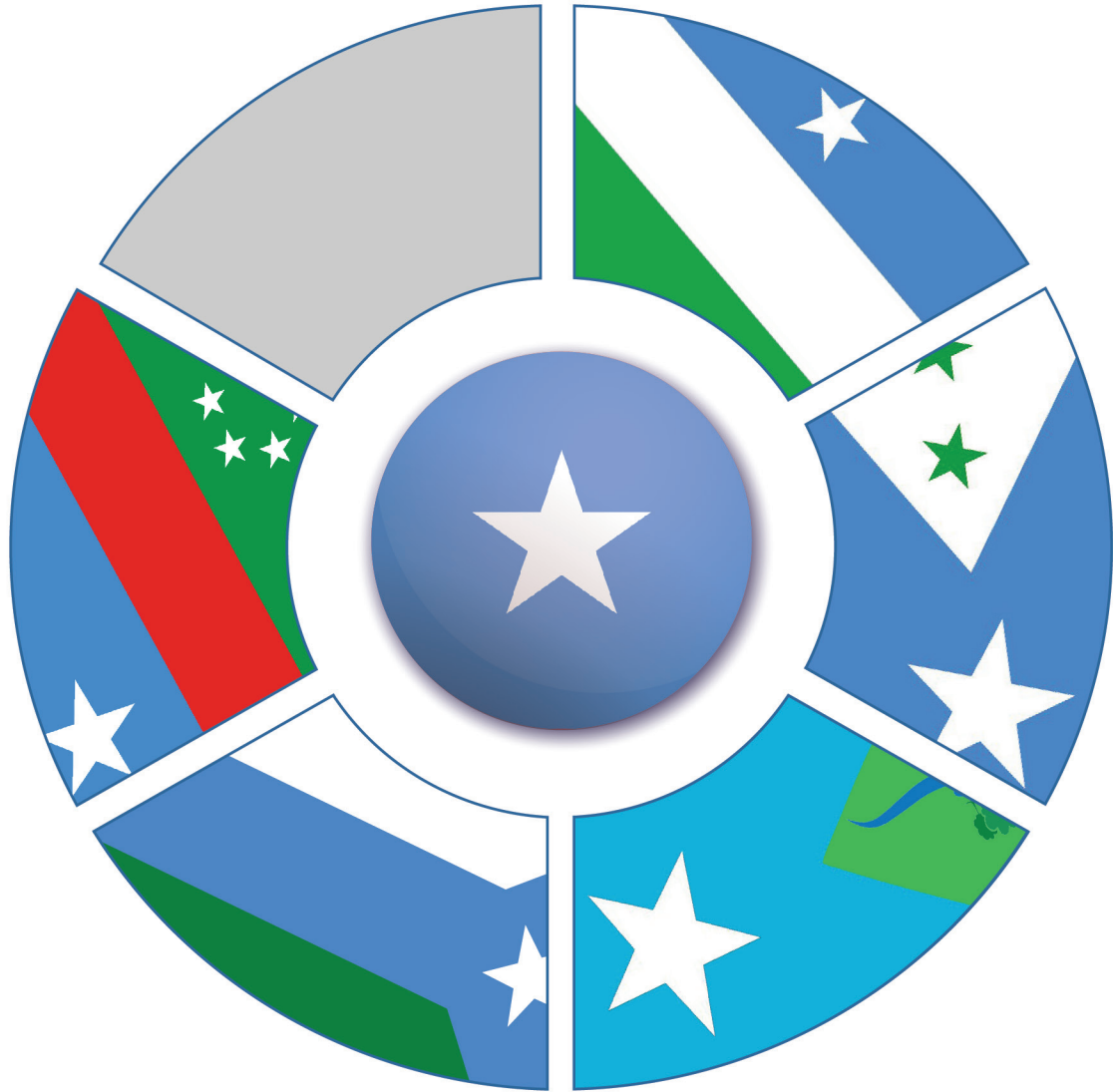


# Dysfunctional federalism



**How political division, constitutional ambiguity and a unitary mindset thwart power sharing in Somalia**



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Abdirizak Aden Muhumed has been the lead author of the study.

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## Executive summary

Article 1 of Somalia's provisional constitution states that "Somalia is a federal state." Article 3 (3) stipulates that "the federal republic of Somalia is founded upon the fundamental principles of power-sharing in a federal system." In the spirit of collaborative federalism, Article 51 (2) underscores that "every government shall respect and protect the limits of its powers and the powers of other governments." Despite these clearly worded constitutional guidelines, conflict is rife between the federal government of Somalia (FGS) and the Federal Member States (FMSs) and the rift is still widening. Over the past three years, the federalism discourse has been characterized by confrontation rather than collaboration. Failure to reach consensus on a power-sharing model has hampered progress on all other issues of national importance, including security, stabilization, institution building, reconciliation, provision of services, peace building, international relations and resource mobilization.

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*Failure to reach consensus on a power-sharing model has hampered progress on all other issues of national importance*

Even less controversial issues have recently generated bitter disputes between the FGS and some FMSs. For instance, the constitution does not demarcate the level at which responsibility lies for the provision of education. As the FGS has tried to develop a national education policy framework, Puntland State (whose formation preceded the establishment of the federal system) has decried what it perceives to be FGS overreach. Likewise, even though the constitution clearly and exclusively allocates to the FGS the mandate to conduct foreign policy, some FMS governments continue to engage in diplomatic transactions with foreign states in defiance of the FGS.

Security and resource management (fiscal federalism) have also become arenas of intense inter-governmental competition. Though the constitution, either clearly or by inference, mandates responsibilities in these areas to one layer of government, in reality another level is executing them. Constitutional ambiguities as well as politicians' inability to collaborate have contributed to the emergence of dysfunctional federalism. The absence of a constitutional court to mediate disagreements over the division of authority and the demarcation of responsibilities has further exacerbated mounting tensions.

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*Constitutional ambiguities as well as politicians' inability to collaborate have contributed to the emergence of dysfunctional federalism*

The federal parliament, potentially a key institution in stabilizing federalism, has often been rendered ineffective by unresolved conflicts between the FGS and FMS executive branches, and it has not assumed an arbitration role regarding the distribution of power. Worse still, many Somali politicians regard the provisional constitution as a nonbinding document, and they frequently engage in unconstitutional conduct. FGS and FMS leaders seldom use traditional avenues of conflict resolution such as informal agreements or inter-state and independent commissions, and their tendency to centralize power signals a half-hearted acceptance of federalism.

This report discusses the issues that underpin power distribution in a federal Somalia. It offers some historical background, a brief discussion on federalism in the global context and the rationale for federalism in Somalia. It contends that the unitary mindset of Somalis is an obstacle to the federalist devolution of power and identifies education, security and fiscal federalism as new 'arenas' of conflict. The study concludes that a shift away from this unitary mindset is necessary if citizens' needs are to be fulfilled, and ends with policy recommendations.

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## Introduction

In the decolonization era of the 1960s, scholars considered Somalia as the “most hopeful nation” on the African continent.<sup>1</sup> Unlike many ethnically diverse African countries, the Somali nation was largely homogeneous. Democratic elections followed the dawn of independence, and the country’s leadership was dubbed “Africa’s first democrats.”<sup>2</sup> For some scholars, Somalia was the only “true nation-state” in north-eastern Africa.<sup>3</sup>



*Hizbia Dastuur Mustaqil al-Somal (HDMS), a party led by politicians from what is now South West State, advanced the notion of a federated Somalia*

The concept of Somali federalism predates independence in 1960.<sup>4</sup> Even during the colonial era, scholars and Somali liberation movements perceived a nation endowed with the necessary preconditions for the formation of a modern state. Hizbia Dastuur Mustaqil al-Somal (HDMS), a party led by politicians from what is now South West State, advanced the notion of a federated Somalia. HDMS believed that the regional Somali dialect known as Maay provided an overarching framework for self-administration in the southwestern region, and that a federal system could protect this region’s economic and political interests. An academic interviewed in Baidoa for this study pointed out that the exceptionally rich farmland in South West State’s Bay and Bakool regions lent further credence to the region’s push for self-rule. Social cohesion among southwestern communities provided greater stability.<sup>5</sup>

However, the politics of pan-Somalism swept away these notions of federalism. Buttressed by ethnic nationalism, the Somali political agenda became focused on the reunification of all Somali territories in the troubled Horn of Africa. The euphoric effects of independence fostered a semblance of elite unity from 1960 to 1964,<sup>6</sup> but the emergence of clan-based political parties led to democratic disorder, and ultimately corruption and nepotism marred civilian government from 1965 to 1969, hindering political and economic progress.<sup>7</sup>

Taking advantage of public discontent and the political stalemate that followed the assassination of President Abdirashid Ali Shermarke in 1969, military forces commanded by General Mohamed Siad Barre overthrew the civilian government in a bloodless coup and suspended the constitution. With strong popular support, the new military regime reignited nationalist spirit by embarking on massive development projects such as the construction of new schools and medium and small-scale factories across the country. The regime’s successful handling of a terrible drought in 1974 further boosted its image, and another semblance of elite unity prevailed from 1969 to 1977.<sup>8</sup>

Resurgent nationalist spirit spurred Somalia’s 1977-1978 war with Ethiopia over the ethnically Somali Ogaden region. However, deployments of Soviet and Cuban soldiers halted initial Somali advances and turned the tide in favor of Ethiopia. Somalia’s defeat in the Ogaden War brought demoralization and serious political dissidence. The military regime’s repressive techniques succeeded in silencing its critics but failed to address festering communal grievances.

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1 Luling, V. (1997). Come back Somalia? Questioning a collapsed state, *Third World Quarterly*, Vol. 18, No. 2.

2 Samatar, A. (2016). *Africa’s First Democrats: Somalia’s Aden A. Osman and Abdirazak H. Hussein*. Indiana: Indiana University Press.

3 Appiah, A. (1993). *In My Father’s House*. Oxford: Oxford University Press.

4 Elmi, A. (2014). Decentralization options for Somalia: Paper for the Heritage Institute for Policy Studies. [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).

5 Kusow, A. (2004). *Putting the cart before the house*. Africa World Press.

6 Samatar, A. (1997). Leadership and ethnicity in the making of African state models: Botswana versus Somalia, *Third World Quarterly*, Vol. 18, No. 4. Even then, Somaliland politicians felt they were marginalized as southern politicians assumed all top political powers in the new unified state.

7 Abdulle, M. (2017). Federalism for Somalia: the best hope for rebuilding the nation: Paper for the Observatory of Conflict and Violence Prevention, <http://ocvp.org/HQRS2/Mohamed%20Iman%20Abdulle.pdf>

8 Samatar, A. (1997). Leadership and ethnicity in the making of African state models: Botswana versus Somalia.

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Federalism as a system of governance did not reappear in this era of nationalistic enthusiasm. Under Barre's iron fist, he was the state and the state was him. The state became increasingly concentrated in geographic terms as infrastructure and basic services such as the issuing of passports and birth certificates rarely went beyond the seat of political power in Mogadishu.<sup>9</sup> In the 1980s, armed rebel groups organized along clan lines gradually weakened the central state, and the military regime finally collapsed in 1991, precipitating unprecedented chaos and the rise of warlord-run fiefdoms. The tragic consequences of the subsequent war are beyond the scope of this report.

In 2000, a conference held in Djibouti after a dozen unsuccessful reconciliation attempts managed to establish a transitional government. It introduced a '4.5' model of power distribution in which political seats were divided among the four major warring clans, with a supplemental dispensation of seats to marginalized groups. The architects of this unprecedented power sharing model insisted that although it was not just, it provided a stopgap solution, creating an artificial political equilibrium among major clans in order to reconstitute a Somali state.<sup>10</sup>

Despite its glaring flaws, the 4.5 model enabled the formation of a Transitional National Government (TNG) with Abdiqasim Salad Hassan as president. Before the end of Hassan's term, a Somali National Reconciliation Conference was held in Mbagathi, Kenya, and opposition factions united to elect Abdullahi Yusuf Ahmed as president in 2004. Federalism was officially prescribed as the political medicine for a bleeding nation<sup>11</sup> as Hassan's TNG morphed into Yusuf's limping Transitional Federal Government (TFG). After Sheikh Sharif Sheikh Ahmed was elected president in 2009, the government sought to slough off its transitional label. In 2012, Somalia adopted a provisional constitution and held its first competitive presidential election since 1967.

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Article 48 of the provisional constitution stated that “based on a voluntary decision, two or more regions may merge to form a federal member state”

Article 48 of the provisional constitution stated that “based on a voluntary decision, two or more regions may merge to form a federal member state.” After Hassan Sheikh Mohamud assumed the presidency in 2012, he oversaw the hasty establishment of four FMSs to join the already-established state of Puntland. Jubaland came into being in 2013 and South West State, Galmudug and Hirshabelle were formed in 2014, 2015 and 2016 respectively. Though anti-federalists depicted these FMSs as clan-dominated entities, a skeletal federal structure had been hurriedly erected.

Some unionist politicians and academics advocated for the new federation to comprise both British Somaliland and Italian Somaliland, the two regions that formed the Somali Republic from independence in 1960 until the former British Somaliland declared independence in 1991. Others argued that the federation should be based on the 8 provinces of the British and the Italian colonial administrations, rather than the 18 pre-1991 regions. They argued that a new merger of the two former colonies would be economically more viable and politically less clannish than a lineage-based federation.

President Hassan Sheikh Mohamud lost the second federal presidential election to Mohamed Abdullahi Farmajo in 2017, in a process laden with renewed hope but marred by vote buying. The resulting peaceful transfer of power was perhaps the most noteworthy political achievement the country has made since its rebirth in 2000.

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9 Elmi. A. (2013). Decentralization options for Somalia: Paper for Heritage Institute for Policy Studies.

10 HIPS interview, 11 January 2020.

11 Federal Somalia: Not if but how. Heritage Institute for Policy Studies Policy Brief, February 2015. <http://www.heritageinstitute.org/federal-somalia-not/>



*The study began with a thorough review of the federal systems of 11 countries, paying close attention to their systems of power-sharing and service delivery*

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## Research methodology

Researchers collected primary data for this report from veteran politicians, federal parliamentarians, academics, members of civil society and members of the Independent Constitutional Review and Implementation Commission (ICRIC) through both key informant interviews and focus group discussions. Interviewees were selected according to their expertise and political positions. To gain insight and different perspectives as well as points of contestation, researchers travelled to all FMSs, where they spoke to regional presidents, cabinet ministers, senior politicians and members of regional parliaments, as well as academics. The study began with a thorough review of the federal systems of 11 countries, paying close attention to their systems of power-sharing and service delivery.

## Federalism in a global context

Professor Peter H. Schuk of Yale University has identified four ways of introducing federalism to a polity.

- Pre-existing regions or colonies willingly form a federal system. The United States of America is the classic example of this scenario.
- An imperial power like the United Kingdom initiates federalist structures within a nation-state that was formerly a part of its colonial empire. Federal systems of governance in Australia, India, Brazil and Nigeria originated in this way.
- A military conquest lays the foundation for federal structures, as with Germany in the aftermath of the Second World War.
- South Africans and Belgians have opted for federalism through negotiated settlements to accommodate different linguistic and minority groups within their respective states.<sup>12</sup>



*Somali federalism emerged from attempts to reconstitute a failed state and reconcile warring actors amid rancorous political fragmentation after more than two decades of turmoil*

Competition among ethno-cultural and linguistic identity groups necessitates a highly-centralized federalism, as in Ethiopia. Somali federalism emerged through none of the above routes. Setting aside the self-declared Republic of Somaliland, among the current FMSs only Puntland, a semi-autonomous region since 1998, preceded the introduction of federalism in 2004. Somali federalism emerged from attempts to reconstitute a failed state and reconcile warring actors amid rancorous political fragmentation after more than two decades of turmoil. The notion of building regional autonomy gained momentum with certain segments of Somali society, while others bitterly opposed the idea of a federated Somalia.

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<sup>12</sup> Schuk, P. H. (2006). Federalism. Faculty Scholarship Series Paper 1672. New Haven, CT: Yale Law School Faculty Scholarship.

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## The rationale for federalism in Somalia

Proponents of a federated Somalia insist that homogeneity did not prevent the country from falling into a political abyss. Unlike Ethiopia and Nigeria, the two other federated countries on the continent, disunity in terms of language, culture, religion, moral codes or common laws were not among the reasons why Somalia adopted federalism. The main impetus was the need to address an acute political fragmentation that permeated the land. The civil war and other conflicts since 1988 created unprecedented social and political distrust. Out of the ashes of the civil war came warlord-run cities, semi-autonomous regional fiefdoms and the self-declared and unrecognized former British protectorate of Somaliland. Intellectuals and politicians from the northeast and southwest regions spearheaded the push for federalism. Federalist ideas began in Puntland but politicians and intellectuals from the Bay and Bakool regions accepted it because of their predecessors' historical aspirations for a federal system in the 1960s, said a member of the Federal Senate interviewed for this report.<sup>13</sup>

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*Anti-federalist commentators contend that federalism was an external project pushed by Ethiopia, which wants to balkanize Somalia into clan fiefdoms*

Given the prolonged turmoil and the emergence of a political climate in which regionalism and factionalism have superseded national unity, Somalia is presented with two choices, in the words of a key informant: permanent fragmentation or the adoption of a federal structure. As the '4.5' power-sharing arrangement was widely seen as an unjust solution, federalism was presented as the only political mechanism to create a skeletal unity. Federation became a matter of “not if but how,” as a 2015 HIPS survey revealed.<sup>14</sup> A former speaker of parliament interviewed for this study contended that, ironically, those who insist on the formation of a centralized state structure are practically “calling for a permanent breakup of Somalia into meaningless regional states, if not mini chiefdoms.”<sup>15</sup> Professor Afyare Elmi has identified four basic grievances that motivate federalism: a trust deficit and demands for political participation, access to basic services and equitable sharing of resources.<sup>16</sup> Dr. Elmi speculates that “a decentralized unitary system is the most suitable governance model for Somalia.”

Critics of federalism argue that the system is incompatible with the cultural, religious and linguistic setup of Somali society. They further argue that the country is predisposed to adopt a decentralized unitary system and that federalism amplifies the differences among Somali communities.<sup>17</sup> Internal power struggles and communal grievances have paved the way for the current system, which Somalis have yet to find a way to make work. Anti-federalist commentators contend that federalism was an external project pushed by Ethiopia, which wants to balkanize Somalia into clan fiefdoms. Ethiopia's 2006 military incursion into Somalia and its dealings with the semi-autonomous regions as separate independent countries have been interpreted as a mission to weaken Somalia.<sup>18</sup>

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13 Interview by phone, 23 November 2019.

14 Federal Somalia: Not if but how. Heritage Institute for Policy Studies Policy Brief, February 2015.

15 HIPS interview, Mogadishu, 7 Feb 2020.

16 Afyare, E. (2015). Decentralized unitary system: a possible middle ground model for Somalia. Research paper for the Arab Center for Research & Policy Studies. [https://www.dohainstitute.org/en/lists/ACRPS-PDFDocumentLibrary/UPDATED\\_Somalia\\_Decentralization\\_Paper.pdf](https://www.dohainstitute.org/en/lists/ACRPS-PDFDocumentLibrary/UPDATED_Somalia_Decentralization_Paper.pdf)

17 Abdi, S. (1980). Decolonization in the Horn and the outcome of Somali Aspirations and Determinations. *Northeast African Studies*, Vol. 2/3, No. 3/1. Chimwiini, Kibajuni, Mushunguli, Jiddu, Garre, Tuni and Dabarre are some of the languages spoken by minority communities in southern Somalia.

18 Mahadallah, H. (2007). The Islamic Courts, Ethiopia's intervention in Somalia, and its implication for regional stability. *Horn of Africa*, Vol XXV. <https://www.yumpu.com/en/document/read/19397829/horn-of-africa-wardheernews>



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## Power-sharing in a climate of political mistrust

There is no single ideal form of federalism. Specific political and historical contexts dictate specific power-sharing mechanisms. Canadian political scientist Ronald Watts has explained that “the essential characteristics of all federations are two or three orders of government, operating within a constitutional framework.”<sup>19</sup> Herein lies Somalia’s political predicament.

“*Interviewed lawmakers and members of civil society believe that giving some form of autonomy to local governments brings services closer to the people, increases political participation and creates a platform to address communal grievances, which are among the driving forces of federalism*”

Article 48 of the provisional constitution says that the state is composed of two levels of government: the federal government and the federal member states, which include both state and local governments. Article 54 designates foreign affairs, national defense, citizenship and immigration and monetary policy as the exclusive jurisdictions of the federal government. Article 52 states that “the Federal Government and Federal Member State governments shall ensure that meetings between the Presidents of the Federal Member States and high ranking officials be held regularly to discuss issues that affect their territories, including: water resources, agriculture, animal husbandry, pasture and forestry, the prevention of erosion and the protection of the environment, health, education, relations and dialogue amongst traditional leaders, and the protection and development of traditional law, relations amongst religious scholars and youth.” However, the constitution does not indicate how the levels of government should share responsibilities. For example, would FMSs co-legislate in these areas or simply administer the decisions of the federal government? It appears that the drafters of the constitution assumed that “regular meetings between the Presidents of the Federal Member States and high ranking officials” of the FGS would be equal to a cooperative devolution of authority.

In practice, the FGS has extended its political influence beyond Mogadishu and has allies in Hirshabelle, Southwest and Galmudug states.<sup>20</sup> But Villa Somalia’s relations with Puntland and Jubaland have generated more contestation than concurrence. As for local government, the constitution mentions this layer only once and states that Somali federalism comprises the FGS, FMSs and the local government. Unfortunately, this third tier of the federal system has no constitutional protection. The FMS interior ministries influence the formation of local governments, as district councils are selected in line with the ‘4.5’ clan system.<sup>21</sup> The mandate and responsibilities of each level of government are thus not constitutionally demarcated. Interviewed lawmakers and members of civil society believe that giving some form of autonomy to local governments brings services closer to the people, increases political participation and creates a platform to address communal grievances, which are among the driving forces of federalism.

“*In finding a balance between constitutional provisions and the practice of politics, contemporary federations use either a functionalist model in which sovereignty is shared, or a hierarchical model in which power is devolved*”

In finding a balance between constitutional provisions and the practice of politics, contemporary federations use either a functionalist model in which sovereignty is shared, or a hierarchical model in which power is devolved. In the functionalist model, each level of government occupies an independent sphere. In the hierarchical model, states implement federal laws, or in other words, constitutions give legislative authority to federal governments and cede a degree of autonomy to states.<sup>22</sup>

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19 Watts, R. (2006). Comparative conclusion, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

20 HIPS interview with one of the regional presidents, 20 January 2020.

21 HIPS interview, Garowe, 2 December 2019. Clan elders nominate councilors and FMS have influence who gets nominated and at times block individuals for security grounds.

22 Schneider, H. (2006). The Federal Republic of Germany, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

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Constitutional autonomy empowers FMSs to implement federal directives and manage their internal affairs while maintaining the overall unity of the country. Power is also distributed when states voluntarily surrender some functional authority to the central government within a constitutional framework or special arrangement. The latter is often characterized by a strict separation of authority.

The Independent Constitutional Review and Implementation Commission (ICRIC) has technically completed its review of the provisional constitution, and its recommendations favor the German model in which legislative power is concentrated at the federal level while functional implementation is assigned to the FMSs.<sup>23</sup>

Federalism is never static; it is a process that continuously reinvents itself within the realm of constitutional amendments or reviews. But the basic elements of constitutional practice do not exist in Somalia. For example, Article 51 (2) states that “every government shall respect and protect the limits of its powers and the powers of other governments,” and adds that levels of government “shall have a brotherly relationship to promote the unity of the citizenry.” However, boundaries of power have not been explicitly demarcated, either functionally or constitutionally, and cooperative relationships hardly exist among Somali political actors, all of which has led to elite infighting. Even more problematic is that Somali citizens did not participate in the drafting of the provisional constitution, and it provides no practical reference for mediating disputes over the devolution of authority.

Consequently, in Somalia, federalism remains little more than a political slogan that has yet to be translated into practice. Implementation of the system has preceded the necessary legal framework. While FMS leaders decry that the spirit of federalism is under attack or slowly fading, FGS officials complain that wayward regional politicians are acting as though they lead fully sovereign states. No wise men have yet emerged on either side of the political divide, and each group is dug into its own self-centered position, prolonging political uncertainty in the country and stunting state and institution building, which further perpetuates the collective suffering of the Somali people.

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*Unfortunately, the role of Somalia’s federal parliament has shrunk. This is especially true of the senate, which was elected in October 2016 and meant to represent the interests of the regional governments*

In most federations, politics is not the sole domain of the executive branches of the national and regional governments. Parliament at both the federal and state levels plays a critical role in the bumpy process of devolving authority. Unfortunately, the role of Somalia’s federal parliament has shrunk. This is especially true of the senate, which was elected in October 2016 and meant to represent the interests of the regional governments. It has not assumed its role in a meaningful and systematic manner, leaving the question unresolved of who does what and who has the power to perform certain duties.

Elite mistrust pervades Somalia’s political space, and consensus has become a rare commodity. The political class has failed to devise an innovative balance between a constitutionally driven federalism and the practice of politics. Negotiations among the FGS and FMS governments held in Garowe on May 2019 failed to produce meaningful options that could mediate distribution of power between the different levels of government.

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23 HIPS interview, Mogadishu, 13 January

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## The unitary mindset in federal power-sharing

Regarding the collaborative relationship between various levels of government, Article 51 of the provisional constitution states that “every government shall strive for a cooperative relationship with other governments, whether at the same level or another level.” Nevertheless, the practice of politics in Somalia neither embodies a cooperative federalism where different levels exercise power in conjunction with one another nor is there a rigid separation of responsibilities for each tier of government. The FGS has been accused of toying with the idea of a centralized authority, encroaching upon the jurisdictions of FMSs like Galmudug, Hirshabelle and Southwest. According to one interviewee, “The federal government does not seek constitutional collaboration. It unconstitutionally co-opts some of the regions, and this gradually erodes the weak structure of federalism.”<sup>24</sup>

Federalism is by nature complex, and Somalia’s type of federalism is undefined. In an interview, former speaker of the federal parliament Mohamed Osman Jawari said that federalism “is a strange system to us, and the tendency to centralize power stems from our lack of comprehension of federalism as a system.”<sup>25</sup> Anti-federalists also liken decentralization of power with the balkanization of the country, weakening Somalis’ faith in federalism. Ronald Watts has explained that in India, Canada and Spain, where there is significant linguistic and cultural fragmentation, the national government was initially given “overriding powers to resist possible tendencies to balkanization.”<sup>26</sup> In South Africa, constitutional federalism “fell into disrepute” because of its association with the apartheid government. Spain uses Autonomous Communities (sub-federal self-governing territorial units) instead of federalism because the first is attributed to decentralization of power and the latter “connotes the dissolution of sovereign authority.”<sup>27</sup>



*Although it is normal in the world’s federated countries for the relationship between national and state governments to run ‘hot and cold,’ in Somalia it has reached a freezing point*

In Somalia, the suspicion of federalism as a vehicle for clan-based division fuels the tendency to centralize power. For instance, President Hassan Sheikh Mahamud took two years to appoint ICRC members, indicating his reluctance to accept federalism.<sup>28</sup> Current President Mohamed Abdullahi Farmaajo is also skeptical of powerful regional governments and favors a strong central government.<sup>29</sup> This has escalated tensions between the FGS and some of the FMSs. Distribution of power within every federation is contentious. According to a minister in South West State, where notions of federalism first emerged in the 1950s, Somalia “is yet to have a president who unreservedly believes in federalism or its constitutional principles.”<sup>30</sup> Although it is normal in the world’s federated countries for the relationship between national and state governments to run ‘hot and cold,’<sup>31</sup> in Somalia it has reached a freezing point.

According to Ronald Watts, federations rely on four different processes to effectively distribute power and operational responsibilities:

- Constitutional amendment. This is not, in Watts’ words, a “unilateral decision.”<sup>32</sup> It is rather a process that requires the consent of member states of the federation before it is adopted. In some countries, contentious issues are put to a referendum, leading to a rigid separation of authority.

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24 HIPS interview, 11 February 2020.

25 HIPS interview, Mogadishu, 7 January 2019.

26 Watts, R. (2006). Comparative conclusion, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

27 Griffiths, A. & Nerenbarg, K. (2005). Handbook of federal countries. McGill Queen’s University Press.

28 HIPS interview, Mogadishu, 26 January 2020.

29 HIPS interview, Baidoa, 6 January 2020.

30 HIPS interview, Baidoa, 7 January 2020. President Abdullahi Yusuf believed in federalism as long as his powers remained unchecked. President Sheikh Sharif grudgingly accepted the provisional constitution. President Hassan Sheikh hastily erected a skeletal structure of federalism in the last two years of his term while his successor, President Abdullahi Mohamed Farmaajo, favors a strong central government.

31 Elaigwu, J. (2006). The Republic of Nigeria, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

32 Watts, R. (2006). Comparative conclusion, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

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- Judicial interpretation and review. This empowers constitutional courts to play a significant role in power distribution.
  - Intergovernmental financial adjustments. These determine the distributive formula for finance, particularly through joint commissions established by a constitution or an act of parliament.
  - Intergovernmental collaboration and agreement. This involves sharing legislative responsibilities and achieving administrative cooperation to respond to the changing nature of power distribution without a constitutional amendment.

These mechanisms for mediating conflict in a federated entity are rarely used in Somalia, where politicians cynically interpret the provisional constitution as a nonbinding document. Somalia's judiciary is, according to a former speaker of the federal parliament, "weak, incompetent and almost nonexistent, and the content of its laws are outdated and cannot mediate federal conflict in its current form."<sup>33</sup> The last two chief justices of the Supreme Court were both sacked by the president, in 2016 and 2018,<sup>34</sup> showing disregard by Presidents Hassan Sheikh and Mohamed Abdullahi Farmaajo for constitutional procedure in the appointment of a chief justice.<sup>35</sup>

According to Article 109 of the provisional constitution, the Constitutional Court which has not been established "is the final authority in constitutional matters." Article 109B (3) stipulates that 'the Judicial Service Commission shall propose to the House of the People the person they want to be appointed as a Constitutional judge.' If the parliament passes the proposal, the president shall appoint that person. The Constitutional Court's mandate includes resolving any disputes between the FGS and FMS governments, or among FMS governments. In a January 2018 judicial conference held in Jowhar, the capital of Hirshabelle state, FGS and FMS justice ministers affirmed these provisions.<sup>36</sup> A former speaker of parliament argues that politicians fear the consequence of establishing a federal Constitutional Court because its decisions would be binding. The Court would in the words of the former speaker legitimize parliamentary motions, rulings, and authorities of different orders of government. This outcome would discredit the tendency to centralize power in a federated country.

A joint communiqué issued after the 2017 London conference called for a progressive intergovernmental agreement on inclusive politics, reconciliation, security and constitutional review. In particular it stated that "the constitutional review process must promote the building of peace and rule of law in the country and contribute to addressing conflict and building trust."<sup>37</sup> However, very little progress has been made in trust-building. "None of the items agreed in the communiqué have materialized," said one of the FMS presidents.<sup>38</sup> Apart from South West State, the FMS presidents categorically stated that they have not been included in the constitutional review process.<sup>39</sup> According to the ICRIC chair, each FMS is supposed to nominate a representative to ICRIC, to be approved by the federal cabinet. However, an ICRIC member reported, "after ICRIC pressured the FMSs to send their representatives, the federal cabinet refused to approve them. Since then, we have been following up on the matter without success."<sup>40</sup>

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33 HIPS interview, Mogadishu, 7 November 2019.

34 "Somalia: President sacks Supreme Court chief and appoints successor," Shabelle Media Network, 27 May 2018. <https://allafrica.com/stories/201805280305.html>

35 HIPS interview, Kismayo, 18 February 2020.

36 HIPS interview, Kismayo, 23 February 2020.

37 London Communique, 11 May 2017. <http://amisom-au.org/2017/05/london-somalia-conference-communique/london-somalia-conference-2017-communique/>

38 HIPS interview, Mogadishu, 20 January 2020.

39 HIPS interviews, Kismayo, Baidoa and Mogadishu, 2020.

40 HIPS interview, Mogadishu, 26 January 2020.



*Fidelity to the principle of federalism reduces friction between the two levels, as each is required to respect the prerogatives of the other*

Politicians on both sides of the divide have only half-heartedly accepted federalism and have failed to internalize the significance of the constitution in guiding power-sharing mechanisms. Instead of collaborating on completing the constitution, the new norm for Somali politicians is to accuse external actors, siding either with a freelancing FMS or aiding the FGS in cajoling the FMSs it brands as wayward. Mistrust has arisen from a unitary tendency in what is theoretically a federated country. It is possible for a federal model to succeed, as it has in other countries. Cooperative federalism in Germany is characterized by a concentration of legislative powers at the federal level and administrative powers at the state level.<sup>41</sup> States implement federal laws as well as their own statutes.<sup>42</sup> Fidelity to the principle of federalism reduces friction between the two levels, as each is required to respect the prerogatives of the other. Intergovernmental negotiations follow due process and happen in good faith. Hans-Peter Schneider describes the influence of federal law as “unitarization of the federation.”<sup>43</sup> In Schneider’s opinion, the federal government is the “master and federal member states are servants” in enforcing the division of authority. The taxation power of the federal member states is dictated by the federal parliament. Intergovernmental financial adjustments are effective when the taxation powers of the FGS and those of FMSs are distinctly demarcated. However, in Somalia federal taxation only takes place in Mogadishu and resource sharing remains a contentious issue.



*The unique socio-historical circumstances of each country have dictated its model of federalism and mechanisms of power-sharing*

In India, the powers of each level of government are rigidly defined.<sup>44</sup> Legislative authority stems from the constitution itself. In the case of any dispute over the distribution of power, an independent judicial interpretation is sought. Slightly different from India, Nigeria assigns legislative powers to both the federal government and the federal member states and defines areas in which both entities can concurrently legislate.<sup>45</sup> What these countries have in common is a sufficient level of institutional fidelity to their different systems of federalism. The unique socio-historical circumstances of each country have dictated its model of federalism and mechanisms of power-sharing. In all these countries, the power and mandate of each level of government is set and legitimized by the constitution. Communal heterogeneity has made compromise within a federal system both politically imperative<sup>46</sup> in places like Nigeria and India.

In Somalia, neither elite political accommodation nor communal heterogeneity has forced a specific logic of constitutional power-sharing or a balance between legitimate political authority and federal unity. Article 51 of the provisional constitution states that “every government shall respect and protect the limits of its powers and the power of other governments.”<sup>47</sup> But the current federal system of Somalia has failed to clearly establish the powers of each level of government. This failure has provided leeway for the FGS and the FMSs to encroach upon each other’s authority and act as though the country is governed by a unitary system.

One way out of this unitary mindset could be what Schneider describes as “negotiated federalism,” a system in which political settlement is given paramount importance before delineating a constitutional division of authority. The chair of the ICRIC expressed a similar view to interviewers: “We technically reviewed the constitution, and we are waiting for politicians from both sides of the divide to reach an agreement on contentious issues, including but not limited to the division of power between the national government and the federal member states.”<sup>48</sup> In other words, further progress on a final constitutional division of powers in Somalia cannot be made in the absence of a comprehensive political settlement.

41 Schneider, H. (2006). The Federal Republic of Germany, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

42 Ibid.

43 Ibid.

44 Mathew, G. (2006). Republic of India, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

45 Elaigwu, J. (2006). The Republic of Nigeria, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

46 Piancastelli, M. (2006). The Republic of Brazil, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

47 The Republic of Somalia: Provisional Constitution. <http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>

48 HIPS interview, Mogadishu, 26 January 2020.

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To dispel the implication that regional leaders have equal authority to that of the national president, Jama Mohamed Ghalib, a university lecturer and former interior minister, has proposed changing the title of the regional leaders from ‘president’ to either ‘governor’ or ‘premier.’<sup>49</sup> There is no uniform title for similar positions in other federated countries. For instance, South Africa and Australia address regional leaders as premiers, Ethiopia and Switzerland have presidents and Nigeria and the United States of America have governors.

## New arenas of conflict

### Education

After the state collapse in 1991, education fell completely into the hands of myriad local entrepreneurs and international non-governmental organizations (NGOs). Article 30 of the provisional constitution stipulates that “education is a basic right of all Somali citizens.” It allocates the power to produce a national curriculum to the FGS, asserting that “the state shall adopt a standardized curriculum across all schools of the country and shall ensure its implementation.” Article 52 clarifies that responsibility for the provision of education is shared between the FGSs and the FMSs, but notably, the constitution does not make explicit the different responsibilities with which each level of government is entrusted.

This problematic constitutional ambiguity is compounded by an imbalance between FMS in terms of their capacity to modify the standard curriculum or provide education. Puntland, which came into existence in 1998, has built an education system, unified the curriculums taught in its schools, and introduced final secondary school examinations. Dubbed the ‘mother of federalism,’ Puntland spearheaded the push for a federal system of governance in Somalia. Other FMSs have education systems in place, mainly run under private umbrellas.<sup>50</sup> Group discussions in Baidoa, Dhuusamareeb and Kismayo revealed that FMSs in south-central Somalia have little or no control over the management of their schools, examinations and curricula. Currently only 26 schools in Mogadishu are under the direct management of the federal Ministry of Education.<sup>51</sup>

Although the FGS has a sovereign mandate over education, in practical terms its writ and resources have not gone beyond Mogadishu in the last 15 years. Puntland, which predated the introduction of federalism, has had a long and acrimonious relationship with the national government. It boycotted the Arta Peace Conference in 2000, clashed with the federal administrations of Sheikh Sharif Ahmed and Hassan Sheikh Mahamud, and resisted attempts from Mogadishu to interfere in its affairs.<sup>52</sup> Puntland considers itself more mature than the other FMSs, and was given a special arrangement under the governments of Sheikh Sharif and Hassan Sheikh. It was allowed to independently manage its own education system while its students still received national certificates from the federal government.<sup>53</sup>

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49 HIPS interview, Mogadishu, 14 November 2019.

50 HIPS interview, Kismayo, 13 January 2020.

51 HIPS interview, Mogadishu, 22 April 2020.

52 HIPS interview, Kismayo, 11 January 2020.

53 HIPS interview, Mogadishu, 22 April 2020.



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To harmonize the national education system, the FGS produced a unified curriculum for grades 1 to 4 in 2018 and grades 5 to 8 in 2019. This was followed by a policy directive from the federal Ministry of Education, Culture and Higher Education demanding that secondary school students across the country sit for unified national final examinations in 2019.<sup>54</sup> As a result of ambiguity in the federal division of power, the directive generated a spat between the FGS and Puntland over the issuance of secondary school certificates.<sup>55</sup>

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The FGS Ministry of Education contends that it is constitutionally mandated to produce a unified national curriculum, ensure quality control, standardize the education system and provide regulatory policies while the FMSs are mandated to take an implementation role.<sup>56</sup> Protesting the federal directive, Puntland insists that its education system is more organized than those of other FMSs, which are still in a recovery stage.<sup>57</sup> It says that lumping all FMSs together would reverse Puntland’s progress in the provision of education.<sup>58</sup> It wants Puntland’s special arrangement to remain in place until the constitution is finalized. An educationalist in Kismayo noted that “Apart from Puntland, the adaptation of the federal directive was likely to succeed in other FMSs because of an already existing uniformity in their systems of education and curriculums.”<sup>59</sup> In response to this objection, the federal Ministry of Education categorically and publicly refused to issue national certificates to students who took their exams in Puntland, accusing it of seeking special treatment. “We cannot issue certificates to students who sit for exams in which the federal Ministry of Education has no role, supervisory or otherwise,” said Abdullahi Godah Barre, the federal minister of education.<sup>60</sup>

Advanced federated countries have also had issues with the division of authority over education. In Germany, provision of education is exclusively the responsibility of the states, which use culture and education to conduct what Schneider describes as “sideline foreign affairs” in ways not always welcomed by the national government.<sup>61</sup> The federal government in India coordinates and determines education standards for learning institutions, enabling it to extend its influence to schools and institutions that are set up by the states. In Nigeria, local governments manage primary schools while the federal and state governments co-legislate regarding post-primary education. Canada has no federal ministry of education and its provincial governments manage education, making it one of the “world’s most decentralized federations” in this aspect.<sup>62</sup> The division of authority in each of these countries reflects its unique socio-political history and model of federalism. What they have in common is that courts effectively enforce a constitutional distribution of authority.

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Somalia has yet to find a federal power-sharing model that is suitable for its socio-political context. Article 50 (b) of the provisional constitution states that “power is given to the level of government where it is likely to be most effectively exercised.” In reality, the FGS has neither the manpower nor the public resources to conduct national exams while Puntland has no constitutional mandate to issue certificates to students. Pragmatically, Puntland could continue using its own curriculum while accepting that the FGS has the authority to inspect Puntland’s education system through joint ministerial committees. This would accommodate the demands of the FGS without impairing Puntland’s self-administration. Interviewees in Mogadishu, Garowe, Baidoa and Kismayo indicated that the controversy over education, which should be among the least contentious elements of federalism, characterizes the wider struggle between the FGS and FMSs over the division of authority. Puntland in particular interprets the FGS stance on issuing certificates as a stick to coerce Garowe into submission.

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54 “Somalia: Kicks off unified exams for secondary schools,” Shabelle Media Network, 27 May 2019. <https://allafrica.com/stories/201905270677.html>

55 Education Minister scolds Puntland for boycotting national exams, Goobjoog News, 18 April 2019. <https://goobjoog.com/english/education-minister-scolds-puntland-for-boycotting-national-exams/>

56 HIPS interview, Mogadishu, 23 April 2020.

57 HIPS interview, Garowe, 13 December 2019.

58 HIPS interview, Garowe, 12 December 2019.

59 HIPS interview, Kismayo, 13 January 2020.

60 Press briefing held in Mogadishu on 1 February 2020 by the Federal Minister of Education.

61 Schneider, H. (2006). The Federal Republic of Germany, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

62 Semeon, R. & Papillon, M. (2006). Canada, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

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*The problem with us, the Somalis, is the lack of realization that we did not accidentally fall in love with federalism. Our recent historical circumstance forces us to adopt it as a system of governance*

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Prolonged disagreements between the FGS and Puntland have caused some of the politicians and academics who were interviewed in Garowe to propose confederation as an alternative to federalism. The purpose, they say, is not to further dismantle Somalia but to allow FMSs to develop their own autonomous governance structures, thus preventing a return to dictatorship. Abdi Farah Said (Juxa), the former federal interior minister, contended that the federal structure is “susceptible to individual manipulation, and is likely to be dismantled by a president who wants to centralize power.” For Minister Juxa, the hope is fading that federalism can provide an antidote to political repression and economic marginalization: “The problem with us, the Somalis, is the lack of realization that we did not accidentally fall in love with federalism. Our recent historical circumstance forces us to adopt it as a system of governance. That must be underlined.”<sup>63</sup>

Education can be collaboratively delivered by the FGS and FMSs, with the FGS taking a supervisory role. If FMSs refuse to comply with federal directives, other avenues of resolving the tension have to be developed. If the FGS arbitrarily forces its will upon the FMSs, there might be unintended ramifications in a country with deep-seated political and social wounds. Deputy Speaker of the Senate Abshir Mohamed Ahmed (Bukhahri) asserted that “The fundamental problem in Somalia is less about constitutional ambiguity but rather the unwillingness of political leaders to reconcile for the national interest.”<sup>64</sup> One could also argue that constitutional ambiguity directly feeds irreconcilability among political stakeholders. For now, the country is likely to wallow in ongoing crises over who is responsible for what until it adopts constitutional, innovative and pragmatic ways of power-sharing.

## Security

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*Many contemporary federal states struggle to find a balance between their peoples’ desire for self-government and the principle of national unity*

Many contemporary federal states struggle to find a balance between their peoples’ desire for self-government and the principle of national unity. For instance, control of security and law enforcement agencies is often subject to constitutional debates. In India, emergency laws in the constitution empower the president to assume the functions of state governments. The Supreme Court protects the jurisdiction of the states to ensure that this provision is not abused.<sup>65</sup> Nigeria, the oldest federal system on the African continent, has historically leaned toward acceptance of a powerful national government. This is mainly a result of the 1972-1973 Biafra war, in which the Igbo ethnic group waged a secessionist uprising. Strong and self-sufficient member states are perceived by national authorities as a threat to national unity, and so states in Nigeria have neither state police nor paramilitary forces. Strengthening the central government is seen as a preventive measure against further ethnic clamor for secession, despite constitutional guarantees of autonomy and limited power for the states.

By contrast, the civil war in Somalia has produced an endless mistrust of elites and deep regional suspicion of a strong national government. Unlike in Nigeria, Somalia’s central government collapsed and secessionism was not militarily defeated. Some regions emerged from the ashes of the civil war with armed groups or clan militias that the national government does not control. In many places the security apparatus is clannish in composition and fluid in character. Article 54 of the provisional constitution allocates defense exclusively to the national government.

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63 HIPS interview, Garowe, 12 December 2019.

64 HIPS interview, Mogadishu, 6 February 2020.

65 Mathew, G. (2006). Republic of India, in in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.



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Likewise, Article 126 stipulates that “the federal government shall guarantee the peace and sovereignty and national security of the Federal Republic of Somalia and the safety of its people through its security services.”

<sup>66</sup> This provision puts the armed forces, intelligence services, police and prisons under the jurisdiction of the FGS.

Article 126 also provides for the establishment of a federal police force mandated to protect lives and property across the country, as well as FMS police forces authorized to preserve peace in the FMSs, “alone or in cooperation with the federal police force”<sup>67</sup> and in accordance with the “laws of the federal member states.” The constitution does not delineate circumstances under which federal police can intervene in FMSs’ internal security or areas in which cooperation can take place. A constitutional demarcation of authority would prevent tensions arising from the overlapping responsibilities of the federal and FMS police forces regarding the implementation of federal laws.

Considering Somalia’s sparsely populated regions and massively underdeveloped economy, the establishment of two police forces “will not strengthen the federal structure, but will rather generate more contestation” according to a member of the federal parliament.<sup>68</sup> A decentralized federal police force could be a more suitable model for Somalia to avoid misuse of the security apparatus, but regional presidents do not welcome this proposal. “The federal government detests regional security forces that it does not control, so a decentralized federal police will certainly serve the interests of the federal government,” said one of the regional presidents.<sup>69</sup>

The experiences of other federated countries show that the distribution of power to maintain law and order is as controversial as that of political power. State governors in Nigeria are the chief security officers but they do not have their own police forces. Isawa Elaigwu, a professor at Jos University, explains that governors of large states with high crime rates have demanded constitutional amendments enabling them to establish their own police forces. Their counterparts in smaller states object to this demand, arguing that the cost involved in establishing state police forces is too high. Others, in Elaigwu’s words, “resort to using vigilante groups to maintain law and order,” which supports calls for a decentralized federal police force.<sup>70</sup>

In Somalia, the federal police force only operates in Mogadishu. At the 2017 London conference, Somali political actors agreed to “integrate the regional and federal forces into a coherent National Security Architecture.”<sup>71</sup> The conference also called for the “swift establishment of the National Security Council and National Security Office.”<sup>72</sup> However, disputes over the distribution of political power overshadowed the implementation of this agreement. Fear of political repression has dogged the security sector in general and the armed forces in particular. Some FMSs such as Puntland and Jubaland remain apprehensive about the possibility of the FGS arbitrarily deploying national defense forces to serve the partisan agenda of a sitting president. This anxiety is exacerbated by what is seen as the FGS’ use of force to influence the outcome of regional elections in South West State, Jubaland and Galmudug.<sup>73</sup> “It will be a pretense to talk about the integration of regional and federal forces as long as federalism itself and mechanisms of power-sharing are not agreed upon,” said a member of the federal parliament.<sup>74</sup>

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<sup>66</sup> The Republic of Somalia: Provisional Constitution. <http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>

<sup>67</sup> Ibid.

<sup>68</sup> HIPS interview, Garowe, 14 December 2019.

<sup>69</sup> HIPS interview, Mogadishu, 20 January 2020.

<sup>70</sup> Elaigwu, J. (2006). *The Republic of Nigeria*, in Ostien, A. & Blindenbucher, A. *Global dialogue on federalism*. McGill Queen University Press.

<sup>71</sup> London conference on Somalia 11 May 2017. <https://reliefweb.int/sites/reliefweb.int/files/resources/london-somalia-conference-2017-communique.pdf>.

<sup>72</sup> Ibid.

<sup>73</sup> HIPS interview, Mogadishu, 9 January 2020.

<sup>74</sup> HIPS interview, Garowe, 13 December 2019.

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*Failure to integrate regional and state security forces as agreed during the London conference has derailed the reform process and generated political confrontation*

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These concerns were also expressed by three regional presidents. Jubaland and Puntland have their own forces, known as Darawish. The presidents of these two FMSs have publicly chastised the Somalia National Army (SNA), calling it an entity used by the federal government to repress political opponents.<sup>75</sup> “We have expressed our concern on the misuse of the SNA and repeatedly called for the establishment of an inclusive national army,” said one of the regional presidents. A communiqué issued on 17 March 2020 in the aftermath of Puntland’s consultative forum held in Garowe, echoed similar concerns.<sup>76</sup>

The FGS has introduced a biometric system to eliminate “ghost soldiers” and has made progress in reforming the SNA to address widespread concerns. But its failure to integrate regional and state security forces as agreed during the London conference has derailed the reform process and generated political confrontation. Some FMSs have decried federal encroachment on their constitutionally guaranteed autonomy, such as the FGS’ attempt to use Ethiopian peacekeeping soldiers to oust the president of Jubaland in the aftermath of his disputed re-election in 2019.<sup>77</sup> In turn, President Farmajo has said that “we will not accept our federal member states being used as a cover to violate Somalia’s territorial integrity.”<sup>78</sup> Jubaland is accused of seeking support from Kenyan peacekeeping forces.

A report published in 2018 by the International Crisis Group pointed out that Somali leaders across the political spectrum are “adept at manipulating foreign involvement and have exploited the escalating rivalry for their ends.”<sup>79</sup> The line between protecting Somalia’s territorial integrity and advancing politicians’ personal aspirations has been blurred in the practice of Somali politics, and defense has become an arena of intense competition. One senator underscored that “denouncing the violation of sovereignty in a border town while every ministerial and parliamentary office in Mogadishu seeks protection from AU forces does not correspond to our political reality.”<sup>80</sup>

### Fiscal federalism

Fiscal federalism is the “optimum decentralization of resource management and revenue collection to ensure efficiency and equity”<sup>81</sup> in a federated entity. ICRIC members explained that Somalia’s fiscal decentralization demands political consensus. Beyond reviewing the technical aspects of the constitution, the commission is also tasked with presenting possible power-sharing options. The chair of ICRIC said that the “onus of implementing a working fiscal policy for Somalia lies with the political actors.” According to one regional president, Somalia is stuck in the first phase of federalism, namely the division of political authority, of which fiscal federalism is a part. Until the constitution clearly reflects an agreed-upon distribution of responsibilities to each level of government, fiscal federalism is unlikely to succeed.

A lack of consensus on the distribution of political power has overshadowed the debate on equitable and efficient resource-sharing models. Article 122 of the provisional constitution stipulates that the “principles of public finance will be discussed between the federal government and the federal member states.”

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75 HIPS interview, Kismayo, 12 January 2020.

76 Communiqué issued on 17 March 2020 after Puntland’s consultative conference in Garowe.

77 HIPS interview, Kismayo, 13 January 2020.

78 Interview with Universal TV on 12 February 2020.

79 Somalia and the Gulf Crisis. International Crisis Group 5 June 2018. <https://www.crisisgroup.org/africa/horn-africa/somalia/260-somalia-and-gulf-crisis>

80 HIPS interview, Mogadishu, 23 January 2020.

81 Chnadra. P. (2015). Theory of fiscal federalism: an analysis. *Journal of Social and Economic Development*. [https://www.academia.edu/41092055/Theory\\_of\\_fiscal\\_federalism\\_an\\_analysis](https://www.academia.edu/41092055/Theory_of_fiscal_federalism_an_analysis)

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*Water, agriculture, animal husbandry, pasture and forest are some of the areas the constitution itemizes as shared responsibilities between the FGS and FMS governments. However, the constitution does not specify which resources or taxation powers fall under which authority*

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Water, agriculture, animal husbandry, pasture and forest are some of the areas the constitution itemizes as shared responsibilities between the FGS and FMS governments. However, the constitution does not specify which resources or taxation powers fall under which authority. For example, it does not state whether the taxation authority of each level of government is jointly determined at the legislative level or at the administrative level.

Parliamentarians interviewed for this report were of the view that other vital tasks must precede the development of fiscal federalism, including the following:

- Constitutionally delineating the division of authority between the FGS and FMSs
- Enshrining the taxation power of each tier of government in the constitution
- Establishing a working Constitutional Court and guaranteeing the independence of the judiciary at both the federal and state levels.

In line with general principles of power distribution, the provisional constitution states that “responsibilities for the raising of revenue shall be given to the level of government where it is likely to be most effectively exercised.” Article 125 allocates the power to determine revenue collection, financial management and expenditure disbursement to the federal parliament. With no administrative institutional arrangements to enforce these requirements, the actions of the Somali political class seem to confirm the theory that “pervasive uncertainty about outcomes prevents the elite from credibly committing to observe the rules or laws in many possible circumstances.”<sup>82</sup> Constitutional provisions in Somalia do not coincide with the practice of politics. Collaboration in terms of fiscal federalism is now limited to quarterly budgetary and expenditure reports submitted to the federal Ministry of Finance by each FMS. There is no national revenue authority or common tariffs on goods leaving or entering the country.<sup>83</sup> Port authorities in Mogadishu, Kismayo and Bosaso operate independently of each other.

Neither the FGS nor the FMSs have taken earnest steps to construct an independent federal institutional arrangement. According to one key informant, politicians’ “self-interest supersedes institutional development,” and there is no unit of government with constitutionally ordained financial capacity. Federal tax collection is confined to Mogadishu, and due to the prolonged absence of a functioning state and severely limited public sector service delivery, most Somalis do not view paying their taxes as a civic duty. For example, a young man who drives a tuktuk (taxi) on the broken roads of the capital city pays \$15 a month to the federal government, out of fear of being harassed or arrested.<sup>84</sup> Equating taxation to official bribery, he told interviewers that he has no option but to “either stop working or pay the tax without expecting any service at all.”<sup>85</sup>

Fiscal federalism requires constitutional clarity and judicial midwifery. Resource distribution is, according to Isawa Elaigwu, one of the “major areas of conflict” in any federated entity. In Nigeria, oil revenues from onshore and offshore sources are shared differently, and this distribution is mediated by the Supreme Court.<sup>86</sup>

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*Fiscal federalism requires constitutional clarity and judicial midwifery*

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82 North, et al (2009). *Social order and Violence*. Cambridge University Press.

83 HIPS interview, Mogadishu, 10 May 2020.

84 HIPS interview, Mogadishu, 10 May 2020.

85 HIPS interview, Mogadishu, 11 May 2020.

86 Elaigwu, J. (2006). *The Republic of Nigeria*, in Ostien, A. & Blindenbucher, A. *Global dialogue on federalism*. McGill Queen University Press.



*One senator likens Somalia's federalism to a "football game without a referee"*

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In Germany, the federal parliament gives taxation authority to the states in an entirely cooperative distribution of power. In India, the financial capacity and taxation authority of each level of government is constitutionally protected. The Indian judiciary does not alter the constitutional relationship between the federal government and the states, but it is expected to offer legal interpretation on the distribution of power.<sup>87</sup>

In Somalia, consensus is still absent on the distribution of taxation powers and the share of revenue given to each tier of government. In February 2020, President Farmaajo ratified a petroleum bill into law but Puntland and Jubaland protested, terming it unconstitutional.<sup>88</sup> The Constitutional Court, which is empowered to determine the legality of the bill, has not been established. One senator likens Somalia's federalism to a "football game without a referee."<sup>89</sup> Somali political players at both levels of government have failed to establish what the senator calls "the infrastructure of federalism." This includes the Constitutional Court and independent and inter-state commissions. In other federated countries, civil society organizations and joint ministerial or parliamentary committees act as referees in allocating authority to each level of government.<sup>90</sup>

Article 111F of the provisional constitution empowers an inter-state commission to facilitate inter-governmental coordination and cooperation among the FGS and FMS governments and to resolve any administrative, political or jurisdictional disputes between the FGS and one or more FMS governments or between FMS governments themselves. The article states that "inter-state commissions shall be composed of members appointed by the Prime Minister and at least an equal number of members appointed by each government of the Federal Member States." If established, such a commission could relieve political frictions in the process of power distribution. Regarding the petroleum bill, senior federal-level politicians pointed out that if the FGS and the FMSs are unable to reach consensus on political power distribution, it is impossible for them to agree on resource sharing.<sup>91</sup> Fiscal decentralization is hindered by political wrangling between the FGS and the FMSs.

According to one regional president, foreign aid is used as both a "stick and a carrot": it is used as a stick to economically squeeze uncooperative states and a carrot to manipulate the internal affairs of so-called friendly states. This contravenes Article 53 of the provisional constitution, which says that "in the spirit of inter-governmental cooperation, the federal government shall consult the federal member states on negotiations relating to foreign aid, trade, treaties or other major issues related to international agreements." If this article is taken into consideration, the FGS is the "guardian of the interest of the Federal Member States, and must act accordingly."

These accusations and counter-accusations illustrate that political stalemates over the division of authority do not stem primarily from constitutional ambiguity but rather a belief that the constitution is incomplete and therefore nonbinding. Disinterest on the part of politicians in accepting federalism has heightened tensions over the division of authority. The FMSs are, in the words of a former speaker of the federal parliament, categorized as either opponents or allies of the FGS, delaying fiscal devolution and power decentralization in the following ways:

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87 Mathew, G. (2006). Republic of India, in in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

88 "Somalia president signs new petroleum bill into law," Reuters, 8 February 2020. <https://in.reuters.com/article/somalia-oil/somalia-president-signs-new-petroleum-bill-into-law-idINL8N2A80BF>

89 HIPS interview, Mogadishu, 16 May 2020.

90 Piancastelli, M. (2006). The Republic of Brazil, in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.

91 HIPS interview, Kismayo, 11 January 2020.

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- FMSs lose their collective bargaining power
  - The FGS has leeway to economically and politically isolate FMS
  - FGS casts doubt on the acceptance of federalism as a system of governance for Somalia
  - The FGS uses foreign aid as a stick or a carrot, impeding the emergence of federal institutions in both the center and the periphery.

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*The national government needs to acknowledge that federal member states are not its agents and regional governments have to realize the simple fact that they are not separate independent countries*”

Economically squeezed FMSs in search of developmental assistance might seek an alternative, signing agreements with other countries against the wishes of the FGS and in violation of the spirit of the provisional constitution. While other federated systems such as Germany are defined by a search for a compromise, Somali political actors demand personal loyalty through the use of aid. According to one constitutional lawyer, “The national government needs to acknowledge that federal member states are not its agents and regional governments have to realize the simple fact that they are not separate independent countries.”<sup>92</sup> States that refuse to toe the FGS’ political line are likely to be economically sidelined. “Look at what is happening in Jubaland,” said a member of the federal parliament. “The port city of Kismayo looks like a ghost town because of the illegal economic sanctions. Even aid agencies are forced to relocate.” Fiscal decentralization and political power distribution are intertwined. One cannot be resolved without reaching consensus on the other. Unless the nascent federalism is reasonably incubated, Somalia is likely to remain in protracted political and fiscal disputes for months if not years.

## Conclusion

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*The unwillingness of Somali political stakeholders to reconcile, combined with ambiguities in the provisional constitution and the absence of a Constitutional Court, has frozen the devolution of authority*”

The unwillingness of Somali political stakeholders to reconcile, combined with ambiguities in the provisional constitution and the absence of a Constitutional Court, has frozen the devolution of authority. This has derailed the completion of the constitution and the search for a power-sharing model that reflects Somalia’s political experience and addresses regional grievances. The country is federated but the boundaries of authority between the FGS and FMSs have not been functionally or hierarchically demarcated, resulting in contestation and distrust.

ICRIC has technically completed its review of the provisional constitution. Its recommendations favor the German model, in which legislative power is concentrated at the federal level and functional implementation is assigned to the FMSs. But many contentious issues including the division of functional authority between the FGS and FMSs still require political consensus.

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92 HIPS interview, Kismayo, 13 January 2020.



*The weak judiciary and the absence of a Constitutional Court to mediate these conflicts have heightened rivalries over the allocation of power*

Rationales for adopting federalism such as the prospect of improved service delivery, national political stability, reconciliation, and avoidance of dictatorship and self-administration have not materialized. The weak judiciary and the absence of a Constitutional Court to mediate these conflicts have heightened rivalries over the allocation of power. Parliament has not assumed a meaningful role in bridging the gap between regional autonomy and the need for national unity. Political actors have bypassed dialogue and considered the provisional constitution a nonbinding document. Previously non-contentious areas such as education and developmental assistance now generate bitter disputes between the FGS and some FMSs. Regional and national security forces have not been integrated. With no common tariffs, revenue is separately collected and collaboration on fiscal federalism is minimal.

## Policy considerations

1. To find a working mechanism for power-sharing, political leaders at both the FGS and FMS level must change their unitary mindset towards the federated system of governance. Half-hearted acceptance of federalism is not only an insidious obstacle to the constitutional devolution of power but is also a source of an endless contestation.
2. FMSs need to establish and empower local governments as the third tier of a federal order through the election of local councils and mayors, devolving power to the people beyond the 'capital city enclaves' and allowing democratic multiparty politics.
3. As per the stipulation of the provisional constitution, inter-state and independent commissions should be formed to shift the current partisan politics towards cooperative federalism.
4. The FGS must stop viewing the FMSs as its rivals but rather as an important and constitutionally mandated layer of federalism. Denying them their fair share of developmental assistance and regional autonomy violates both the letter and the spirit of the constitution and sows the seeds of further conflict.
5. Political leaders at the federal and state levels must discuss the reviewed draft of the provisional constitution as presented by ICRIC and finalize the outstanding issues that require political agreement.
6. The constitutional court must be established urgently so that it can play its vital role of interpreting the provisional constitution in a binding manner.

