\_compact.pdf](http://eeas.europa.eu/delegations/somalia/documents/press_corner/20130916_the_somali_compact.pdf)

<sup>18</sup> Villa Somalia, *Vision 2016: Principles and Recommendations*, September 2-6, 2013, [http://www.villasomalia.gov.so/wp-content/uploads/2014/11/VISION2016-Final\\_COMMUNIQUE1.pdf](http://www.villasomalia.gov.so/wp-content/uploads/2014/11/VISION2016-Final_COMMUNIQUE1.pdf)

<sup>19</sup> Ibid

In early 2015, a new cabinet was formed and by March 2015 the Ministry of Constitutional Affairs (MoCA) signed a Memorandum of Understanding (MoU) with the OC and ICRIC specifying the division of labor, responsibilities, and cooperation. The MoU gives almost equal powers and authority to the three institutions in the constitutional review process.<sup>20</sup>

However, Asha Gelle, the chair of ICRIC, resigned in May 2015, 11 months after the work began. She said her resignation was triggered by lack of funds, constant external interferences in ICRIC's work, unmotivated commission members and the lack of tangible progress against set timelines.<sup>21</sup> Mohamed Dahir Afrah, a respected academic, replaced Asha Gelle. In conformity with the constitution<sup>22</sup>, the Oversight Commission, chaired by MP Maryan Arif Qassim, still maintained the right to direct and approve the work of ICRIC.

On July 27, 2015, the Somali Federal Parliament approved a resolution – pushed by the speaker – guiding the constitutional review process. The resolution divided the review into four categories: technical review, key political issues, gaps that needs to be filled and contentious issues that need extensive political dialogue and negotiations. The resolution assigned ICRIC and OC members to review only the technical matters.<sup>23</sup>

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<sup>20</sup> The MoU is not public. However, the UNDP extracted the roles and responsibilities of MoCA, OC, and ICRIC from the original MoU on March 8, 2015, in Project Initiation Plan document, 16 June 2015, [https://info.undp.org/docs/pdc/Documents/SOM/PSG%201-2%20-%20Constitutional%20Review%20Project%20Initiation%20\(Final%20for%20Signature%20Rev%202\).pdf](https://info.undp.org/docs/pdc/Documents/SOM/PSG%201-2%20-%20Constitutional%20Review%20Project%20Initiation%20(Final%20for%20Signature%20Rev%202).pdf)

<sup>21</sup> Horseed Media, “*Somalia’s Constitutional Reform Commission Chairperson resigns over ‘Interference’*”, May 6, 2015, <https://horseedmedia.net/2015/05/06/somalias-constitutional-reform-commission-chairperson-resigns-over-interference/>

<sup>22</sup> Article 133 of the constitution

<sup>23</sup> Of all the politicians engaged in the constitution making process, Speaker Jawari is the most involved who not only interfaces with the international community but also

The National Leadership Forum members set eight political issues including power sharing, the structure of government (presidential vs parliamentary), powers of the two chambers of parliament, the status of Mogadishu and the justice system as key priority areas to be addressed by the end of the government’s term. On April 12, 2016 a communiqué from the National Leadership Forum proposed a constitutional conference to be held in Garoowe<sup>24</sup> between May and June 2016. The stakeholders were expected to focus on these eight political issues. However, the conference was not convened because of a disagreement over constitutional provisions regarding the structure of the government. According to interviews conducted for this study, several members of the leadership forum felt the proposed shift to a presidential system would further marginalize some clans and empower others. As a result, the leadership forum collectively decided that the next government and parliament would address the constitutional issue.

Meanwhile, the federal parliament amended two articles, 60 and 136, of the constitution to avoid gaps during the transitional period and move the referendum to the upcoming tenth parliament. Article 60 states that the term of the parliament will be four years, stipulating the mandate of the 9<sup>th</sup> parliament ended on August 19, 2016. The amendment states that “the term of the office of Federal Parliament ends from the day that the incoming parliament takes the oath”.<sup>25</sup>

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works with Parliamentary Oversight committee; the 10<sup>th</sup> parliament should not assume Jawari’s role replaces their responsibilities.

<sup>24</sup> Wardheer News, *The National Leaders Forum Communiqué*, April 9-12, 2016, <http://www.wardheernews.com/wp-content/uploads/2016/04/NLF-Communique-Final-April-12-2016.pdf>

<sup>25</sup> Goobjoog, *Somali federal Parliament amends articles in Provisional constitution*, June 15, 2016, <http://goobjoog.com/english/somali-federal-parliament-amends-articles-in-provisional-constitution/>



The second clause of article 136 was also amended. This article stipulated that if a referendum aimed at adopting the “Provisional Constitution as amended, [is] held before the end of the first term of the House of the People, the electorate of the Federal Republic of Somalia may adopt the new Constitution by a majority vote in favor of the final version of this Constitution.” Since a referendum was unlikely to happen, the amendment states that the referendum will be held after the parliament is replaced by the tenth parliament.<sup>26</sup>

MPs voted for these two amendments in a secret ballot. Since the constitution demands a two-thirds majority vote (184) for a constitutional amendment, a quorum of more than 184 MPs in one session was difficult. A member of the federal parliament interviewed for this report explained that the speaker proposed three days of voting (Saturday, Monday, and Wednesday) in order to reach the targeted number of votes. MPs needed only to vote soon after they signed the attendance sheet. As a result, 208 MPs voted for the amendment on June 15, 2016.<sup>27</sup> Though this decision provides parliament some continuity until another is selected, the National Leadership Forum held in Mogadishu in August extended the mandate of the executive branch until the end of October.<sup>28</sup>

## Content of the Constitution: Contested Issues

A parliamentary resolution passed in July 2015 referred or transferred some issues to the National Leadership Forum. Although some legislators interviewed by HIPS questioned its validity, parliament issued a resolution that divided the constitutional review process into four categories: technical issues, key political

issues, gaps to be filled and complex issues that needed extensive political dialogue and negotiations. This resolution gave the National Leadership Forum the exclusive prerogative to negotiate and decide on the contentious political issues.

It seems that the NLF did not negotiate on all issues. However, the contested political issues in the provisional constitution that have to be negotiated among different stakeholders are: the distribution of powers and responsibilities between national and sub-national authorities; resource and revenue sharing; the powers of the president and the prime minister; the powers and representation of the two chambers of the parliament; the status of Mogadishu; citizenship questions; and the design of the judiciary system.

## The Federalization Process: Sub-National Actors

HIPS has [written](#) on the process of federalization in Somalia.<sup>29</sup> Although Somalis express different views on the suitability of the model, HIPS supports federalization as the way forward. That said, a number of questions remain unanswered. In particular, political actors disagree on the number of sub-national units, whether the federation would be symmetric or asymmetric and the distribution of powers of the two levels of the government.

The provisional constitution is based on a federal model with two levels of government: the federal government level and the federal member state level.<sup>30</sup> The constitution is not clear on some of the key questions. For instance, it does not spell out the number of units in the federation. The constitution mandates that two or more of the 18 administrative regions that existed in 1990 can

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Villa Somalia, *Communiqué-National Leadership Forum*, August 10, 2016, <http://www.villasomalia.gov.so/communiqué-national-leadership-forum/>

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<sup>29</sup> HIPS conducted research in five cities (Mogadishu, Baidoa, Kismaayo, Gaalkayo and Garoowe) and a survey of 213 people on the federation process, February 2015, <http://www.heritageinstitute.org/wp-content/uploads/2015/02/HIPS-Briefing-Federal-Somalia-ENG-3.pdf>

<sup>30</sup> Articles 48 and 50 of the provisional constitution

voluntarily join to make a federal member state.<sup>31</sup> It strictly requires that the boundaries of the regions should remain the same as they were in 1990<sup>32</sup>, albeit with a contradictory clause that sets up a boundaries commission tasked with arbitrating disputes.<sup>33</sup> The Somali Federal Parliament was supposed to establish the Boundaries and Federation Commission that was expected to recommend the number and concrete demarcations of Federal Member States. One of the major challenges facing this stipulation is related to the fact that most of the administrations –Somaliland (1991), Puntland (1997) and the more recent Jubaland and South West interim authorities – preceded the formation of the Boundaries Commission in July 2015.<sup>34</sup>

### **Somaliland (Confederation or Asymmetric Federal System)**

Somaliland, a former protectorate of Great Britain, gained its independence on June 26, 1960, and united with Somalia's southern region on July 1, 1960. After a long dictatorship, which used warplanes to attack cities such as Hargeisa and a brutal civil war that resulted in thousands of deaths, Somaliland seceded from the rest of Somalia on May 18, 1991. It has acted as a de facto state since that time and has held successful presidential, parliamentary and local elections. It also has its own currency and legal system, security forces and passport.<sup>35</sup> However, no state has recognized Somaliland as an independent and sovereign nation. Additionally, since its

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<sup>31</sup> Article 49(6) of the provisional constitution

<sup>32</sup> Article 49(5) of the provisional constitution

<sup>33</sup> Article 49(2) states that the federal parliament will form a boundaries commission, which contradicts clause five of the same article, which says 1991 boundaries of administrative regions will be the basis of the Federal Member States.

<sup>34</sup> Goobjoog Radio, *Somali Parliament approves Electoral and Boundaries and Federation Commissions*, July 6, 2015, <http://goobjoog.com/english/?p=15555>

<sup>35</sup> Mary Harper, *Somaliland: Making a success of 'independence'*, May 18, 2016, <http://www.bbc.com/news/world-africa-36300592>

withdrawal from the union in 1991, the Somaliland administration has not been part of Somali conferences and constitution making processes. However, individuals from Somaliland have been members of the parliaments and national governments in Mogadishu.

While Somaliland intends to secede from the rest of Somalia, the Mogadishu-based government sees it as one of many regions that will eventually be part of Somalia's federal government. Moreover, many unionists from Somaliland have called for some form of confederation or federation.<sup>36</sup> The UK, the United Arab Emirates (UAE) and Turkey have sponsored talks between Somaliland and Somalia's Federal Government but genuine and comprehensive debates are yet to start about its status in future political dispensations.

Three views dominate the current thinking: i) secession from the rest of Somalia, ii) confederation or asymmetric federalism iii) symmetric federalism, which makes Somaliland equal to other regions.

### **Puntland: Special Status**

Puntland is an autonomous region in Somalia, which was created on August 1, 1998. Unlike Somaliland, Puntland did not secede from Somalia. But since it was established before the current Federal Government, Puntland considers itself as the only fully-fledged federal member state in Somalia. Thus, notwithstanding its squabbles with Mogadishu, Puntland has been probably the most influential actor in the drafting and reviewing of the current provisional constitution, putting its weight strongly behind the establishment of a federal system in Somalia. Before the end of the transition, Puntland hosted two constitutional conferences in Garoowe known as Garoowe I and II. Based on interviews

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<sup>36</sup> Afyare Elmi, "Decentralization Options for Somalia," *Heritage Institute for Policy Studies (HIPS)* (2014), [http://www.heritageinstitute.org/wp-content/uploads/2014/01/Decentralization\\_Options\\_for\\_Somalia-ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2014/01/Decentralization_Options_for_Somalia-ENGLISH.pdf)

with Puntland politicians, HIPS found that Puntland considers itself a mature administration and therefore asserts itself to secure its interests within the federation. The region's assertiveness, however, irks elements within the federal government who interpret Puntland's hardball negotiations as another secessionist administration. Some aspects of Puntland's tactics suggest that the region wants some form of asymmetric federalism - constituent states within the federation that have different powers.

### Interim Federal Entities

The first Interim Regional Administration of Jubaland was established in an achromatic manner in August 2013. Initially, the Federal Government resisted the creation of Jubaland until Ethiopia and IGAD mediated a compromise accord.<sup>37</sup> This was followed by the tumultuous formation of the Interim South West Administration (ISWA) in June 2014 and the Interim Galmudug Administration in July 2015. Despite the resistance of some clans in Hiiraan to participating in the process, the Interim Hirshabelle Administration was formed in October 2016.

However, despite the diversity of the regions in population and geography, the provisional constitution conceived that all regions should be equal in status, representation and power (symmetric federalism). In this case, regardless of the process followed, there are now six regions that are at different stages of development: Puntland, Galmudug, South-West, Jubaland and Hir-Shabelle. Somaliland is a separate entity and the international community established special mechanisms for its development. The Sool and Sanaag regions are contested by Somaliland, Puntland, and more recently Khaatumo State, which is still unable to

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<sup>37</sup> HIPS produced a detailed policy brief on the conflict and recommendations for a compromise, [http://www.heritageinstitute.org/wp-content/uploads/2013/06/HIPS\\_Policy\\_Brief\\_004-2013\\_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/06/HIPS_Policy_Brief_004-2013_ENGLISH.pdf)

establish itself as an independent administration partly because of military and political pressures from Somaliland and Puntland. The status of Mogadishu has also not yet been decided. During the National Leadership Forum deliberations in Kismaayo, it was determined that Somaliland and Puntland would get more senate seats (11 each) than the rest of the regions, which probably would not address Somaliland's contentions with the rest of Somalia.

### Distribution of Powers, Resources and Responsibilities

The draft constitution divides powers and responsibilities to the Federal Government and the federal regional governments. The constitution gives exclusively to the Federal Government the powers and responsibilities of foreign affairs, national defense, citizenship and immigration and monetary policy. In addition, it calls for further discussions on the distribution of powers, responsibilities, and resources.<sup>38</sup>

The parliamentary Oversight Committee and the Independent Review Commission have completed their separate reviews of the constitution.<sup>39</sup> ICRIC revised chapters of the draft constitution and submitted them to the OC as per their terms of reference. The OC revised and finalized the draft and then submitted it to the ninth parliament. The final draft of the OC proposed that another layer of local governments be established. The rationale for this, according to an interview with a member of the OC, is that the regional governments have not devolved powers to the local governments. The committee concluded that some form of constitutional

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<sup>38</sup> Article 54 of the constitution

<sup>39</sup> The process was contentious as ICRIC and OC worked separately and have different views. An MP who represented Puntland in the OC once walked out of the discussions and took to the airwaves criticizing the process, <http://idilnews.com/2016/05/12/video-xildhibaan-seed-oo-qaylo-dhaan-ka-soo-saaray-farataysiga-dastuurka-fadaraalka-lagu-hayo/>

protection for the local governments was necessary.

In addition, both committees revised chapter five – Devolution of the Powers of State in the Federal Republic of Somalia - of the provisional constitution. The OC, which has the authority to review the proposals of the independent commission, amend and submit to parliament, proposed a new distribution of powers. According to article 57 of the revised document, the national government will exclusively legislate and administer 24 areas. They include foreign affairs, defense, monetary policy, the central bank, citizenship, transportation (air, major roads and trains), postal and telecommunication services, law of the sea, issues related to organized crime, counter piracy issues, economic development, health, education, research and technology, land and natural resources, rivers and lakes that link two or more regions, elections and political parties, copyright issues, emergency laws, ownership of weapons, taxation and legislation of the judiciary.

Additionally, the OC proposed that federal regional administrations should legislate and administer seven areas exclusively. They include a constitution that is consistent with the federal constitution; establishing a democratic administration that is based on the rule of law; development plans; administering the region; taxation for exclusive state revenue sources; legislation and administration of civil servants of the region; and the establishing of police for the state.

In the revised provisional constitution, the commission did not assign concurrent powers, which both the federal and state governments have to share. There are however areas where the two levels of the government can collaborate. They include, but are not limited to, agriculture, energy production, commerce, marriage, forest and wilderness protection. The Federal Government can, for instance, legislate while the regions can administer laws. Therefore, identifying, agreeing and listing federal

exclusive, state exclusive and concurrent jurisdictions in the constitution would be useful in establishing a decentralized and united Somalia with functioning federal, state and local institutions.

However, realities on the ground contradict some of the proposals of the OC. As it stands now, some of the regional states, if not all, operate as almost independent states. They have their own government ministries, parliamentarians, and flags. They run their own internal affairs. They deal with neighboring countries and the international community through their own representatives. Somaliland and Puntland aside, none of these states claim special status. Even though they at times clash with the central government, and they would like to have as much power as possible, politicians from interim Federal Member States express an interest in creating symmetric federalism where all states including Somaliland and Puntland would have equal powers. Yet, when they met in Kismaayo in early 2016, they agreed to give six more senate seats (three to each) to Puntland and Somaliland.

## Presidential vs Parliamentary System

Parliamentary and presidential systems are the dominant modes of government around the world. The parliamentary system fuses the legislative and executive powers. In contrast, presidential systems are based on the separation of powers of the legislative and executive branches. A third less used system is known as a semi-presidential system, and it combines the features of both presidential and parliamentary systems, creating a president and prime minister with considerable executive powers.<sup>40</sup>

Somalia's 1960 constitution adopted a semi-presidential system. Parliamentarians elected a

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<sup>40</sup> Peter Harris and Ben Reilly, "Democracy and Deep-Rooted Conflict: Options for Negotiators," *International Institute for Democracy and Electoral Assistance* (1998), [http://www.idea.int/publications/democracy\\_and\\_deep\\_rooted\\_conflict/upload/ddrc\\_full\\_en.pdf](http://www.idea.int/publications/democracy_and_deep_rooted_conflict/upload/ddrc_full_en.pdf)

president who had the power to appoint and dismiss a prime minister.<sup>41</sup> The prime minister had to maintain the confidence of parliament and the president. The 1969 revolution introduced a presidential system where General Mohamed Siyad Barre was the leader of the revolution, the secretary general of the ruling party and the president of the republic. The military regime centralized power and ruled the country from Mogadishu. This centralization led to a brutal civil war that eventually destroyed the state in 1991.

In 2000, for the first time, Somalia's political class got the opportunity to deliberate on a suitable design of the executive branch at the Arta Conference. The committee that drafted the charter agreed to go back to the 1960 constitution with some modifications and adopted a semi-presidential system. However, the committee decided to remove the power of the president to dismiss the prime minister to avoid another centralized presidential system that might lead to a dictatorial regime.

Somalis have been using this poorly conceived system for the last 16 years. Since then, there have been five presidents: Abdikassim Salad Hassan, Abdullahi Yusuf Ahmed, Sharif Sheikh Ahmed, Hassan Sheikh Mohamud and Mohamed Abdullahi 'Farmaajo'. Each of the first four presidents has had a conflict with his prime ministers, and there have been 12 since 2000.<sup>42</sup> This highlighted systemic rather than individual problems. The provisional constitution assigns executive powers to the Council of Ministers, which is headed by the prime minister. On the other hand, the constitution tasks a number of executive functions to the president, thus creating confusion. Furthermore, the parliament

elects the president while the president appoints the prime minister. The citizens elect neither official. In fact, Somalia's current draft constitution does not conceive of a president that is popularly elected. Additionally, the draft constitution empowers presidents that are elected by parliament (not the people) to appoint the prime minister of his choice. More importantly, Somalia's political culture is based on a strong president – suggesting that the ultimate political post that politicians covet is the presidency.

The consequences of this divided executive system were devastating. Frequent changes of the cabinet, arbitrary designs of ministry portfolios and grand corruption are among many systemic problems of the executive institution. First, Somalia has not seen a cabinet that lasted for four years. Some were in office for only six months while others stayed in power for about two years – often marred by power struggles. Second, ministers are appointed for expediency reasons, because prime ministers want to gain parliamentary confidence. Most parliamentarians seek to influence who becomes a member of the cabinet.

At times prime ministers formed large cabinets. Prime Minister Ali Gedi appointed close to 100 ministers, state ministers and deputy ministers in 2005.<sup>43</sup> During Abdi Farah Shirdoon's premiership, there were only 10 federal government cabinet ministries. His successor Abdiwali Sheikh Ahmed announced 25 ministries, five state ministries, and another 25 deputy ministries. When the president and prime minister disagreed on a course of action, the only option available was to corrupt the members of the parliament in order to remove one or the other, often the prime minister.

Somali politicians, academics, and the general public have different views on the structure of government suitable for the country. Some

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<sup>41</sup> *The Constitution of the Somali Republic*, adopted in 1960, [http://www.ilo.org/dyn/travail/docs/2176/Constitution\\_1960.pdf](http://www.ilo.org/dyn/travail/docs/2176/Constitution_1960.pdf)

<sup>42</sup> HIPS policy brief on the Consequences of Political Infighting, December 2013, [http://www.heritageinstitute.org/wp-content/uploads/2013/12/HIPS\\_Policy\\_Brief\\_006-2013\\_ENGLISH-1.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/12/HIPS_Policy_Brief_006-2013_ENGLISH-1.pdf)

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<sup>43</sup> See the names of the ministers, state ministers, and vice-ministers, <http://www.somalitalk.com/2005/jan/7jan25.html>

politicians and regional leaders are adamant about maintaining the divided executive system where two individuals hailing from different clans occupy the two positions. This issue is the main reason for the postponing of the constitutional review. Three of the eight national forum leaders is said to have felt that the proposed change of the structure of the government to the presidential system would further marginalize non-Hawiye clans. For these politicians, keeping the divided executive is important to balance clan powers. Moreover, balancing major clans' political powers is the rationale behind the famous/infamous 4.5 clan power sharing formula.

The Digil and Mirifle clan family currently gets the post of parliamentary speaker, while the Hawiye and Daarood clans alternate the presidency and premiership posts. The Dir clan is relegated to the posts of deputy premier and chief justice. The so-called minority clans (as a national census has not been taken) assume the deputy speakers' position as well as cabinet posts.

Others insist that the divided executive has failed to function in Somalia and propose a presidential system. Proponents of this view contend that such a system would result in a stable executive for the period that it is in power, ending the power struggles between the individuals in the divided executive positions. Somalia's political class is familiar with such a system as the country's recent political history illustrates. There would be a clear separation of power between the executive and legislative branches of the government. Finally and most importantly, citizens would get the opportunity to elect the executive branch of the government.<sup>44</sup>

Against this background, the OC recommended a presidential system with vice presidents. In Somaliland, Puntland and other interim federal

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<sup>44</sup> Mahad Wasuge, *Presidential System: Exploring Future Somali Government Structure*, March 8, 2015, <https://mahadbile.wordpress.com/2015/03/08/presidential-system-exploring-future-somali-government-structure/>

regional administrations this arrangement is suggested to have resulted in stable decision making.

HIPS believes that the most appropriate way to end the power struggle between presidents and premiers could be to return to the 1960 constitution with some modifications. The president's power to dismiss the prime minister should be re-instated. This would force the prime minister to maintain the confidence of both the president and parliament. HIPS also contends that the Somali people should directly elect the president rather than parliament. The prime minister should be subordinated to the president, and the president must be elected by the citizens.

## Design of the Bicameral Legislature

Somaliland aside, Somalia has not had a two-chamber parliament in its history. The 1960 constitution adopted a unicameral parliament. The military regime maintained one rubber stamp assembly. The Arta Accord in Djibouti in 2000 also kept a one-chamber parliament. In 2004, even though the Somali reconciliation conference in Kenya adopted a federal charter, a unicameral legislature was maintained. Article 28 (2) stated that "The Transitional Federal Parliament of the Somali Republic shall have a single Chamber."<sup>45</sup>

However, the provisional constitution of 2012 introduced a federal system with two chambers. The constitution mandated a 54-member upper house with three senators for each of Somalia's pre-civil war 18 administrative regions.<sup>46</sup> In theory, the House of the People represents the citizens, while the upper house represents Federal Member States.

The provisional constitution accords similar functions, powers, and responsibilities to the two

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<sup>45</sup> ILO, *The Transitional Federal Charter of the Somali Republic*, Nairobi, February 2004

<http://www.ilo.org/dyn/travail/docs/2177/Transitional%20Federal%20charter-feb%202004-English.pdf>

<sup>46</sup> Article 72 of the constitution

chambers. They participate in elections and the impeachment of the president, constitutional amendments, legislative processes, the nomination of independent commissions and the establishment of the constitutional court. In 2012, the formation of the upper house was not practical, and therefore the stakeholders decided the new government and parliament should complete the federation process before establishing the second chamber.

There was one major development regarding the establishment of the second chamber during the 2012-2016 term. New Interim Federal Member States emerged from the South-Central region: Jubaland (2013), Southwest (2014), Galmudug (2015) and Hirshabelle (2016). However, the government failed to finalize the status of Mogadishu. Based on this development, on April 12, 2016, the National Leaders Forum agreed the six point procedure to form the upper house – before the elections of the lower house. According to a communiqué from the NLF, the regional government executives would divide the number of senators among sub-clans in the region, which would nominate two or more senatorial candidates for each of the upper house positions. Regional parliamentarians would vote for one candidate on each list. The president of each state would sign the list of elected members.<sup>47</sup>

There is controversy on the formation of the upper house on two levels. Firstly, many question the wisdom of having a second chamber, saying it is duplication in terms of the constituents it represents and functions it performs. As things stand at the time of writing, the lower house members were selected based on the 4.5 clan formula. For each of the 275 seats, traditional elders chose 51 delegates from sub-clans that elect each parliamentarian.

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<sup>47</sup> Wardheer News, *The National Leaders Forum Communiqué*, April 9-12, 2016, <http://www.wardheernews.com/wp-content/uploads/2016/04/NLF-Communique-Final-April-12-2016.pdf>

Secondly, the upper house members represent major clans within the states. Clan politicians disagreed on the number of constituent units and the functions and the powers that this body would exercise. Politicians were divided along clan lines. Daarood political leaders such as Abdiweli Gas and Ahmed Islam called for an upper house based on 18 regions. They believed that their regions (read clan) would dominate that chamber in this arrangement. Hawiye political leaders Abdikarim Guled and Hassan Sh. are said to have campaigned for an upper house that is based on the current interim Federal Member States. Under such an arrangement, Hawiye politicians would dominate Galmudug and Hir-Shabelle. Digil and Mirifle politicians rejected both proposals, arguing for a system that is based on the 4.5 clan formula.

In fact, according to a position paper that has been shared with the international community, the Digil and Mirifle politicians proposed Somalia's 135 clan elders should become the members of the upper house. The rationale for this position is based on two important considerations. First, if the Daarood and Hawiye proposals are adopted, the Digil and Mirifle politicians believe that their clan will be marginalized. Second, neither Daarood nor Hawiye politicians have not considered the representation of the internally displaced people who are in Puntland, Banadir and Galmudug regions. As such, 1.2 million IDPs would be left unrepresented. Finally, politicians from the Isaaq and Dir clans (unionists) also reject the Hawiye-Daarood proposals. They believe the federation should be between British Somaliland and Italian Somaliland and the two chambers should represent these two entities.

After a number of achromatic discussions, the National Leaders Forum agreed to maintain the Kismaayo Agreement in which eight seats were given to each of the interim authorities and an extra three seats to Somaliland and Puntland.<sup>48</sup>

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<sup>48</sup> See the communiqué, <http://www.villasomalia.gov.so/communique-on-the-electoral-model-for-2016/>

Regional leaders nominated/selected two or more individuals from each major clan from their region, and the regional legislature voted one of the candidates as a senator. Special caucuses of 46 members (23 elders plus an equal number of citizen voters) were formed to elect Somaliland representatives in the upper house.

However, this did not resolve the complaints of some unrepresented or under-represented clans. In response, at their meeting in December 2016, the National Leadership Forum decided to add 18 more seats to the second chamber, making the total 72. According to the communiqué, the new seats are equally divided among six regional administrations.

Procedurally, the selection process of the new members is different from the selection of the other 54 senators. The presidents of the regional administrations would select three members from their regions, and the president of the federal government would endorse these members by issuing a presidential decree.<sup>49</sup>

However, this addition of the new members contradicts the provisional constitution which mandated 54 senators. Thus, many Somali politicians and the international community opposed the proposal of the new seats to the senate chamber and described it as unconstitutional.<sup>50</sup> As a result, the forum leaders met again and decided to postpone the addition of new members and requested from the new parliament to amend article 72 of the provisional constitution.<sup>51</sup> In short, the second chamber, in

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<sup>49</sup> Jowhar, *Akhirso: War murtiyeed kasoo baxay shirkii Madasha iyo 18 xubnood oo lagu kordhiyay Aqalka Sare*, December 25, 2016, <http://www.jowhar.com/akhirso-war-murtiyeed-ka-soo-baxay-shirkii-madasha-iyo-18-xubnood-oo-lagu-kordhiyay-aqalka-sare/>

<sup>50</sup> UNSOM, "International Community Gravely Concerned Over Decisions of National Leadership Forum on Electoral Process," December 27, 2016, <https://unsom.unmissions.org/international-community-gravely-concerned-over-decisions-national-leadership-forum-electoral-process>

<sup>51</sup> Goobjoog, *National Leadership Forum Ask Amendments Article 72 Of The Constitution*, December 29, 2016,

theory, represents sub-clans of the region, but in practice, it is arbitrarily chosen by the presidents of the regions.

Generally, in Somalia, there are two important identity cleavages that the political system should accommodate – that of clans and that of citizens. The concern of South West is now clear. The senators that are chosen through the above explained process did not comply with the clan power sharing arrangements maintained in the past 16 years. Daarood and Hawiye clans dominated the majority seats of the new legislative body.

If a bicameral legislature is to be maintained and properly function in Somalia, the two chambers should represent these two distinct constituencies. In this case, the second chamber (senate) should represent clans. For instance, Somaliland has an upper house that represents clans. This chamber has played a significant role in the stability of the region since 1992. This is an experience that can be replicated in Somalia's federal institutions. The Digil and Mirifle politicians proposed that Somalia's 135 traditional elders that selected the parliamentarians to form this second chamber. But, the National Leadership Forum rejected this proposal. Finally, limiting the functions, powers, and responsibilities of the senate as Ghana and Botswana could minimize or safeguard duplication & conflict.

On the other hand, the lower house or the House of the People could in 2020 represent citizens electing through political parties that compete in a single national district based on proportional representation. For instance, the 275-members of this chamber would be contested by political parties. Each citizen, regardless of where he or she lives, will vote for his/her preferred political party. It is the political party that will present its list (of 275 candidates) to the electoral commission. For political parties to win across

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<http://goobjoog.com/english/national-leadership-forum-ask-amendments-article-72-constitution/>



the nation they will have to field an inclusive list, consisting of all clans and electoral blocs and constituencies including youth and women.

## On the Status of Mogadishu

Mogadishu is the most populous city in Somalia. The UN's census estimated the population at 1.6 million residents.<sup>52</sup> The city was the capital and one of many cities of the ex-Banaadir region from 1954-1969.<sup>53</sup> However, the military regime divided ex-Banaadir into three: Lower Shabeelle, Middle Shabeelle and Banaadir but kept Mogadishu as a city and a region at the same time. The constitution calls for the two houses of the Federal Parliament to enact a special law outlining Mogadishu's status in the constitutional review process.

The ninth parliament did not clarify the status of Mogadishu. Additionally, the National Leadership Forum failed to agree on the issue. The forum formed an independent commission to recommend special status for Mogadishu within 60 days.<sup>54</sup> In late June, the forum agreed to assign two seats of the upper house to the Banaadiri community, Mogadishu's founding community. The September National Leadership Forum communiqué did not elaborate an agreed Mogadishu status. The proposal of the independent commission to allot Mogadishu 15 senators (an equal number for all clans) was not considered. In contrast, the two seats for Banaadiri community were repealed and again the forum reverted to the Kismaayo Accord. In this regard, Mogadishu as a city has no representation in the upper house. That said, while the Banaadiri and other unarmed clans are not represented in the second chamber, most

clans such as Daarood, Digil and Mirifle, Dir and Hawiye are represented in the senate.

There have been two main arguments on the status of Mogadishu in a federal Somalia. One is to regard the city as one of the federal member state units in the country. The other argument contends that Mogadishu remains the capital city and under federal government jurisdiction. Both arguments have proponents and opponents from Somali policy makers, politicians and the general public.

Somalia's Parliamentary Oversight Committee proposed that Mogadishu be considered as a city-state. The commission underscored that Mogadishu will be the capital city of the country. The OC added that taxation and laws regulating the lands and properties of the federal government in the Banaadir region will be negotiated between the Banaadir regional state and the federal government.

In short, the knowledge and understanding of the intricacies of federalism remain low among Somalis and views on Mogadishu's status among stakeholders seem impractical in the short term.<sup>55</sup> Therefore, exhaustive studies on the different constitutional arrangements for capital cities in federal countries are required. Further, a dialogue and negotiations among all stakeholders is equally important before deciding the future status of Mogadishu. The post-2016 federal parliament and government should make this one of its first priorities.

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<sup>52</sup> UNFPA, "Population Estimate Survey for the Pre-war Regions of Somalia," October 2014, <http://somalia.unfpa.org/sites/arbstates/files/pub-pdf/Population-Estimation-Survey-of-Somalia-PESS-2013-2014.pdf>

<sup>53</sup> Mohamed Trunji, *Somalia: The Untold History 1941 – 1969* (Leicester: Lohpressn, 2015).

<sup>54</sup> National Leaders Forum communiqué, June 3, 2016, <http://www.villasomalia.gov.so/war-murtiyeed/>

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<sup>55</sup> For a policy-oriented, academic discussion on possible governance structures for Somalia, see the LSE's 2005 report, *A Study of Decentralised Political Structures for Somalia: A Menu of Options*, [http://tobiashagmann.freeflux.net/files/media/horn/docs/lewis\\_mayall\\_1995\\_decentralised-structures-somalia.pdf](http://tobiashagmann.freeflux.net/files/media/horn/docs/lewis_mayall_1995_decentralised-structures-somalia.pdf)

## Conclusion

The constitutional review process has not progressed in the past four years as expected and the milestones outlined in the New Deal and Vision 2016 have not been achieved. The key contested issues are still unsettled and negotiations and genuine discussion among political actors are yet to be realized. The delay in the formation of the Independent Constitutional Review and Implementation Commission, failure to secure the necessary independence and resources the commission needed and political infighting are among the main reasons that Somalia is without a finalized, and genuinely Somali-owned, constitution.

The Heritage Institute believes that a thorough review of all critical issues relating to the constitution, at the national level, is necessary before 2020. Lessons should be learned from past mistakes, and the next parliament and government should make the finalization of the constitution a top collective priority. It should also select competent commission members and allocate the necessary resources to the process.

## Policy Recommendations

- Somalia's constitution making process took much longer than necessary. Harnessing and incorporating the views, values, and aspirations of the Somali citizens has been wholly inadequate. The upcoming government and the new parliament should strive to make the process a citizen-centric exercise. This will ensure the final document will be a constitution by and for the Somali people.
- Parliament's Oversight Committee presented recommendations to the tenth parliament and provided a menu of options from which Somalis could choose. The Oversight Committee proposed a 24/7 formula when it comes to the distribution of powers and responsibilities. This means the federal government's responsibilities are in 24 critical areas whereas regions are entrusted with seven. We consider this recommendation sensible and urge Somalia's political class and civil society leaders to start discussions, genuinely negotiate and reach agreement on the Oversight Committee's recommendations.
- A stable, transparent, accountable and legitimate executive branch of government is imperative. The divided executive system has not functioned effectively and efficiently in Somalia since 2000. The proposed move to a popularly elected presidential system by the Oversight Committee would end the paralysis of the decision making of the government. However, since the Somali people are recovering from a long and brutal civil war, the political class must understand and address the fears of domination and concerns of over-centralization.

- We also recommend that as the 1960 constitution stipulated, the president's power to dismiss the prime minister should be reinstated. This would force a prime minister to maintain the dual confidence of the president and the parliament. In addition, we believe that since the president has these powers, the Somali people should elect him/her directly. In other words, the prime minister should be subordinated to the president, and the president must be elected by the people.
- Bicameral legislatures are meant to reflect the cleavages and identities within society. In the case of Somalia, individual citizens and clan identity are the two main cleavages that the political system should accommodate. For economic and political factors, an inclusive unicameral legislature would be the preferred option for Somalia. However, the political class has established two chambers. We think the lower house should represent the citizens. By 2020, political parties should compete for the 275 seats in a single national district and be elected through proportional representation.
- The second chamber that has been established represents major clans of the federal member states. Procedurally, there are two processes. In terms of representation, as the Somaliland experience shows, we support the idea that senators represent clans. However, we call for Banaadiri clans to be accommodated in the process. We also propose that, in future, the procedure of the selection of senators and the functions of the second chamber should be revisited.
- The constitution will guarantee and establish every citizen's rights and duties. It is imperative that all Somalis understand and have a say in the formulation of the supreme law of the land. Somalia's political class should recognize the importance of creating a constitution that is understood, respected and appreciated by the people and state institutions. The political leadership should stop the monopolization of the process at the expense and exclusion of citizens.
- The Somali ownership of the constitution making process should start with the Somali government taking responsibility for funding the constitutional review process. Resources from external actors are needed especially in conducting a countrywide referendum. However, Somalis should take ownership and play the lead role. A study has shown that a generally accepted best practice for external support to a sovereign process is to leave the ownership of the content and process of the constitution building to domestic parties.<sup>56</sup> The external support should come under this principal and should not design the review and ratification process to Somalis.
- Civil society should play a pivotal role in safeguarding the interests and constitutional rights of Somali citizens and monitor the extent to which state institutions abide by the constitutional provisions. Civil society actors should redouble their efforts in ensuring politicking does not muddy the nation's constitution making process.

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<sup>56</sup> IEDA, *Constitution building after conflict: External support to a sovereign process*, May 2011, <http://www.idea.int/publications/constitution-building-after-conflict/upload/CB-after-conflict.pdf>.

