



## Democratic Transformation, options for 2016

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### Review and Implementation of the Constitution

The timely Review and implementation of the provisional constitution is intricately part of [the transition to democratic](#) governance in Somalia. The *implementation process* is about setting up the mechanisms and passing the laws that will enable the constitution to be operational. Notable constitutional bodies are: Constitutional Court (The bill was drafted but has not been passed by the parliament); Review and Implementation Commission; Electoral Commission and Boundaries and Federation Commission; Establish Interstate Commission' Oversight Committee. The *review process* is about making the policy decision- the form of Government that is envisaged for Somalia, what is the form of the Constitution; these two issues encompass nature of federalism which the Provisional Constitution has been silent of. The review process chiefly requires the member states to be established so that these critical power sharing issues are negotiated between themselves and the federal government.



So what has been achieved in this constitutional process? The early period of constitutional implementation and review process met with great challenges, and has had far-reaching consequences for the review and implementation. There have been severe delays in setting up the required commissions and the passage of critical legislations thus begging the question of alternative modes for enhancing the legitimacy of the next government despite the fact that the Provisional Constitution lays out clear steps in the Final and Transitional Provisions, including steps for immediate implementation of the Constitution (refer to chapter 15). During the initial phase of implementation, the PC envisages passage of a series of laws and the creation of necessary institutions in order to give effect to the constitutional system and to rebuild

the state.

In particular, Chapter 15 requires the quick establishment of an Oversight Committee of Parliament and a Review and Implementation Commission of technical drafters, which together will manage the production of a large volume of required legislation identified in the Schedules, and to oversee the implementation of the Provisional Constitution (Art. 133(2)(b)). The Commission has been formed but the oversight committee does not exist- the current oversight committee is for all intense and purposes a subcommittee of the parliament; like the finance or foreign affairs committee.

In addition, Art. 136 lays out a mechanism for adopting a series of amendments of the Provisional Constitution during the first term of the House of the People, to be followed by a referendum on the package. Additionally, the provisional constitution envisions that a census, an internationally supervised constitutional referendum and elections should be organized before the end of the transitional period.

Most of the critical institutions (*including the oversight committee*), as envisaged by the provisional constitution, do not exist. Even if such institutions are to be stood up, training, logistics and other arduous tasks will require time, perhaps a minimum of two to three years. The problem is compounded by the Somaliland constitution- more on below.

### **Constitutional Referendum: feasible options**

The classic model for a Constitutional referendum would include the creation of an Independent Electoral Commission (IEC), which would be in charge of organizing and conducting the referendum, including voter registration. In the absence of a countrywide referendum, and for an indirect process to work, there are two potential options: wait until a referendum can be held countrywide (due to security concerns and lack of preparedness); hold the referendum in areas where security currently allows it (Somaliland, Puntland, TFG-controlled areas, embassies, refugee camps). However, neither of these options is feasible or sufficiently legitimate. Thus it is important to examine other Constitutional adoption mechanisms that would not require access to the entire territory but would still give the document greater legitimacy.

The options discussed are the following, and while none of them is optimal in providing the same level of credibility as a popular referendum, under the current conditions they could be considered as valid alternatives approximating legitimacy. The basic principle of this alternative mechanism would consist in the Constitution being adopted through indirect means through a Constituent Assembly (CA).

This CA could be established in various ways 1) Using the current House of the people with its 275 members; 2) Using a formula mixing whole or part of the House of the People and the Upper House and new delegates; perhaps from wider civil society; 3) Convene an entirely new set of delegates to form a CA.

For the last two options the new delegates could be nominated using regions or districts as the basis for representation so that the number of delegates would be based on the size of the population in the respective regions/districts (representation proportional to population). Population numbers will however necessarily need to be estimated and are likely to be contested. This system may also crystallize further the issue of Somaliland as a secessionist State if it refuses to send representatives.

Finalization of the constitution without the participation of Somaliland will pose some serious challenges in the adoption process. Non-participation would undermine the national outlook of the constitution and bolster Somaliland's claim to succession with the argument that this new state is not part of them. Therefore, it is important for Somali policy makers to make provisions in the constitution which refer to future negotiations with states (both existing and nascent) who were not part of the ratification process.

### **General Elections in 2016. Why this is not possible**

[A general election in 2016 looks impossible](#) for a number of reasons; lack of resources, security, Somaliland question and severe lack of time.

Any form of popular consultation takes time to set up: laws, institutions, and training of personnel, registration of voters, political and educational activity, and the actual voting events, setting up polling station, all are non-trivial tasks.

Moving from preparation to implementation requires either a negotiated or a 'managed' peace on the ground, sufficient for the reasonably safe conduct of election activities.

It is necessary, however, to acknowledge the stark advice (including from members of the SFG, Puntland authorities, Somali women's groups and other NGOs, and members of international community) general elections, currently cannot be undertaken. That advice, put simply, is that it is impossible to conduct a referendum and an election under current conditions.

To prepare for general elections in 2016 a number of things have to take place well before then: the Constitution has to be finalized and approved (albeit provisionally again); the upper house of Parliament constituted; outstanding political issues with 'Somaliland' must be resolved (or at least there must be a mechanism to address them); the electoral law should be drafted, debated and approved by Parliament; political parties must be formed; and, above all, security has to be improved to an acceptable level.

In addition, there must be adequate resources allocated to elections. If all the preceding issues are addressed the absence of the following funding in itself would be a deal breaker. Elections are very costly. For example elections cost for each Afghani elector was \$20 (Assuming 3 million voters for Somalia that would work out to a cool 60 million dollars in direct costs alone).

The electoral Commission mandated constitutionally with organizing the elections has not yet been constituted. We also don't know what these elections will be; just parliamentary or will the constitutional question about the system of government be settled and the new order will be presidential than parliamentary.

Further, we are dealing with an electorate that has not undergone a large-scale election in four decades. Instead, more than 25 years of violence dominated the political landscape and sullied the political culture of the country. Consequently a heavy investment is needed to recreate the election authorities' infrastructure, as well as conduct civic and voter education to facilitate the electorate's understanding of a democratic electoral process.

Both the Somali government and international community have not availed anything closer to the resources needed to undertake such a monumental task. This means that achieving the objectives of the Democratic Transformation in the time available requires parallel planning for active preparation for alternative interim ways of achieving some democratic transformation; and preparation for the longer-term popular consultations by referendum and elections when conditions on the ground allow.

### **Where to from here: Democratic Transformation and approximating Legitimacy**

As Confucius famously remarked "Better a diamond with a flaw than a pebble without." The absence of general elections should not mean granting extension to the current administration. Aside from the calls from quite a number of parliamentarians for the impeachment of the president, here are alternative routes that could be used to bring about a democratic transformation in 2016. These options could be applied to both the parliamentary and presidential election with simple tweaking:

#### *1. District based Indirect Poll and Appoint*

This option envisages conducting direct election in those areas that are safe to do so and some kind of an appointment process in other areas that are not secure enough to conduct elections. For the polling, each 3-5 thousand people in each district could elect their members of parliament and the president (if the constitution settles on a presidential system). This could have been possible if plans were started in middle of 2014.

#### *2. Federal Members States and Interim Administrations elect*

Both the international community and Somali politicians have been pushing for the speedy establishment of the Regional and interim Administrations. One principal reason was that it was identified earlier on that universal polling would not be possible in 2016. Thus, it was argued it would be important to have alternative mechanisms to be in place for the indirect elections; one such mechanism is the Federal member states.

Consequently, the federal member states will select their own members of parliament (both the lower house and the upper house, of course there are some constitutional challenges with this). According to the proponents of this option, this will enhance the legitimacy of the federal parliament and each federal parliamentarian will have a legitimate constituency. Of course, this will need to be balanced with the current 4.5 clan power-sharing formula and the elections commission should ensure that the process is transparent and there aren't undue pressure from regional presidents.

### *3. Parliamentary-Plus Constituent Assembly (PPCA)*

This option will allow some Somali citizens to have a say on the selection/election of the new administration. Both the parliamentarians and the executive (head of state/head of government) will be selected by members of the parliamentary-plus CA. The PPCA will consist of both the house of the people and the upper house together with members from the public- civil society members of you wish. In order to ensure the voting number are adequate, this option envisages that the *Plus* will be 500 civil society members drawn from pre 1991 18 regions (the 4.5 formula should be adhered to). Thus the people who are making the selection are not only the political elite but the public (at least small number of them) will have say. Because of the numbers of the electorate in the PPCA, it will make harder for vote buying

### *4. Extension of the Current House of the People*

The other option is to extend the current parliament. Those who are in favor of this argue this will ensure continuity. The public however have some reservations as the current House of the people's reputation has been tarnished. The proponents of this option advance the idea that to enhance the legitimacy, the upper house will need to be established so that the Federal member states (in the case of Somaliland and areas that don't fall within interim or federal units, there needs to be a mechanism where they can send their representatives to the Upper House) will send their representatives to the Upper House. Thus with the creation of the Upper House, this will inject some fresh blood and will enhance the legitimacy legislature and the election/selection process- it will allow the states also to have a direct stake in ushering in the next government. Consequently, both Houses will have a joint session and select the President/Prime Minister.

For any of the above options to be feasible, a robust National Independent Electoral Commission (NIEC) is required to administer these elections. The international community should support the setting up of the NIEC whilst ensuring that the process of selection of members of this body is fair and transparent. Looking at the recent history of Somalia, conflicts of interest, and buying votes carry the greatest risk of corrupting the processes of democratic transformation.

On the pertinent questions of how to organize effective oversight, it is important to stress the complementarity of external oversight and internal control. It is equally important that a functional Constitutional Court (currently non-existent) with adequate staff and

capacity is set up by early 2016 so it can adjudicate any allegations of corruption or electoral malpractices.

The challenges ahead for the 2016 elections in Somalia are legion but not insurmountable.

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