

UNBLOCKING

SOMALIA'S FEDERAL ARRANGEMENT



A SYNTHESIS REPORT

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

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1. Introduction

1.1 State of federalism in Somalia

Over the past four years, the federal arrangement in Somalia has been dysfunctional, uncooperative and invariably confrontational. Instead of being a magic wand for resolving or mitigating the country's prolonged political divisions, communal grievances and misrule, federalism has become a new spectrum for political wrestling with limited progress. Consequently, compromise and consensus within a constitutional order has been replaced by antagonistic politics. Inter-governmental relations have worsened. The central government has been accused of undoing the skeletal arrangement of federalism in a bid to usurp power and install its allies as presidents of the federal member states. Where it failed to unseat regional presidents, Mogadishu has branded opponents as enemies of the state. Meanwhile, federal member states such as Puntland and Jubbaland have presented the federal government as a bogeyman that is determined to snatch political authority from the member states.

Conversely, the rift between Somalia's political stakeholders have widened and the idea that federalism becomes a bulwark against despotism and a pathway to decentralization of power, reconciliation, self-rule and service delivery has not materialized. Participants highlighted that the political infighting has been, especially exacerbated by the following factors:



As one participant in the roundtable discussions said, Somalia's federal arrangement is being held hostage by regional states that are apprehensive about a return of a repressive central government - and a central government that is afraid of empowered regional states

1. An indifference to constitutional guidelines;
2. The co-opting of parliament by the executive branch at the federal level; and
3. The reducing of member states' parliaments to a rubber stamp for the regional presidents.

Independent and formal federal institutions have not evolved to mediate the political infighting. This is why there has not been a meaningful push for power redistribution in the country's federal context both at the national and regional level. As one participant in the roundtable discussions said, Somalia's federal arrangement is being held hostage by regional states that are apprehensive about a return of a repressive central government - and a central government that is afraid of empowered regional states.

With no constitutional mechanism in place and no independent federal institutions to lubricate political frictions, six antagonistic political actors have taken over the federalism project. They are President Mohamed Abdullahi Farmajo and the five regional leaders. Their actions are often interest-driven, self-centered and highly personalized rather than systematic, debated and decentralized. The overly confrontational practice of politics has created an overly hostile political climate which is an uncondusive environment for meaningful negotiations on the implementation of federalism as well as being para-constitutional and arbitrary. In practical terms, the continuous political infighting has narrowed the space for stakeholder participation in the federalism project. As one former regional president explained, federalism “has no wheels to move forward”. The essence of federalism is deeply misunderstood and its progress is blocked. Ironically, over the past two years there has been a steady increase in expressions of support among the political elites for federalism as a system of governance in Somalia. These elites that were previously perceived as anti-federalists have become its vehement defenders.

1.2 Methodology

The Heritage Institute for Policy Studies (HIPS), in collaboration of Forum of Federations (FOF) and Conflict Dynamics International (CDI), convened a series of three roundtable (RT) discussions to seek clarity on the lack of progress on federalism. Discussants included politicians, including former regional presidents, ministers, members of parliament, ambassadors, technocrats and civil society. Through these discussions with a cross-section of Somali society, the goal of the project was to identify the causes of the stalemate, highlighting competing views, and focus on ensuring post-election progress in federal-state distribution of powers and intergovernmental relations. Prior to each roundtable discussion, a set of questions were sent to the 20 participants. The discussions were then recorded and the data was transcribed, thematically categorised and analysed. This paper is the synthesis of the three roundtable discussions.

2. History of Federalism in Somalia

Although marginal, the first conversation on federalism in Somalia dates back to 1950-1960 during the decolonization period. Fearing further marginalization and political domination, prominent politicians from today’s Southwest state advocated for a federated Somalia but the conversation never really took hold but rather died on arrival.¹

1. Muhumed, A (2020). Dysfunctional federalism: how political division, constitutional ambiguity and a unitary mind-set thwart equitable distribution of power in Somalia.
<https://heritageinstitute.org/dysfunctional-federalism-how-political-division-constitutional-ambiguity-and-a-unitary-mindset-thwart-equitable-distribution-of-power-in-somalia/>

National euphoria for the unification of the colonially dismembered Somali Peninsula, overpowered the marginalized proponents of a federal arrangement in building a post-colonial Somali state. If the national demand for the unification of the Somali Peninsula in 1960, silenced the proponents of federalism, Southwest's historical desire for the introduction of federal arrangement is evidence of local support for the model in Somalia.

The idea of federalism was resuscitated after the collapse of the military regime in 1991. It was officially, albeit acrimoniously, introduced to Somalia's governance structure and enshrined in the constitution in 2004 at a long-drawn-out reconciliation conference held in Kenya. The conference was dominated by Somali warlords and Kenya and Ethiopia. From the onset, federalism was branded as a foreign project, aimed at balkanizing Somalia into supposedly, warring fiefdoms. It was shrouded with excessive negative publicity across the country. Elites in Puntland state and Southwest strongly supported the project.

Federalism was formally added into the provisional federal constitution in 2012. Four Federal Member States (FMS) were established during Hassan Sheikh Mohamud's presidency from 2014-2016. Article 49 (6) of the Provisional Constitution stipulates that "two or more regions may merge to form a Federal Member State". The merger of the regions should according to the constitution, be based on the pre-1991 borders. The number and the boundaries of the FMSs were to be determined by the federal parliament through a national commission that was nominated and approved by the same parliament. If a region stands alone, according to the constitution, it will be administered by the federal government until it "merges with another region to form a new federal member state".

These guidelines were disregarded in the formation of the federal member states. As the result, some do not meet the constitutional requirements. Established in 2014, the National Boundary Commission remains inactive with no role in the federal arrangement. In short, the formation of the federal member states was haphazard and took place without much consideration of communal grievances, regional preferences and administrative boundaries. This is a failure that may as well haunt Somalia's skeletal federal arrangement.

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3. Making Sense of the Stalemate

3.1. Trust-deficit



These politicians attempt to seek power and unseat opponents both at the federal and federal member states level without compromise and co-optation

Participants in the roundtable discussions singled out trust-deficit as one of the main challenges facing the implementation of the federal arrangement. This trust deficit stems from the era of dictatorship and the years of state collapse and permeates across the political landscape. The result is an antagonistic practice of politics among political actors. These politicians attempt to seek power and unseat opponents both at the federal and federal member states level without compromise and co-optation. The mistrust is so pervasive that, in the words of a former federal minister, “nothing short of eliminating a political opponent is acceptable to whoever is at the helm of power”. This is one of the main explanations for constitutional guidelines being ignored, political agreements between elites often dishonored and implementation of the federal arrangements stalled or sabotaged.

In Somalia’s federal context, the trust deficit issues manifest themselves in two ways: distrust among the political elite and public mistrust in the governance structure and institutions. Both layers of trust deficit impede the implementation of federalism. Conversely, the public does not exert pressure on the political actors while at the same time, the interests of the political elites seem incongruent to serving needs and expectations of the public. This is to say, where political actors seem disinterested in unblocking the federal arrangement, citizen participation and should counterbalance the political seesaw, a necessary requirement that is not part of Somalia’s federal project. With the absence of public participation and the confrontational behavior of the political elite, the federalism project fails to advance and powers do not devolve. The underlining causes of the trust-deficit with respect to the implementation of federalism include:

1. Misuse of power at both levels of government including the elimination of political dissidents;
2. Politically irresponsible behavior including ignoring Somalia’s fragility;
3. Lack of accountability in how Somalia is generally governed;
4. A total disregard of the constitution by the political actors; and
5. Absence of federal institutions designed to diffuse political distrust.

3.2. A centralized political culture



In relation to service delivery and delegation of authority, the presence of each federal member state is hardly visible beyond the city state

Political power was highly centralized before the collapse of the military regime. This unitary mindset in a federated Somalia interacts in two competing ways and at two levels. Centrifugal forces, the federal member states, accuse Mogadishu of undoing the skeletal federal structure. On the other hand, the centralization-based political culture of the federal leadership blames regional presidents for usurping powers that fall beyond the realms of states. In practical terms, political actors at both levels of government antagonistically seek power accumulation. Power in the federal member states is concentrated in the regional state capitals, forming city states. In relation to service delivery and delegation of authority, the presence of each federal member state is hardly visible beyond the city state.

Some participants in the roundtable discussions pointed out that the federal member states' accusations against the central government are unjustified for the following reasons:

- a) Regional leaders have not shown a willingness to devolve power within their states;
- b) Regional leaders have crippled regional parliaments;
- c) Governance structures in the member states solely depend on the whims of regional leaders and not on the strength of local institutions; and
- d) Regional presidents extend their authority to arenas designated for the central government such as foreign affairs and defense.



This means that the contestation between political stakeholders is not about the devolution of power or whether the principles of federalism fit Somalia's context. It is about domination and political supremacy

This means that the contestation between political stakeholders is not about the devolution of power or whether the principles of federalism fit Somalia's context. It is about domination and political supremacy. If the regional presidents were to decentralize power, their criticism of the federal government for misuse of power would have attracted sympathy and political support from segments of the Somali public. For its part, the central government has not shared power or ceded any reasonable political authority to the federal member states, as would be envisioned in one way or another in any genuine federal arrangement. The centralization-based political culture in Somalia has forsaken the principle that interdependence in a federal system necessitates shared governance. This mindset, is incompatible with federalism's "philosophical foundation that a government is best when it governs the least and, therefore, only limited functions"² are given to the central government.

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



In the case of Somalia, a balance between power centralization and self-rule has to be devised to unblock the federal arrangement and break the stalemate

Unblocking Somalia’s federal arrangement lies in limiting the power of both the centripetal and centrifugal forces. Even if certain functions are best conducted by the federal government, self-rule at the regional level should not be trampled down. It is for this reason that Akhtar Majeed argues that good governance at the federal level is not a “substitute for self-rule”³ at the federal member states level and power should not be usurped by the central government. In the case of Somalia, a balance between power centralization and self-rule has to be devised to unblock the federal arrangement and break the stalemate.

3.3. Political will and credible commitment-problem

Most participants in the roundtable discussions highlighted that a lack of political will and credible commitment as blockages to progress on Somalia’s federal arrangement. Undoubtedly, the road to a functioning federal dispensation requires both political will and credible commitment. The challenge in unblocking the federal arrangement is to find ways to bind political actors to an agreement. This lack of commitment to federalism persists for the following reasons:

1. No common incentive or thread binds the political players together;
2. Lack of a traction for constitutional completion process that would guide the basic federal rules of the game;
3. Checks and balances in the federal arrangement have not evolved; and
4. Political players are neither accountable to the parliament nor to the public and any agreement on federalism has so far been dishonored.

Since the adoption of the Federal Provisional Constitutional, successive presidents have started their terms with a fight against the federal member states. Former president Hassan Sheikh Mohamud, who is lauded for establishing four regional states, spent his first two years in resisting federalism as a system of governance in post-civil war Somalia. His successor, Mohamed Abdullahi Farmajo, violently installed his allies in three member states and locked horns with Jubbaland and Puntland. The categorization of federal member states as either enemies or friends is contrary to the principles of cooperative federalism. Participants agreed that political actors have demonstrated lack of faith in federalism, often erroneously equating power decentralization with balkanization of the country, a pretext that has been exploited by anti-federalist leaders.



The categorization of federal member states as either enemies or friends is contrary to the principles of cooperative federalism

3. Majeed, A. (2006). Comparative introduction in Ostien, A. & Blindenbucher, A. Global dialogue on federalism. McGill Queen University Press.



The lack of political will to unblock the federal dispensation is interlaced with two more obstacles: a knowledge gap about the various forms of federalism and the wrongful assumption that power sharing reduces the stature of the sitting president

The lack of political will to unblock the federal dispensation is interlaced with two more obstacles: a knowledge gap about the various forms of federalism and the wrongful assumption that power sharing reduces the stature of the sitting president. On the knowledge gap, internal communal grievances, public sentiments against bad governance, allegiances of sub-regions, political marginalization and the misuse of power that federalism was meant to address are ironically presented as deficiencies of federalism as a system of governance. Some of the participants said that political leaders are driven by the widespread practice of ‘big man’ politics both at the federal and the federal member states level. Contrary to the principles of federalism, governance in Somalia is equated with one man, and the man becomes the government without governance.

4. Challenges to the federalism project

4.1 Somaliland

For the participants in the roundtable discussions, one of the main hurdles facing the implementation of federalism in Somalia is the unresolved status of Somaliland. In the aftermath of the state collapse in 1991 and the subsequent civil war, Somaliland declared its independence from the rest of the country. Often described as a pocket of stability in conflict-ridden Somalia, Somaliland remains unrecognized. This presents a set of contradictory challenges. In the political setup, at least in theory, Somaliland is partly represented in the 4.5 arrangements, the clan-based political formula. But the region is not included in the federal structure and does not administratively take part in the debates on federalism, insisting that it has seceded from the rest of the country.

Somalia does not regard Somaliland as an independent country. Unblocking the federal arrangement, therefore, requires a mechanism to address the Somaliland question. The RT participants were divided on how to approach the Somaliland issue in the federal structure. Some believed that other major controversial issues impeding the implementation of federalism such as resource and power-sharing and the completion of the constitution, cannot be settled without first deciding the political fate of Somaliland as it is an important stakeholder in the future governance of Somalia. Others were of the view that there is no incentive that could lure Somaliland into the federal project and the onus of unlocking the federal arrangement falls on the southern political elite. They believe that federalism must function in the south before any special arrangement or accommodation is made for Somaliland.



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4.2 Power sharing

Article 48 of the Provisional Constitution stipulates that the state in Somalia “is composed of two levels of government”. According to federalist scholars, this is a fundamental feature of all federations and a minimum requirement. Constitutionally, Somalia meets this requirement. But this essential characteristic necessitates a constitutional framework or a political settlement within which the levels of government operate. Somalia fails to meet this necessary requirement, the constitutional allocation of power to each level of government. The lack of a constitutional mechanism for power-sharing has not only inhibited the progress of federalism in general but has also given an impetus to the endless political friction between the federal member states and the central government.

The provisional constitution designates four areas to be controlled by the central government. They are: foreign affairs, national defense, citizenship and immigration and monetary policy. Defense and foreign affairs remain contested. In practice, member states carry out foreign relations with other countries without the consent of the central government. On defense, some states are suspicious of the presence of the Somalia National Army (SNA) for fear of repression. In the past, Mogadishu has used the national army to manipulate elections in some states. The constitutional provision that “allocation of powers and resources shall be negotiated and agreed upon by the federal government and the federal member states” has not been put into practice. Participants blamed both levels of government for centralizing authority; imbalances between the federal member states when negotiating with the central government; and the unwillingness of the political stakeholders to locate the degree of self-rule at the state level and shared governance at the federal level.

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From revenue generation and resource sharing to basic education and service delivery, the allocation of power to each level of government is in the words of one participant an “unmovable political lump in the nation’s throat,” denying the federal structure a space to breathe.

The tendency to centralize power at both the federal and member state level stems from the half-hearted acceptance of the federal structure. Participants linked the stalemate with a lack of vision and faith in the federal structure by Somalia’s political leaders combined with the inability to strike a balance between self-rule for regional states and shared loyalty to the national government. More precisely, Somalia’s federal project is being blocked by who does what. From revenue generation and resource sharing to basic education and service delivery, the allocation of power to each level of government is in the words of one participant an “unmovable political lump in the nation’s throat,” denying the federal structure a space to breathe. Even a reasonable debate about allocating authority to the constituent units of government, either in the policy arenas or in the actual provision of services, has been stifled.

4.3 Fragmentation and representation

From the onset, federalism in Somalia was beset by fragmentation at the federal member state level. Several regions, such as Gedo, Hiran, Sool, Sanaag and Banadir have continuously expressed disenchantment, outright disloyalty and advocated for becoming full federal member states themselves.

The Gedo region has in the last four years become a sphere of influence for the central government. Administrators appointed by the president of Jubbaland were ousted and the central government replaced them with its political allies.

For Hiran, the seed of discord is older than the introduction of federalism. In the trusteeship era, Hiran was one of Somalia's six region. It remained a region during the civilian and the military regimes (1960-1991). The military regime divided some of the provinces in two or three regions while Hiran was not. Therefore, there has been a grievance that is linked to the regionalization process in the past. When federalism was introduced, the region felt that the time was right to become its own state. This did not happen. Hiran was merged with the Middle Shebelle. These fractures are deepened by the fact that neither Hiran nor Gedo speaks with one voice. Both have the deputy president of the respective states and the division among the political elites from the same region further complicates the arrangement of federalism.

Another source of fragmentation at the member state level involves the contested Sool, Sanaag and Cayn regions which both Somaliland and Puntland claimed. Somaliland's claim is based on the colonial border of the British protectorate. Puntland's counterclaim is premised on kinship. Like Gedo and Hiran, the loyalty of these regions is divided and the political elites are in various camps, those of Puntland, Somaliland and the central government. Others advocate for the formation of a new federal member state independent of Somaliland and Puntland. Nevertheless, the status of these regions in the federal structure is undecided, raising further questions on the possibility of unblocking Somalia's federal arrangements.



The political aspirations of Banadir, Gedo, Hiran and Sool regions fall outside the administrative borders within which they are geographically incorporated- a political aspiration that weakens the existing federal member states and makes intergovernmental collaboration a difficult task.

Furthermore, the status of the Banadir region remains contested. Banadir has had juridical regional status since the trusteeship era. Like Hiran, it was one of the six regions in Somalia; one of eight regions during the Somali Republic (1960-1969); and one of 18 regions by the end of the military regime in 1991. There are various proposals that have been presented in settling the status of Banadir. So far, the political class has not reached consensus on this issue.

The commonality in all of these fragmentations is the crisis of representation. The political aspirations of Banadir, Gedo, Hiran and Sool regions fall outside the administrative borders within which they are geographically incorporated- a political aspiration that weakens the existing federal member states and makes intergovernmental collaboration a difficult task. These regions want to keep the juridical status they had which the current federal arrangement does not offer.

4.4 Local government

Governance according to some of the federalist scholars, is ‘going local’⁴ But the provisional federal constitution mentions local government only once. This means that the role of local authorities as the third level of government in a federated Somalia remains undecided. All participants in the discussions agreed on the need for local government. Some wanted its authority to be spelled out in the provisional federal constitution to protect it from the manipulation of regional states and to prevent it from becoming another layer of the power struggle in Somalia’s federal arrangement. Others were of the view that forming local government should be left to the states and be enshrined in their constitutions rather than the provisional federal constitution. Each federal member state should structure local government in its own way without interference from the central government.

These disagreements on the role, authority and the legality of local government were also manifested in the recommendations of the various Constitutional Review and Implementation Commissions. The first commission proposed the formation of local government while the last removed that recommendation. These differences of opinion are part of the evolving debates on how to unblock Somalia’s federal arrangement.

4.5 Implementation challenges

Participants underlined that one of the main obstacles to unblocking Somalia’s federal arrangement is not constitutional ambiguity but the unwillingness to implement constitutional provisions. Constitutional requirements about devolving power or unblocking the federal arrangement are deliberately ignored. For example, article 51 (3) stipulates that an annual conference of executive heads of the federal government and the federal member states shall be regularly convened to ensure the existence and development of cooperative federal relations and to discuss issues ranging from strengthening unity to sharing information. Here, the constitutional guideline is clear but political actors invariably fail to put this type of provision into practice.

Many participants were of the view that political agreements on contentious issues are pre-conditions to any constitutional arrangements. Constitutional Review and Implementation Commissions can only constitutionalize what is agreed at the political level. While the actual operationalization of federalism should not be, in the words of Ronald Watt, “understood in terms of rigid structures for the division of power,”⁵ political stakeholders have no tradition of honoring agreements or constitutional provisions in the quest for functioning federalism in the country.

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Political stakeholders have no tradition of honoring agreements or constitutional provisions in the quest for functioning federalism in the country

4. Grindle, M. (2007). *Going Local: decentralization, democratization and the promise of good governance*. Princeton University Press.

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

The 2017 security architecture is a good example. If elements of this agreement were to be honored and implemented, information sharing and collaboration in the security sector would have been operationalized in line with the federal dispensation.

Another example of agreements not being implemented is article 53 of the provisional constitution which clearly stipulates 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.” The stalemate in the federal arrangement is not a lack of constitutional clarity but is instead the political culture that disregards the rule of law and the content of the constitution.

5. Conclusion

To unblock Somalia’s federal arrangement, participants underscored that the next government must embark on political and social reconciliation. At the political level, the federal government is expected to invite the federal member states for peace talks to diffuse current political tension that has been building up over the last four years. The aim of these talks should be to create a conducive environment for debates on federalism. More importantly, the central government must, from the onset, make clear that it is not anti-federal member states. In the first 100 days of its term, the central government should act on the constitutional stipulation that “in conducting negotiations, the federal government shall regard itself as the guardian of the interests of the federal member states, and must act accordingly.” As a former federal minister put it, a “return to the federal project” has to be prioritized in order to safeguard Somalia’s territorial and political unity. What is agreed at the political level should, according to the RT participants, be publicized at the social level in order to connect the Somali public to the process of state-building and encourage bottom-up political and social reconciliation. In short, restoring faith in the federalism project through trust-building among political actors can’t wait if federalism is to be a functional governance system in Somalia.

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As a former federal minister put it, a “return to the federal project” has to be prioritized in order to safeguard Somalia’s territorial and political unity

6. Recommendations

1. The central government should spearhead the completion of the provisional constitution. As negotiations evolve, the central government, in collaboration with the federal member states, should directly engage in the constitution-making process, cataloguing the powers of each level of government. Participants in the discussions reiterated that consensus-building and a common vision are prerequisites for the completion of the constitution. This must be prioritized in unblocking Somalia's federal arrangement.

2. Somalia's federalism is both nascent, misrepresented and misunderstood. As one of the participants put it, the "image of federalism is as dented as the country's political podium". Therefore, the continuation of discussions on federalism is necessary for two main reasons: rescuing the image of the federal arrangement and educating both political actors and the public about the nuances of federalism in Somalia. These debates should not be confined to the federal and the federal member state levels. The conversation has to be devolved as a means of civic education on federalism and governance in Somalia. Participants agreed that public knowledge about federalism is as necessary as political settlement at the elite level. Devolving the debate is necessary to dispel the negative connotations that equates the federal arrangement to the dismembering of the country. The next government has to prioritize the continuation of discussions on federalism.



Participants agreed that public knowledge about federalism is as necessary as political settlement at the elite level

3. Apart from political agreements on power and resource-sharing, perhaps nothing is more needed in addressing the stalemate in Somalia's federal structure than a constitutional court. Participants highlighted that the problem in unblocking Somalia's federal arrangement is the arbitrary practice of politics. A constitutional court could lubricate the continuous friction between the federal government and the federal member states. From the legal point of view, the court would be an arbiter when needed in mediating the tensions arising from power struggles. Therefore, the next government must establish the constitutional court in its first year in office.

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FEDERAL ARRANGEMENTS IN SOMALIA

HERITAGE
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