
Political and Constitutional Crisis Looming in Somalia

INTRODUCTION

It has been 20 years since the establishment of the federal government in Somalia, yet the country still lacks fundamental principles and laws to govern it. The implementation of the federal system, including the constitution-making process, has been a contentious issue for a long time¹. The establishment of the Somali Government came after 14 years during which Somalia remained without a government. This was achieved through a two-year-long conference hosted in Kenya, supported by the international community, which convened nearly 2000 delegates including active stakeholders and representatives from Puntland for the purpose of reconciliation and the building of a Somali State. The conference led to the formation of the Federal Government and the development of a national charter, which later transformed into the provisional constitution. The reconciliatory state-building conference concluded in 2004 with the election of President Abdullah Yusuf Ahmed as the first president of a federal Somali State². Somalia's constitution has remained provisional since 2012 when 825 delegates represented the clans and the existing federal entities of Puntland & Ex-Galmudug, as well as other political groups that existed at that time (ASWJ)³ and later the transitional federal government, approved the draft constitution in Mogadishu as provisional federal constitution⁴. The constitution became a subject of dispute when the federal government made changes to certain articles between 2013 and 2023. These articles pertained to power-sharing, resources, the status of Mogadishu - the capital city, and other significant executive powers and roles. As a result of the changes, some of the responsibilities that were previously held by the Office of the Prime Minister were transferred to the Presidency⁵. In addition, the political power-sharing formula that exists in Somalia to distribute political positions among the four major clans and collection of others, known as the 4.5 formula, is not constitutional; it is an unwritten agreement for the transitional period⁶.

Puntland is the only state in Somalia that had a constitution before the federal government was established. It played a major role in the process of building the state, and its constitution grants it powers as an independent government. However, the two constitutions -Puntland and the federal one- need to be harmonized so that the federal constitution becomes a national constitution that is accepted by all parties involved⁷. During various meetings among national leaders, the topics of natural resource production, maritime resources, and their sharing were discussed, resulting in the issuance of communiqués⁸. Unfortunately, Puntland was not present during these meetings, and as a result, the

¹ Abdi Farah Said (Juha), Minister of Interior of Puntland speaking at the inauguration ceremony of the President of Puntland on 25 January, 2024. In attendance, all political stakeholders including the President of the FR of Somalia.

² The Somalia Conflict/Implication for Peacemaking and Peacekeeping Efforts/Institute for Security Studies

³ Ahlu Sunna Wal-Jima'a- traditional religious group in Galgaduud region

⁴ Heritage Institute/Survey of Public Opinion on Somalia's Provisional Constitution/2017

⁵ CES KII Interview, February 2024

⁶ Report of the Secretary General on the Situation in Somalia/UNSC/8 October 2004

⁷ Constitution of Puntland State and the Provisional Constitution of the Federal Republic of Somalia.

⁸ CES KII Interview, February 2024

implementation of the agreements has been difficult due to political issues and contentious article within the constitution⁹. Similarly, it took a long time for Puntland and the Federal Government to agree on the issues related to fiscal federalism, which would increase the federal government's revenue if it could have collaborated with Puntland¹⁰. Somalia's debt relief process ended with Puntland having questions, concerns and the relationship between the two sides have been unhealthy¹¹.

Over the past two years, the relationship between Puntland and the Federal Government has not been good. This has negatively impacted the country's political progress on various fronts including the war on terrorist groups, intergovernmental relations, international aid coordination, and the completion of the constitution. A new political culture has emerged among national leaders in Somalia, where each Federal Government and Federal Member State prioritizes their political agendas and interests in relation to the elections. Moreover, in May 2023, the federal government and the southern States of Somalia agreed to unify the country's elections. To accomplish this goal, all Federal Member States (FMS) have been granted an extension¹². The majority of FMSs have extended their terms beyond the mandated limits. Villa Somalia has aided them in this process by extending their terms in return for their support of the controversial process of amending the constitution¹³.

Reflections on Constitution Review Process

The process of reviewing the constitution requires a stable political environment that enables political stakeholders to have healthy debates and negotiate articles that may require further discussion¹⁴. Article 54 of the federal provisional constitution of Somalia states that “the federal government and the member States of the federation shall negotiate on how to determine the issues of power-sharing and the economy”¹⁵. This reflects the provisional constitution review process in which the Federal Member States intend to negotiate with Federal Government on outstanding protracted issues that need negotiation. However, the public opinion perceives that the limited role of the cabinet and Office of the Prime Minister, coupled with the fact that the President of the Republic has taken over the role of the Prime Minister, renders this article dysfunctional and ineffective¹⁶. As of now, the constitutional court has not yet been established, leaving the President of the Republic as the only available avenue to balance debates between the federal government, parliament, and FMSs. However, the President is playing the role of the executive branch, which makes the country lack the status of the Head of State. The Head of State is mandated to unite the people, be trusted by all stakeholders, and act as a symbol of national unity, as stated in Article 87 of the provisional constitution¹⁷.

The debate is not over the review of the constitution, but rather the methodological procedures and agreements being applied, which are not inclusive. Additionally, the proposed changes such as eliminating the position of the Prime Minister and adopting two-party system are seen as potentially divisive and risky for the country's political landscape¹⁸. Interviews with political elites revealed that an inclusive

⁹ Mr. Mohamed Abdiwahab, Minister of Justice and Constitutional Affairs of Puntland speaking to the local media

¹⁰ Communique issued by the Minister of Finance of Puntland.

¹¹ CES KII Interview, February 2024

¹² Communique issued by the NCC meeting in May 2023 in Mogadishu

¹³ CES KII Interview, February 2024

¹⁴ CES KII Interview, February 2024

¹⁵ Provisional Constitution of the Federal Republic of Somalia

¹⁶ CES KII Interview, February 2024

¹⁷ Provisional Constitution of Somalia cited by MP Abdirahman Abdishakur speaking at the session of the House of the People in Mogadishu

¹⁸ Communique issued by the NCC meeting in May 2023 in Mogadishu

process involving all stakeholders is crucial for the constitution review process, with three key engagements being indispensable¹⁹. **(I)** The work of the Independent Constitutional Review Commission (ICRIC) and Parliamentary Oversight Committee (OC) should be politically and financially independent in order to receive technical contributions, facilitate political dialogues, negotiate, and consult with the public, civil society organizations, and experts as stated in Article 133 & 134 of the Provisional Constitution, **(II)** to restore inclusivity among the national leaders to negotiate issues that need further negotiations such as long outstanding contentious issues in security, powers and resources so as to be in agreement and apply to the constitution review process, and **(III)** the political stakeholders to agree on the guidelines and procedures of reviewing the constitution. The recently approved parliamentary procedure is seen as serving the political interests of the current FGS regime²⁰. If all stakeholders do not agree on the procedural review process of the constitution, it will result in a one-sided outcome that undermines the parliamentary debates, leading to an illegitimate and incomplete constitution²¹.

The Legitimacy around Puntland Debate

The Puntland constitution predates the contested Federal provisional constitution and contains contradictions with over 15 articles. Puntland has been acknowledged as the only State that contributed to the rebuilding of Somali State technically, financially and military, and was once the only source that provided financial resources to the Federal Government²². In addition, Puntland hosted timely strategic conferences that made it possible to complete the draft constitution into provisional constitution. As result, Somalia was delisted from the transitional status under Garowe I&II, Galkayo Agreements²³. The constitution of Puntland state should be harmonized with Federal Constitution as stated in Article 140 of Puntland Constitution²⁴. However, the harmonization process can only be possible if the review of the provisional constitution goes through an inclusive, negotiated and agreed upon procedure, and the review must be facilitated by committees of ICRIC and OC accompanied by representatives from all FMSs and House of Representatives of the FMSs must be consulted as well on issues associated with constitution review as confined in Article 133 & 134 of the Provisional Constitution²⁵.

Puntland is currently debating on a number of contentious issue that need to be negotiated and agreed upon in their constitution review. These issues include but are not limited to: the fundamental principles for the implementation of federalism, the structure of the national security agencies, governance structures and powers, resource-sharing, fiscal issues, judicial structures, elections, Mogadishu issue and Somaliland. Additionally Puntland is also looking to negotiate the procedure for reviewing the provisional constitution. The objective of these negotiations is to address any contested matters in order to facilitate the reconstruction of effective institutions and guide the post-conflict situation towards a positive trajectory²⁶.

¹⁹ CES KII Interview, February 2024

²⁰ CES KII Interview, February 2024

²¹ CES KII Interview with political elite in Garowe, February 2024

²² Mahad Abdalla Awad, former speaker of the House of the People speaking at the joint session of the two houses of the Federal Parliament

²³ Federal Republic Constitution making process conference in 2011/12

²⁴ Puntland State Constitution

²⁵ Provisional Federal Constitution of Somalia

²⁶ Mr. Mohamed Abdiwahab, Minister of Justice and Constitutional Affairs of Puntland in interview with the local media

The President of Puntland, HE. Said Abdullahi Deni nominated a committee of experts in June 2023 to negotiate with the Federal Government on the above issues to expedite completion of the constitution²⁷. However, the Federal Government undermined these negotiations, in which the majority of the interviewed politicians expressed fears that FGS preferred to commence a one-sided process to review the constitution²⁸. FGS amended the already agreed upon provisions including the governance structure which has shifted the power from parliamentary to presidential. This move upset the balance between clans and power-sharing, instead of negotiating with FMSs and other key stakeholders to come up with mutually acceptable solutions on contentious issues, FGS has taken unilateral action. This move has been viewed by political elites as one that will lead controversial debates, mistrust, fragmentation, political instability, insecurity and constitutional crises²⁹.

Puntland has expressed its commitment to negotiations by not only nominating a negotiation committee but also by inviting the President of the Federal Republic of Somalia, HE. Dr. Hassan Sh. Mohamud, and other stakeholders to convene a meeting in Garowe to address national contentious issues, particularly those surrounding the constitution debates. President HE. Said Abdullahi Deni made this offer during his reelection inaugural speech³⁰. In consequence, the president of the Federal Republic, HE. Dr. Hasssan Sh. Mohamud, has reportedly accepted the offer and considered that the NCC meeting be scheduled in Garowe³¹. However, public opinion and political elites feel that federal government undermined the proposed Garowe meeting, and preferred to expedite the constitution review process which is exclusive³².

An Analysis of the Constitutional Crisis and the Future of FGS

The constitution requires prerequisite political will and proper negotiations; without these elements, there can be political and constitutional crisis. The first four chapters are expected to be to be completed in thirteen days, and the whole constitution within one month which is unrealistic timelines. The changes made by the constitutional amendment committees show that the principles and structures proposed to reshape the government agencies are undermining the already agreed upon federal system that Somalia adopted in 2004 through political dialogue and consensus conferences which international community largely invested in. The aforementioned points raised questions and concerns by the political elite whether the FGS is reviewing the constitution or rewriting a new constitution for the Federal Republic of Somalia³³.

The provisional constitution was made through political negotiation and consensus and approved by a Constituent assembly. The review process could also be legitimate, if it was agreed upon by political stakeholders as stated in the provisional constitution Article 54, in which the two chambers of Federal Parliament has the role to participate in the review process or any kind of amendment as written Article 63 & 71 of the provisional constitution. Accordingly, the Federal Parliament do not have the sole role for amending the constitution without political consensus³⁴.

²⁷ Nomination directive attached/June 2023/Garowe

²⁸ CES KII Interview, February 2024

²⁹ CES KII Interview, February 2024

³⁰ 25 January at the inaugural ceremony of the President of Puntland

³¹ CES KII Interview, February 2024

³² CES KII Interview, February 2024

³³ MP Abdirahman Abdishakur, speaking at the House of People's session on 13th February

³⁴ Political elite interview by CES @Garowe/February 2024

During a parliamentary briefing, ICRC & OC discussed the methodology of the constitution review process, they mentioned that they have incorporated some political agreements between the FGS and the FMS over the contentious issues. These agreements were mostly signed in 2022 & 2023 and covered topics such as juridical structures, powers between the Federal Government and States, security structures, fiscal federalism, elections and oil & minerals³⁵. However, Puntland State revealed that they were not part of the agreements and claimed that it was between the FGS and FMSs that exist in Southern Somalia³⁶. In addition, the major concerns by the Somali political stakeholders depicts that if constitutional changes is approved by parliament to serve the political interests of the incumbent regime, the political stakeholders will not accept the outcome of a one-sided process. Predictions shows that Puntland will get legitimate debates granted by the provisional constitution as Article 142 states “Preceded states before the formation of the Federal Government will have independent powers of using their respective constitutions” till its constitution is harmonized with the Federal constitution as well as ratification through a referendum. Furthermore, Puntland constitution also states, till Article 4 of its constitution conforms Article 142 of the Federal Provisional Constitution, Puntland will retain its powers as an independent authority from the federation³⁷. It’s evident that the constitution of Somalia cannot be completed by a one-sided process. Instead negotiations, dialogues and inclusive process are necessary to save the post-conflict Somalia from fragmentation, political disputes and constitutional crisis.

The country faces potential constitutional crises that could lead to insecurity and political instability. The most dangerous cause of these crises is if the parliament approves the constitution without consensus. This would undermine the legitimacy of the constitution as well as the federal institutions. In addition, it’s possible that the political elites and the opposing FMS could organize parallel discussions regarding the State-building process in general and 2026 elections in particular using the provisional constitution³⁸.

Potential Outcomes of the Declared Garowe NCC Meeting

The public opinion trusts that the announced National Consultative Council (NCC) meeting to take place in Garowe is a priority for Somalia's politics to discuss the outstanding issues of the last two years, including addressing the grievances raised from the 2022 elections as well as the recent elections in Puntland where President Said Abdullahi Deni was re-elected. This upcoming NCC gathering has to be characterized by three supportive engagements;

(1) The dialogue discussions must be transparent and their agendas should be clarified and understood by the public and media for all points agreed upon and those who have different points of view must be considered as well, **(2)** Engage representatives from the international community to understand actors who mix their political interests into national issues that need progressive outcomes; and **(3)** Since the closed-table of NCC failed to manage the national politics, it should be transformed to NCC-plus and expanded to accommodate the SSC-Khatumo, former national leaders, concerned Ministries at both levels according to the agenda points. NCC+ should also respect representatives from the minority groups, women and civil society networks to attend the meetings and be included in the council to form transformative approaches and progresses³⁹.

Further, the meetings must focus on;

³⁵ ICRC & Parliamentary Oversight Committee presentations at the joint session of the two houses of the Federal parliament @ 13th February, 2024

³⁶ Minister of Justice and Constitutional Affairs of Puntland, Mohamed Abdiwahab at interview with the local media

³⁷ Article 142 of the Federal Provisional Constitution and Art 4 of Puntland State Constitution

³⁸ Political elite interview by CES @Garowe/February 2024

³⁹ CES KII Interview, February 2024

(I) controversial issues surrounding the completion of the constitution on national security structures, strategies for eliminating terrorism in Somalia, power-sharing issues (politically, institutionally), resources, fiscal federalism, judicial structures, Mogadishu issues, Somaliland, models of the 2026 elections, and the guidelines and procedures of constitution review process; (II) Address, discuss and agree controversial laws that have been passed by Federal Parliament Houses that touch on the above mentioned issues which Puntland were not a part of them; (III) A clear procedure should be established for the NCC+ to avoid frequent disputes among national leaders regarding the authority and legitimacy of the NCC+; (IV) To determine and agree on the next steps of debt relief and lift on arms embargo, which reflects the implementation of fiscal federalism and rebuild effective, legitimate and inclusive national security institutions; and (V) Lastly, the meeting should create an opportunity for the federal government to unite Somalia's views on issues in the Horn of Africa, the Gulf of Aden and the national strategy to respond to Ethiopia's desire to gain access to the Red Sea and its illegal MoU with Somaliland⁴⁰.

Conclusive Scenario if Garowe NCC Meeting Fails

If the upcoming national leaders' meeting in Garowe is not convened to address the grievances witnessed from the 2022 elections, the constitution review process, fight against terrorism, and the implementation of federalism in Somalia, this could lead to several negative consequences to the state-building process and the progress which is expected to be achieved in the coming two years:

Firstly, it is important that the NCC+ meeting in Garowe takes place, as failure to do so could lead to further political instability and unrest. This might result in the FGS leaders getting stuck in political conflict with Puntland and the political elite of Somalia. Additionally, it could increase tensions and political conflicts in the southern FMSs since they are scheduled for elections. The extension given to the southern FMS will create further disputes among the political elite of the respective FMS. Consequently, it will create ambiguity and noise over that Villa Somalia is already drawing extensions which will lead to political crises.

Secondly, if the constitution review process remains divisive, and the federal government would likely continue amending the constitution without Puntland, consequently, an illegitimate constitution will emerge that could worsen the situation of post-conflict Somalia. The ongoing debates surrounding the process of reviewing the constitution, and the roles of various stakeholders in this process, have created division and hindered progress. The lack of collaboration between government institutions at all levels has not only delayed the resolution of contentious issues and the constitution review process, but has also left the Somali people disappointed and frustrated the international community working in Somalia. This lack of progress affects various areas, including humanitarian response, security, governance and economic foundations.

Thirdly, time factor is a key resource for the political stakeholders in Somalia; if the controversial debate continues and is not resolved it could impede key national priorities addressing and combating terrorism, fiscal related disputes, and all contentious issues mentioned in this paper to apply in the constitution review process for completion. Failure to convene the Garowe declared NCC meeting, after one year the mandate of FGS will become limited, the only legitimate debates which will be considered are related to the 2026 elections and its models, and continued tensions between the FGS and Puntland could lead to further fragmentation and division within the country.

Finally, there is currently a constitutional crisis between the Federal Government of Somalia (FGS) and Puntland, where many political stakeholders are opposing the procedures for reviewing the constitution. The country is also facing crises at the regional level that reflect domestic issues, security, economy, and sovereignty and territorial integrity. Therefore, the NCC meeting in Garowe could be an opportunity to resolve these domestic issues and unite the stakeholders' views towards foreign affairs.

⁴⁰ CES KII Interview, February 2024

Recommendations

Immediate Action: to avoid division and political crises, it is highly recommended that the Federal Government of Somalia postpone the controversial and one-sided process of changing the provisional constitution. Instead, they should consult with national stakeholders to launch an inclusive process for reviewing and completing the provisional constitution.

Establish Legitimate Constitution Review Bodies: to prevent ICRC and OC from serving the political interests of the current regime, it is important that they are accompanied by technical experts and parliamentary members from the FMS. Additionally, a third group of constitution making technical experts must be formed; roles and responsibilities of the three bodies must be defined and agreed upon by the stakeholders.

Constitution Review Procedure: the review process of the constitution should be agreed by all stakeholders, timelines and schedules for completing the chapters of the constitution must be realistic to avoid confusion that undermine the fairness of the process. The recently approved controversial procedures must be disregarded and legitimate guidelines and roadmaps set.

Conduct Consultations: Conduct intense consultations with all stakeholders including civil society organization and the public to gather sufficient inputs on the key issues that the constitution should address. Consultations must be conducted before the constitution chapters are taken to the houses of the parliament and must address political and social grievances from the civil war, human rights, gender equality, economic-building, institution-building and, ensure that it reflects the will of the Somali people.

Transparent of the NCC+ Negotiations: the National Consultative Council (NCC+) dialogues, talks and negotiations should invite civil society organization and well-informed experts who have been involved in the State-building process of Somalia and be conducted in a transparent and open manner so the citizens are aware of the discussions. Failure to hold the NCC+ meeting in Garowe (scheduled), the Somali political elite should immediately organize an inclusive strategic conference to address the national contentious issues for development.

Expansion of the NCC (NCC+): NCC should be composed of leaders from FGS and FMS, as well as expanded to accommodate the SSC-Khatumo, Speakers of the Federal and FMS Parliaments, the former leaders who served in top positions (Presidents, PMs), concerned Ministries at both levels and significant individuals and representatives from the minority groups. NCC responsibility, scope and working modality with Parliaments at both levels must be outlined to avoid NCC being disbanded.

Acknowledgement: the federal government has to acknowledge and accept the reality of contentious issues of powers, resources, fiscal federalism, security and elections and constitution review process need to be extensively transparently negotiated. In this regard, it's highly recommended to disregard laws passed and an agreement reached with the absence of Puntland to commence a fair negotiation process. In addition, debt relief and lift of army's embargo have been tremendous achievement and success on economic growth and security enhancement of the post-conflict Somalia. However, the next steps to take advantage of both these attainments must be negotiated and agreed by the stakeholders.

Regional Issues: The federal government should take into account the opinions of national stakeholders regarding the illegal Memorandum of Understanding (MoU) between Ethiopia and Somaliland. The MoU is seen as an encroachment on the territorial integrity of the country, and it is essential that domestic issues be resolved promptly. This will enable the country to stabilize its foreign affairs that have been destabilized by external interests.