



THE IMPLEMENTATION OF THE PROVISIONAL CONSTITUTION OF SOMALIA FROM 2012 – 2016

A CRITICAL ASSESSMENT

EDMOND EFENDIJA

The Implementation of the Provisional Constitution of Somalia from 2012-2016 - A Critical Assessment¹

By Edmond Efendija²

April 2016

EXECUTIVE SUMMARY

There were great expectations from the current government, some unrealistic. The Provisional Constitution adopted in August 2012 had set an ambitious agenda. Among other things, the government had four years to implement the federalization process, review the constitution and ratify it in a referendum; and conduct the country's first democratic elections since 1969, all while fighting Al-Shabaab to take over control of territory. Unfortunately, little progress on the implementation of the Provisional Constitution was made. Different reasons exist for this, from lack of ownership, to political infighting, and to the lack of political will. As a result, the tasks of the new government will remain largely unchanged: reviewing the constitution, completing the federalization process, and preparing for direct elections.

Key institutional leaders of the current government did not concur with the process how the Provisional Constitution came about, but in the same time, they have missed the opportunity to review it and shape it to a Somali-owned vision. In the near future, review of the constitution will be necessary in at least two phases: before August 2016, to ensure that the upcoming transition of the government is unfolded within the constitutional framework; and after the government transition, to address pending issues of national reconciliation, delineation of powers between federal and state governments, inter-state boundaries, and the justice system.

However, considerable progress has been achieved in the process of federalization, even though the process is further from completion than most would like to believe. New state administrations have been established, which is a great achievement, but currently they resemble a mini-version of the Federal Government of Somalia (FGS), in the sense of not being

¹ This report is based on the review of literature and media articles, followed by individual in-depth interviews with Somali and international officials, including representatives from the federal and state governments, independent commissions, civil society, diplomatic missions, the UN, and international non-governmental organizations.

² Edmond Efendija has been working on Somalia since 2007. He was part of the National Democratic Institute (NDI) and has supervised programs supporting state and federal legislatures, as well as executive branches. He worked with Independent Federal Constitution Commission (IFCC) and the Committee of Experts (CoE) during the process of public consultation and civic education. Edmond Efendija has left NDI Somalia, in August 2015. He prepared this paper as an independent consultant for the Max Planck Foundation for International Peace and the Rule of Law. The opinions expressed in the paper, however, are the author's own and do not necessarily reflect the view of the Max Planck Foundation for International Peace and the Rule of Law.

able to deliver services or control their territory, and owing their existence to the protection from AMISOM. The federalization process is, therefore, not close to completion. There is an opportunity for state administrations to go toward further consolidation of state government structures, including at local level, which can stabilize respective regions; but there are still risks that they will be flimsy governments, which grapple with governance issues; are not sufficiently representative, and may aggravate conflict instead of mitigating it.

To ensure that new state administrations become part of the solution, the focus should be in strengthening their legitimacy and capacity to govern. Legitimacy can be strengthened by making the state administrations inclusive and by improving capacity of the respective governments to deliver services. Vigorous assistance from the international community will be an imperative, albeit not sufficient, as a lot will depend from the will of Somali leaders. The federalization process did not transpire in full compliance with the Provisional Constitution and there are still open issues, for example, concerning boundaries demarcation. In this respect, pending issues that pertain to the Boundaries and Federalization Commission, have to be addressed as soon as possible.

The consolidation of state administrations and a meaningful constitution review process will pave the way for holding direct elections. When the state and local government structures are established, and national issues of contention among communities are addressed and integrated in the new constitution, chances for enduring stability and security will increase, paving the way for conduct of direct elections. To get there, however, will take an ample time, hard work, and strong commitment.

The next Somali government should embrace the challenges and not delay dealing with the hard issues. They can count on the support from the international community but should also be aware that such support comes with a caveat. If addressing the problems is delayed for too long, the international community, motivated by the need to have results, will intervene and may influence speedy solutions that are not best fit for Somalis. Too often this has been the case in the past, not to learn a lesson from it.

BACKGROUND

When in September 2012 the new President of Somalia was inaugurated, many outside observers looked at the future of Somalia with a lot of optimism. The newly adopted Provisional Constitution – the hope was - would mark a new era. Election of the new President and formation of the government shortly after, marked the formal end of the transition. The former Transitional Federal Government (TFG) would now be called the Federal Government of Somalia (FGS). But those more closely engaged with the previous developments and aware of how everything came about, were doubtful that ending a transition is merely about removing a word.

The Provisional Constitution had been drafted in a hasty way, by a small group of leaders, excluding important parts of the Somali elites. The Independent Federal Constitution Commission (IFCC), mandated by the Transitional Federal Charter to develop the final draft constitution, had worked together with the Committee of Experts (CoE) to finalize it. In May 2012, the IFCC and CoE gave their final draft to the Roadmap signatories.³ To the surprise of many, the Roadmap Signatories, after a meeting in Addis Ababa, issued a press release informing the public that they will incorporate and harmonize their own submissions into the document, practically taking over the process of amending the draft.⁴ From this point, the IFCC and CoE stopped being involved in the process. Moreover, the Signatories had concluded that the Federal Parliament was not able to pass necessary amendments to the Transitional Federal Charter and the legislation necessary for transition, thus the Parliament too was excluded from the process.

The leaders of the IFCC and CoE, Abdullahi Jama and Mohamed Osman Jawari got infuriated because their draft constitution was taken away from them and changes were being made without their input or chance to explain the original draft. The Members of the Transitional Federal Parliament were also irritated because the Speaker, who had lost their support, was among those drafting the new constitution. The attempt of the Members to remove their Speaker⁵ resulted in their qualification as spoilers and exclusion from the due process. Even outside the institutions, there was dissatisfaction. Hassan Sheikh Mohamud, the leader of the Peace and Development Party, led protests in Mogadishu⁶ against the process through which the new constitution was coming about.

The new draft of the Provisional Constitution, a very different one from what was initially presented by the IFCC and CoE,⁷ was adopted in August 2012.⁸ The document guided the formation of the new institutions, leading to very interesting results: more than half of the old Members of Parliament returned in the new legislature; the new Parliament elected Mr.

³ The Roadmap Signatories were: President Sheikh Sharif Sheikh Ahmed, Prime Minister Abdiweli Mohamed Ali, Speaker Sharif Hassan Sheikh Aden, Puntland President Abdirrahman Mohamed Mohamud (Farole), Galmudug president Mohamed Ahmed Alim, representative of ASWJ Khalif Abdulkadir Moalim Noor and the SRSF Amb. Augustine Mahiga.

⁴ Addis Ababa Communique, 23 May 2012, Available at: <http://unpos.unmissions.org/LinkClick.aspx?fileticket=c5df15pV7q8%3D&tabid=9705&mid=12667&language=en-US>

⁵ Garowe Online (2011) Somalia: Parliament Vote to Oust Speaker Ignites New Political Dispute, Available at: <http://allafrica.com/stories/201112140818.html>

⁶ Author's interview.

⁷ Elmi, A.A., (2012), Revisiting the UN-Controlled Constitution-Making Process for Somalia, Available at: <http://www.e-ir.info/2012/09/02/revisiting-the-un-controlled-constitution-making-process-for-somalia/>

⁸ After the roadmap signatories signed off on the Provisional Constitution, the Technical Facilitation Committee (TFC), which members were appointed by the signatories, made significant changes in the draft. Despite the fact that Puntland was represented in the TFC, President Farole contested authenticity of the Provisional Constitution, claiming that the document has been tampered with, after signatories had signed off on it.

Mohamed Osman Jawari as their new Speaker; Hassan Sheikh Mohamud became the new President, later nominating Abdi Farah Shirdon as the new Prime Minister. All three Roadmap Signatories representing the transitional federal institutions were voted out. Those who were opposing the previous process, became the new leaders.

In a speech before the Parliament, President Hassan Sheikh, holding up a copy of the Provisional Constitution, said that he was not going to be bound by it. The Six Pillar Program,⁹ which the President presented, focused on security, economic recovery, reconciliation, service delivery, international relations, and unity. His speech did not include plans about the constitution review, federalization or elections. The implementation of the Provisional Constitution was not off to a good start.

I. IMPLEMENTATION OF THE CONSTITUTION: TAKING STOCK

It took about a year for the government to come back on track and set a new plan that was commensurate to the Provisional Constitution. In September 2013, the Somali Compact¹⁰ was adopted. The Compact has five Peace and State-building Goals (PSGs), including Inclusive Politics, Security, Justice, Economic Foundations, and Revenue and Services. The FGS developed another document at the end of 2013 – the ‘Vision 2016’, which took its final form in June 2014.¹¹ The document, which effectively became the blueprint for the implementation of the Provisional Constitution included the three PSG1 objectives: Reviewing of the Provisional Constitution; Federalization and Democratic Elections.

1. REVIEW OF THE PROVISIONAL CONSTITUTION

The Provisional Constitution envisions its own review. Articles 133 to 137 lay out a rather complex and separate process to amend the Provisional Constitution before the end of the first term of the Federal Parliament, and after ratification of the constitution by referendum.¹² This paper will look into the process of review during the first term of the Federal Parliament. In this respect, an Independent Constitutional Review and Implementation Commission (ICRIC) was mandated with the tasks of: (1) drafting the constitutional amendments to be the basis for the review of the constitution and (2) developing draft legislation to implement the constitution.¹³ A Constitutional Review and Implementation Oversight Committee (OC),

⁹ President Hassan Sheikh laid out the Six Pillar Policy in his address to the Federal Parliament. The policy is available at: <http://www.villasomalia.gov.so/project/foundations-of-new-beginning-the-six-pillar-policy/>

¹⁰ The Somali 'Compact' is a plan agreed by Somali government and the donor community, to guide a partnership between the parties with the aim to transition the country out of fragility. The Compact is guided by the New Deal principles for fragile states agreed in Busan in 2011. For more details see A New Deal for Somalia, available at: <http://www.somalia-newdeal-conference.eu/>

¹¹ On file with author.

¹² Article 136 requires the amended Provisional Constitution to be ratified in a referendum, which would be held before the end of the first term of the parliament. Article 137 regulates the process of review of the Constitution after the first term of the parliament is over.

¹³ The Provisional Constitution, Article 134 (7).

composed of Members of the Federal Parliament and delegates from the Federal Member States was mandated to direct and oversee the work of the Commission.

UNNECESSARY DELAYS

Despite the fact that the Provisional Constitution provided detailed provisions on the mandate of the ICRIC, the bill for its establishment was introduced only at the end of May 2013. The Federal Parliament passed the law in early July 2013,¹⁴ after which it took the government almost another year to appoint the members of the Commission.¹⁵

Disagreements between the President and the Prime Minister, which became clear in November 2013¹⁶, at least partly, have contributed to the delay. The disputes ended by the Federal Parliament's vote of no-confidence¹⁷ in Prime Minister Shirdon.

The new Prime Minister, Abdiweli Sheikh Ahmed, who was inaugurated in December 2013, appointed a new Minister for Justice and Constitutional Affairs¹⁸. The government nominated the five ICRIC members in May 2014, and the Federal Parliament endorsed them in June of the same year. In consultation with the Puntland leadership, Asha Gelle, an experienced politician and women rights activist, became the chairperson of the ICRIC.¹⁹ Unfortunately, soon it became clear that the Commission was going to face huge objective challenges: government had not allocated funds to support their work, which meant that commissioners were not being paid; no staff support; office or operational cost.²⁰ In these conditions, three members of the Commission were living outside Somalia and were not attending meetings in Mogadishu. In effect, the Commission did not have a quorum to meet in Mogadishu and its members tried to make up for this situation by using online communication.

Different institutions that were engaged in the constitution review process had different views about the mandate of the Commission. To address this issue, the Ministry of Constitutional Affairs, ICRIC and OC signed a memorandum,²¹ which clarified roles of each entity. Unfortunately, this agreement had little impact as financing of the ICRIC continued to be a problem and, after one year without budget and political support, the chairperson of the ICRIC,

¹⁴ House of the People, '9th Parliament Bill Tracker', Updated on May 2015.

¹⁵ Garowe Online (2014) Somalia: Federal Parliament Endorses Constitutional Review Commission, Available at: <http://allafrica.com/stories/201406200576.html>

¹⁶ VOA News (2013) Somali President Seeks PM's Resignation, Available at: <http://www.voanews.com/content/somali-president-seeks-pms-resignation/1787727.html>

¹⁷ BBC News (2013) Somali PM Abdi Farah Shirdon loses confidence vote, Available at: <http://www.bbc.com/news/world-africa-25189072>

¹⁸ Somalia News (2014) List of the new Somali Cabinet revealed by Prime Minister Abdiweli Sheikh Ahmed, Available at: <http://www.mareeg.com/list-of-the-new-somali-cabinet-revealed-by-prime-minister-abdiweli-sheikh-ahmed/>

¹⁹ Asha Gelle was practically appointed by the Puntland's President Abdiweli Gaas, who agreed not to appoint an extra member in the ICRIC, under condition that Asha Gelle becomes the Chair of the ICRIC.

²⁰ Author's interviews.

²¹ On file with the author.

Asha Gelle, resigned in May 2015.²² Three years through the term of the government, the ICRIC continued²³ to have no budget.

Some government officials have linked the delays to the fact that reviewing the constitution was pending on the formation of the federal states.²⁴ This claim has merits, but it does not justify the delays. While it is true that the process of constitutional review is best undertaken when the regional administrations are fully established and are able to participate, their formal absence should not have prevented the Commission from doing its work. From the legal point of view, the existence of the Commission is not predicated on the completion of the federalization process. In fact, Article 134 (2) clearly stipulates that the Commission should be formed at the beginning of the term of the Federal Parliament, although it was clear – when the constitution was drafted – that the federalization process would not be completed by then.

Furthermore, the mandate of the ICRIC is to produce technical solutions, which are to be endorsed by the relevant political stakeholders and through a formal decision of the Federal Parliament. Conducting necessary research and developing draft amendments earlier would have prepared the ICRIC and the OC to start the public debate and consult state administrations, as they were emerging. In the regions where state administrations had not come up, the consultations could have been conducted with the relevant politicians and other stakeholders in society. The same would pertain today to Banadir, Hiran and Middle Shabelle regions. Had this approach been adopted, the review process would have been much more advanced today. Last but not least, the mandate of the ICRIC was also to draft legislation, as per Schedule One (D) of the Provisional Constitution, which also would not necessitate the formation of states. Thus, connecting the review process to the finalization of the state-formation is neither practical nor a requirement of the Provisional Constitution.

A PERIOD OF PROGRESS

Fortunately, the OC did not wait for the ICRIC's establishment to start studying the document and discuss areas to be amended. The OC even submitted to ICRIC the drafting instructions on the amendments they wanted to see. When in November 2015, the ICRIC members started to receive salaries, rapid progress was made thereon. Together with the OC, ICRIC reviewed 10 of the 15 chapters of the constitution. On 15th February 2016, OC and ICRIC submitted a joint report to the Federal Parliament, proposing amendments to chapters 1-5 and 10-14 of the Provisional Constitution.

The Puntland administration opposed to some of the amendments claiming that they would return the country to a unitary system of government.²⁵ Although, Puntland's claim seems

²² Asha Gelle was replaced by Mohamed Afrah, also appointed by President Abdiweli Gaas.

²³ Author's interviews.

²⁴ Author's interview.

²⁵ Garowe Online (2016) Puntland slams Somalia Government over unitary constitution, Available at: <http://www.garoweonline.com/en/news/puntland/puntland-slams-somalia-govt-over-unitary-constitution>

exaggerated, an analysis of the report²⁶ suggests a tendency to strengthen the Federal Government powers. One of the significant amendments proposed makes the capital Mogadishu a city-state, with the right to be represented in the Upper House of the Federal Parliament. This is another sensitive issue,²⁷ which will become part of the dialogue on the constitutional review and has the potential to affect other developments. More detailed analysis of this issue can be found in the section on the federalization process.

CONSULTATION ON THE PROPOSED AMENDMENTS

ICRIC and OC would like to use the remaining time of the Federal Parliament's term to reach out to the state legislative assemblies and other stakeholders to explain their proposals and collect feedback, which would shape the final amendments.²⁸ The main challenges to the implementation of this plan are the limited financial resources and time. The February 2016 High Level Partnership Forum (HLPF) meeting confirmed that international partners are ready to support the review process.²⁹ However, it is not certain if this declarative support will translate into financial support. In reality, there seems to be little appetite in the international community to fund a substantive constitution review process, while having to implement the recently agreed plan for the upcoming indirect elections.

Somali leadership, on the other hand, seems to have reached a momentum about reviewing the Provisional Constitution. In mid-March, the ICRIC held one consultative meeting in Baidoa. In a communique issued on April 12, the National Leadership Forum announced a Constitutional Conference in Garowe, to start at the end of May, 2016.³⁰ This is positive news and the conference would present a good opportunity to reach consensus on some important pending issues. In fact some amendments will be necessary and should happen rather soon.

THE WAY FORWARD

To ensure that the upcoming transition will unfold within a constitutional framework, will require amending the Provisional Constitution in few key areas, before the end of the term of the current parliament. The following areas need to be addressed:

- 1) The Provisional Constitution requires any amendments to be ratified through a Referendum, which will not happen. New formulations need to do away with the Referendum and define a single process for constitution review, which does not depend on what term the Federal Parliament is in.
- 2) The state formation process has not been concluded. The Galmudug state is comprised of one and half regions. There are border disputes on both ends of Puntland.

²⁶ On file with the author.

²⁷ Author's interviews.

²⁸ Author's interviews.

²⁹ High-Level Partnership Forum Meeting (2016) Communique. Available at: <http://hlpfistanbul.mfa.gov.tr/data/communique-high-level-partnership-forum-istanbul-23-24-february-2016.pdf>

³⁰ Garowe Online (2016) Somalia political leaders rule out term extension, <http://www.garoweonline.com/en/news/press-releases/somalia-political-leaders-rule-out-term-extension>

Mogadishu is being proposed to be a ‘city-state’. The relevant Articles, therefore, need to be revised to reflect the reality on the ground.

- 3) The Provisional Constitution requires the next Parliament to be elected through direct elections, which will not be possible.³¹ The NIEC is not playing any role in the upcoming election. Amendments ought to be made to reflect the recently reached agreements about the indirect elections and the role of the NIEC.

The discussion of amendments, unfortunately, has to be compressed in a short timeframe. This is due to the fact that the review of the Provisional Constitution was not a high priority for the FGS. The enormous delays in the creation of ICRIC and the meagre financial and political support,³² which the Commission received after its establishment, speak to the fact that the government did not have enough interest to move the process forward. However, it is very important that, despite the delays, the Somali leadership now understands the need to address these legal issues and has made specific plans about it.

The new government, after August 2016, should not wait long to start the dialogue about the review of the constitution. The issues of the delineation of powers between federal and state governments, and sharing of the national resources, deserve an urgent consideration.³³ Other complex issues include national reconciliation, inter-state boundaries, and finalization of the justice system. These are big issues, which require intensive dialogue, thus it may be useful to consider a phased approach.

The Provisional Constitution allows the states to have constitutions that are not compliant with the federal one, until the federalization process is complete.³⁴ This should change, as contradicting state constitutions will render any state-building based on constitutionalism and a coherent legal framework impossible.

2. THE PROCESS OF FORMATION OF STATE ADMINISTRATIONS

The Provisional Constitution, Article 48, stipulates that two or more regions may merge voluntarily to form a state. The Constitution does not provide details how a region is to express its will. In addition, the states should be based on the boundaries of the administrative regions before 1991. The latter provision appears to be in contradiction with another provision of the Provisional Constitution, Article 111E (3), which mandates the Boundaries and Federation Commission (BFC) to make recommendations to the House of the People of the Federal

³¹ United Nations Security Council (2015) Report of the Secretary-General on Somalia, Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/702

³² Author's interviews.

³³ Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

³⁴ The Provisional Constitution, Article.

Parliament regarding demarcation of borders.³⁵ Based on the recommendations of the BFC, the House of the People should approve the number and the boundaries of the states.

In an attempt to clarify how the state formation should unfold, the government drafted a bill on the establishment of district and regional administrations. The bill was signed into a law in August 2013 and provided for a bottom-up approach to erect district and regional administrations.³⁶ Legitimate regional institutions would have been well placed to express the will of the people of a region to come together with other regions and form a state. Unfortunately, the law came too late. By the time it was enacted, the state-formation process in Jubaland was well advanced and at the end of the same month, the FGS reached an agreement with its leader Ahmed Madobe, formally recognizing Jubaland as an interim administration.³⁷

INTERIM JUBALAND ADMINISTRATION (IJA)

Reluctantly, the FGS signed the agreement in recognition of the reality on the ground, which was outside its control. Ras Kambooni militia led by Ahmed Madobe and with great support from the Kenya Defence Force (KDF), were able to defeat Al-Shabaab and take control of Kismayo, in September 2012.³⁸ Madobe was elected President of Jubaland by a controversial conference of elders, which was accused of not being sufficiently inclusive.³⁹ Keeping all groups happy is no easy task in Jubaland. This region is probably the most diverse in Somalia in terms of clan representation. In the last 25 years there has been many inter-clan, resource-based conflicts, especially over the port city of Kismayo. These conflicts bring baggage in the current relations between clans.

Some communities dominating Gedo and Middle Juba⁴⁰ regions perceive Madobe's administration to be controlled by one sub-clan of Ogaden clan,⁴¹ which is there only because of AMISOM and political support from IGAD. The accusations for the lack of inclusivity resurfaced when the Jubaland Regional Assembly was constituted, in May 2015. On the same grounds, the Federal Parliament passed a motion to "outlaw" the Jubaland Assembly. Madobe reacted immediately, declaring that he is cutting ties with the FGS. It was another example of how limited the de facto jurisdiction of the FGS is. The process in Jubaland continued, however, after having been re-elected by the Assembly, Madobe agreed to reconstitute the Regional

³⁵ Aucoin, L., Murray, G. & Anderson, G., (2015) 'Issues Raised by the 2012 Constitution', UNSOM Paper.

³⁶ Districts and Regional Administration Establishment Act, Law/No.116.

³⁷ Garowe Online (2013) Somalia: Jubaland Gains Recognition After Intense Bilateral Talks in Ethiopia, Available at: <http://allafrica.com/stories/201308290096.html>

³⁸ The International Crisis Group (2013) Jubaland in Jeopardy: The Uneasy Path to State-Building in Somalia, Available at <http://blog.crisisgroup.org/africa/somalia/2013/05/21/jubaland-in-jeopardy-the-uneasy-path-to-state-building-in-somalia/>

³⁹ Institute for Security Studies (2013) A new solution that brings new problems for Somalia's Jubaland, Available at <https://www.issafrica.org/iss-today/a-new-solution-that-brings-new-problems-for-somalias-jubaland>

⁴⁰ These communities include Marehan/Darod and sub-clans of Rahanweyn, minorities and Hawiye.

⁴¹ Bryden, M., (2015), Somalia's Troubled Transition: Vision 2016 Revisited, Available at: <http://sclr.stabilisationunit.gov.uk/top-10-reads/geographic/somalia/892-somalia-s-troubled-transition-vision-2016-revisited/file>

Assembly to address the representational issues.⁴² In late March, he reached an agreement with Marehan politicians from Gedo, who committed to persuade other Marehan leaders to support the institutions of Jubaland.

Meanwhile, the position of the FGS toward Jubaland has softened. The central government officials now appreciate the fact that they can access towns like Kismayo, thanks to the regional administration there.⁴³ The President and Prime Minister took part in the inauguration ceremony of Madobe after the new Regional Assembly reconfirmed him as President of IJA.⁴⁴

INTERIM SOUTH-WEST ADMINISTRATION (ISWA)

The process for the establishment of the South-West administration started with two different conferences. On one side was a group, which became known as the SW6, favouring the merging of six regions⁴⁵ and led by Madobe Nunow, former federal Minister of Constitution. These leaders had opposed the FGS's agreement with Jubaland administration and instead aimed at including the Jubaland regions into the South-West administration.⁴⁶ The second initiative – the SW3, led by the former federal Minister of Finance and Speaker of the Transitional Federal Parliament, Sharif Hassan, was aspiring for a state including three regions - Bay, Bakool and Lower Shabelle. Despite the fact that the SW6 initiative enjoyed the backing of most of the Rahanweyn community, it could not succeed because it lacked broader support both at the national and international level. The Darod sub-clans in the South who probably make a majority⁴⁷ in the IJA, were not keen to lose this status in a six-region state. On the other hand, the agreement of the FGS and Jubaland administration in August 2013 had been supported by the international community and Puntland, and changing position was not an option.

Consequently, the international community sided with the SW3 initiative and, pressured by all sides, the SW6 group was persuaded to join with the SW3 in forming the South-West administration including Bay, Bakool and Lower Shabelle. In November 2014, a conference of elders elected Sharif Hassan to be the President, who soon had to deal with the long standing

⁴² Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

⁴³ Author's interviews.

⁴⁴ Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

⁴⁵ The six regions included Bay, Bakool, Lower Shabelle, Gedo, Middle Juba and Lower Juba.

⁴⁶ United Nations Security Council (2013) Report of the Secretary-General on Somalia, Available at: <https://unsom.unmissions.org/Portals/UNSOM/SG%20Report%20on%20Somalia%202%20December.pdf>

⁴⁷ <http://media.maps.com/magellan/Images/SOMCLA-W2.gif>

inter-clan conflict in Lower Shabelle and the reluctance of some of these communities – mainly from the Hawiye clan - who were not happy that Lower Shabelle was left with ISWA.⁴⁸

LOWER SHEBELLE CONFLICT

Perhaps, aiming to appeal to the communities in Lower Shabelle, the coastal town of Baraawe was chosen to be the capital of the new South-West state.⁴⁹ However, this has not sufficed to fully integrate this part. Al-Shabaab recently took briefly control of Merka, the biggest town in Lower Shabelle. In addition, the region is marred by a long conflict over land, between Haber Gedir/Hawiye and Biyemal/Dir clans.⁵⁰ There are challenges in other parts of ISWA, as well.

UPPER BAKOOL CHALLENGE

Following establishment of the ISWA Regional Assembly in December 2015, members of an Ogaden sub-clan living in Bakool articulated their dissatisfaction claiming low level of representation in the 145-member ISWA Regional Assembly.⁵¹ They announced the formation of a new administration – Upper Bakool. Although fraction of Bakool region does not meet constitutional requirements to be an administration of its own, this did not prevent Puntland to support the initiative.⁵² In early 2016, ISWA took initiative to open talks with the Upper Bakool representatives.

INTERIM GALMUDUG ADMINISTRATION (IGA)

The process of establishing the Galmudug administration differed from the previous two processes because here the Regional Assembly was established first and then elected the President of the Galmudug administration.⁵³ Secondly, FGS, namely, the office of the President, was able to influence the process of state formation much more than in the other two. In fact, there have been serious allegations that the ‘influence’ of the government took forms of vote-buying and patronage.⁵⁴ In July 2015, Abdikarim Guled, former federal Minister for National

⁴⁸ In fact there was another initiative about Shabelle state, which aspired merging of the Middle Shabelle and Lower Shabelle, but did get much traction.

⁴⁹ This was a wise move because the Digil, who dominate in Lower Shabelle and traditionally were the political leaders among the Rahanweyn clan, were not too happy of the power shift toward the Mirifle, in terms of ISWA leadership.

⁵⁰ Khalif, A. & Barnes, C. (2016) ‘Somalia: Why is Al-Shabaab Still A Potent Threat?’, International Crisis Group, Available at: <http://blog.crisisgroup.org/africa/somalia/2016/02/11/somalia-why-is-al-shabaab-still-a-potent-threat/>

⁵¹ Somalia Newsroom (2015) New “Breakaway” Administration Forms in Somalia In Latest Federalism Dispute, Available at <http://somalianewsroom.com/2015/12/29/new-breakaway-administration-forms-in-somalia-in-latest-federalism-dispute/>

⁵² Garowe Online (2015) Somalia: Puntland shows support for Upper Bakool admin, Available at: <http://www.garoweonline.com/en/news/puntland/somalia-puntland-shows-support-for-upper-bakool-admin>

⁵³ This is much better process than having a parliament which is created after the state leaders is elected and ‘under his watch’. Possible influence of the leaders on the composition of the regional assembly diminishes chances of the parliament to carry out any oversight of the executive.

⁵⁴ Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at:

Security – a candidate favoured by President Hassan Sheikh - was elected President of Interim Galmudug Administration.

THE CHALLENGE WITH ASWJ

Not unlike earlier cases of state-formation, a broad consensus could not be accomplished. Ahlu Sunna Waljama'a (ASWJ), a Sufi-based⁵⁵ military faction that has fought against Al-Shabaab, pulled out of the state-formation process when the Central Regions State-Formation Agreement was signed, in July 2014. They claimed that the person signing on their behalf did not represent them. A conflict with Somali National Army erupted in late 2014, and has continued on and off since then. In September 2015, the ASWJ took over Dhusamareb, the Galmudug's declared capital.⁵⁶ ASWJ believes they need a share because they fought against Al-Shabaab. Those on the side of the government say that ASWJ is affiliated with specific clans in the region and their demands for representation in Galmudug's institutions would disturb the clan balance that was already agreed upon. In January 2016, the Speaker of the Federal Parliament visited Dhusamareb after which he stated that ASWJ is ready for talks with FGS. This visit was not welcomed by the IGA's President Abdikarim Guled, who asked for mediation from IGAD.⁵⁷ The result is yet to be seen.

FEDERALIZATION AND THE CHALLENGE OF IMPLEMENTATION OF THE PROVISIONAL CONSTITUTION

Another serious problem of IGA is the territorial dispute with Puntland and its discordancy with the Provisional Constitution. When Puntland was established in 1998, it defined its southern border all the way to Galkayo, the capital of the Mudug region,⁵⁸ ensuring that Darod clans remain within Puntland territory. Galkayo has been a divided city since the early days of the civil war, with sporadic conflicts between the Darod clans living on its north and Hawiye on the southern part.⁵⁹ Thus, it was no surprise when Puntland reacted fiercely to the Central State Formation Agreement,⁶⁰ which claimed to form the new state by merging Galgaduud and Mudug regions. The ties with the FGS were cut. To assure Puntland, the EU, UN and IGAD envoys sent a letter to Puntland President Abdiweli Gaas, stating their commitment that

http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

⁵⁵ Stanford University (2012) Mapping Militant Organizations: Ahlu Sunna Wal Jameha, Available at: <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/109>

⁵⁶ Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

⁵⁷ Uluso, M. M., (2016) Somalia: Unwarranted Political Hardball Against ASWJ, Hiiraan Online, Available at: http://www.hiiraan.com/op4/2016/jan/103566/somalia_unwarranted_political_hardball_against_aswj.aspx

⁵⁸ Mudug is one of the 18 administrative regions in the pre-1991 period.

⁵⁹ In fact, north of Galkayo is dominated by Omar Mohamud/Majerteen/Darod and south by Saad/Habar Gedir/Hawiye. Puntland President Abdiweli Gaas hails from Omar Mohamud clan.

⁶⁰ United Nations Security Council (2014) Report of the Secretary-General on Somalia, Available at: http://unsom.unmissions.org/Portals/UNSOM/S_2014_699_25SEPT14.pdf

northern Mudug should remain an integral part of Puntland.⁶¹ In October 2015, the President of Puntland and the FGS Prime Minister signed an agreement that – among other things – reiterated Puntland's integrity over northern Mudug.⁶² This agreement, however, was not accepted in southern Galkayo, where the signatories of the Central State Formation Agreement opposed it.⁶³ Consequently, the situation in Galkayo remained tense and in November 2015 a conflict between Omar Mohamud and Saad clans erupted again. After many casualties, FGS managed to facilitate a truce between Puntland and IGA, on December 5, 2015. So far, the truce is holding but the situation remains tense.

THE BOUNDARIES OF PUNTLAND AND THE BOUNDARIES AND FEDERATION COMMISSION (BFC)

Having an inter-state border going through Mudug and forming the state out of one and a half regions is in contradiction with the Provisional Constitution, Article 49 (5).⁶⁴ An amendment in the Provisional Constitution will be required to ensure that the new border is in compliance with the Constitution. Of course, opening up the issue of border changes brings new complications. However, it appears that the ICRIC and OC agree that, once the states are established, they can renegotiate borders among themselves.⁶⁵ The BFC is mandated to make recommendations regarding boundaries demarcations,⁶⁶ but unfortunately the BFC cannot carry out its duties because of the process they were established.

Article 111(2) of the Provisional Constitution requires that Federal Members States are consulted when commissioners are appointed. Soon after the Council of Ministers nominated the BFC, in May 2015, Puntland Vice-President made a public statement that Puntland will not recognize the Commission because of lack of consultation with them when the members were nominated.⁶⁷ Yet, this statement did not prevent the Federal Parliament to endorse the Commission.

Now, the BFC is not allowed to access the territory of Puntland and Jubaland. It has been allocated office space in Mogadishu, but this is of little use when it is not recognized by most parts of the country.⁶⁸ Even the mandate of the BFC is legally ambiguous because it is not clear

⁶¹ RBC Raxanreeb (2014) SOMALIA: UN, EU and IGAD envoys for Somalia send concern letter to Puntland president after the region suspended ties with Mogadishu, Available at: <http://www.raxanreeb.com/2014/08/somalia-un-eu-and-igad-envoys-for-somalia-send-concern-letter-to-puntland-president-after-the-region-suspended-ties-with-mogadishu/>

⁶² IGAD (2014) Agreement between the Federal Government of Somalia and Puntland State of Somalia, [http://igad.int/attachments/978_141014%20Agreement%20between%20FGS%20and%20Puntland%20\(E\).pdf](http://igad.int/attachments/978_141014%20Agreement%20between%20FGS%20and%20Puntland%20(E).pdf)

⁶³ United Nations Security Council (2015) Report of the Secretary-General on Somalia, Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/51

⁶⁴ Aucoin, L., Murray, G. & Anderson, G., (2015) 'Issues Raised by the 2012 Constitution', UNSOM Paper.

⁶⁵ In the ICRIC and OC report, there is an amendment that proposes a procedure for dealing with inter-state boundaries modifications.

⁶⁶ The Provisional Constitution, Article 111E (5).

⁶⁷ In fact, Puntland challenged formation of three important commissions which were nominated at the same time: BFC, NIEC and Judicial Service Commission.

⁶⁸ Somaliland does not recognize any Somali institution.

whether the Provisional Constitution allows change of the inter-states borders. In order for the process to move forward, these legal and political problems have to be resolved. The legal aspect can be resolved through an amendment of the Provisional Constitution and the issue of the composition of the BFC should be tackled at the National Leaders Forum (NLF).⁶⁹

HIRAN AND MIDDLE SHABELLE INITIATIVE

Creating a joint state by merging Hiran and Middle Shabelle proved to be more difficult than most people expected. Both regions are dominated by Hawiye sub-clans but there is a history of conflicts and rivalry between them, within each of the regions. Hawadle/Hawiye, the biggest clan in Hiran has been traditionally in alliance with Jejele/Hawiye but in rivalry with most of other clans including Galjaal/Hawiye, some Dir sub-clans and minority clans.⁷⁰ Middle Shabelle is dominated by the Hawiye's Abgal, but there is deep-rooted conflicts between the Abgal sub-clans over land and political power.

WHO WILL GET WHAT?

The struggle for power between the larger Hawiye sub-clans is also impacting the process negatively. The Hawadle believe that they should have the lion's share in the new state because the Abgal already control Mogadishu city and the presidency of the country.⁷¹ Main issues to be negotiated are: where will the capital be, which clan will get the presidency, what will be the clan composition of the regional assembly, and where the founding conference will take place. Having seen the process in IGA, the Hawadle are concerned that President Hassan Sheikh will do everything in his power to secure the presidency for one of his affiliates.⁷² They have resisted government's proposals to meet in Jowhar, causing several meetings to fail. Finally, in late March 2016 it was reported that President Hassan Sheikh was able to convince Hawadle clan elders to participate in the conference held in Jowhar, provided that he does not intervene in the process of the selection of delegates for the conference.

The animosities between different clans, within each region and between the regions, further complicate the negotiation process. For the process to move forward, a principled agreement about sharing of responsibilities over the key positions and the capital might be necessary, before the process of setting up the state institutions can commence.

STATUS OF MOGADISHU

Mogadishu is at the heart of the reconciliation process at the national level. One interviewee said "If we can resolve Mogadishu, we can resolve everything."⁷³ The Provisional Constitution,

⁶⁹ The National Leaders Forum was launched in February 2015 and includes the President of Somalia and the leaders of state administrations. Lately, the Speaker of the House of the People and the Prime Minister of Somalia have also attended the meetings of the Forum.

⁷⁰ SOMALI CEWERU (2013) 'From the bottom-up: Perspectives through Conflict Analysis and Key Political Actors' Mapping for the Central Regions of Hiran, Galgaduud, and Middle Shabelle', Draft Report, Conflict Early Warning Early Response Unit (CEWERU).

⁷¹ Author's interviews.

⁷² President Hassan Sheikh may also be interested to give the leadership of the new state to another sub-clan of Abgal, in return for support of his re-election.

⁷³ Author's interviews.

Article 9, stipulates that Mogadishu is the capital of Somalia and that its status “shall be determined in the constitutional review process, and the two Houses of the Somali Federal Parliament shall enact a special law with regards to this issue.” There are two main issues pending about Mogadishu: 1) the status of the city in the federal system and 2) the status of property and land in Mogadishu and its surroundings. Both are interlinked and prolonged delays in addressing the latter had a negative effect on the relations between communities in Somalia. These tensions are most visibly reflected in the relations between Puntland and the FGS.⁷⁴

STATUS OF MOGADISHU IN THE FEDERATION

As per the current dynamics of the state-formation process, the Banadir region is not joining any other state. In January 2016, ICRIC and OC proposed amendments to the Provisional Constitution that provide for Mogadishu to become a city-state. The argument is that 1,6 million of the estimated population⁷⁵ needs to be represented in the Upper House. This proposition is likely to be opposed by Puntland authorities, which expressed general disagreement with the report of the OC and ICRIC. In addition, Puntland officials have circulated ideas that the capital should move to another part of Somalia. In any case, the proposal of the OC and ICRIC merits a national debate and the feedback should be incorporated in the review process. The consensus over the Mogadishu’s status in the federation is probably best tackled in tandem with negotiations about other aspects of the Provisional Constitution, for example, restitution of property and national reconciliation.

UNRESOLVED PROPERTY AND LAND ISSUES

When in 1991 Siad Bare’s regime collapsed, many atrocities happened and the non-Hawiye residents departed the city massively, leaving their property behind. Hawiye, together with the Benadiri⁷⁶, are the traditional settlers in Mogadishu, and many of them claim that during Siad Barre’s regime their land and property was taken by the state and given to others. Thus, from their perspective, by occupying the properties they are only reclaiming what belonged to their families, righting the wrongs of the past. But most of those who have occupied disputed property do not possess documentation that land or property belonged to them. Those who do possess the documents are those that have received these documents during the Siad Barre’s era. They are mainly of Darod clan but also other clans.⁷⁷

⁷⁴ Puntland is pre-dominantly Darod state and the FGS is perceived as a Hawiye dominated, as embodied in the de-facto most powerful institution – the presidency.

⁷⁵ UNFPA (2014) Population Estimation Survey 2014, For the 18 pre-war regions of Somalia, UNFPA Somalia Country Office, Available at: <http://somalia.unfpa.org/sites/arbstates/files/pub-pdf/Population-Estimation-Survey-of-Somalia-PESS-2013-2014.pdf>

⁷⁶ Benadiri is a minority clan.

⁷⁷ Author’s interviews. For more details about the Hawiye - Darod contest, see CEWERU’s ‘From the bottom up:

Southern Regions - Perspectives through conflict analysis and key political actors’ mapping of Gedo, Middle Juba, Lower Juba, and Lower Shabelle’, pp40-41.

Today, 25 years later, many real estate and land issues in Mogadishu remain unresolved. People have little confidence in the judicial system, which they see as corrupt.⁷⁸ This situation has continuously been a great concern for Puntland, which is the reason it has been continuously addressed in all agreements between FGS and Puntland. However, those agreements have had little impact on the ground. Unresolved issues of property feed more mistrust, especially between the two largest groups – Darod and Hawiye. Unavoidably, these relations affect political dynamics, which have reflected on the views of political actors about the constitutional arrangements and the implementation of the Provisional Constitution.

So far, the attitude of the authorities in Mogadishu has been to avoid the discussion about this sensitive issue. Failure to resolve the property issues is one of the factors that has strengthened the federalization tendencies in Somalia. Further postponing will only enhance centrifugal forces. An indication for this can be seen in the initiatives to move the country's capital. Thus, there is a pressing need for genuine dialogue between the elites - both political and traditional - to tackle this complex issue.

Some interviewees, on the other side, see Mogadishu property issues purely as a matter of the rule of law. They believe that the government should enforce the law and make sure that those who do not possess documentation to prove ownership should be forced to release the property. This approach, however, fails to take into account the clan dimension, which remains relevant in the Somali context. The Hawiye see Mogadishu as their economic hub, the source of wealth for them, whereas other clans have other ports they can benefit from. So, some feel they are entitled to controlling Mogadishu. Others may fear that opening it up again may result in a situation where the city is controlled by other clans, like in the time of Siad Barre.

Secondly, enforcing legislation (old or new) requires a credible judiciary, which currently is not there. A credible plan to solve property issues should include arrangements for a special court, which is seen as competent and impartial from the communities inside and outside Mogadishu.⁷⁹

This complex issue remains a task for the new government. The delays to tackle this issue have already produced huge rifts among communities in Somalia. There should be no more excuses for postponement because the more it is postponed, the more complex the situation will become.

INTERIM ADMINISTRATIONS VS. FEDERAL MEMBER STATES

Article 49 (1) of the Provisional Constitution specifies that the House of the People shall determine the number and boundaries of Federal Member States. The House is supposed to do this based on recommendations from the BFC. The Provisional Constitution also requires the law establishing the Boundaries and Federation Commission to set criteria for the establishment of the Federal Member States. The decision of the House of the People should be in the form of a law. Although, on one hand, Puntland is recognized as a Federal Member State

⁷⁸ Horseed Media (2015) Mogadishu: Relocation of Somalia's Capital City – The Broken Heart of Somalia, Available at: <https://horseedmedia.net/2015/12/31/mogadishu-relocation-of-somalias-capital-city-the-broken-heart-of-somalia/>

⁷⁹ Author's interviews.

(because it is not considered an interim administration), Article 49 (1) requires the clarification of boundaries before the states are recognized by the Federal Parliament. Puntland has disputed borders with Somaliland and Galmudug, but would not allow the Boundaries and Federation Commission to access its territory.

On the other hand, the establishment of the Upper House, as per Article 138 (2) of the Provisional Constitution, is supposed to be established when all Federal Member States are formed. The inter-state boundaries have to be defined in order for the state-formation process to be complete and for the Federal Parliament to confirm it by a way of a law. Consequently, the establishment of the Upper House is - as per the requirements of the Provisional Constitution - pending demarcation of the inter-state borders.

Ironically, Puntland is both the biggest proponent and the biggest legal obstacle to the establishment of the Upper House (before the end of current government's term). Two less than ideal options can make this work: either the Provisional Constitution needs to be amended to allow the establishment of the Upper House without clarification of the boundaries, or the establishment of the Upper House needs to be postponed until the inter-state boundaries are demarcated.⁸⁰ Obviously, the FGS has chosen the former option, which is in collusion with the Provisional Constitution, unless the latter is amended accordingly.⁸¹

POWERS OF THE FEDERAL AND STATE GOVERNMENTS

The powers of the federal and state governments are not fully and clearly delineated in the Provisional Constitution and this is one of the critical issues, which will have to be addressed by the next government. Furthermore, the constitutional arrangements require a broad consensus for decision-making on some issues and prescribes important roles for Federal Member States. The Provisional Constitution requires the FGS to consult or negotiate with Federal Member States about a great number of issues including membership of Independent Commissions,⁸² the delineation of powers between federal and state governments,⁸³ allocation of natural resources,⁸⁴ constitutional amendments,⁸⁵ election model,⁸⁶ and a wide range of other policy issues,⁸⁷ even including the foreign affairs,⁸⁸ which under the same Constitution is supposed to be under the jurisdiction of the federal government. In effect this means that federal government can do little without the consent of federal member states.

In principle, such constitutional arrangements, which effectively put into question legitimacy of the FGS, are probably a direct consequence of the circumstances in which the Provisional Constitution was drafted. In mid-2012, the Transitional Federal Government leaders had to

⁸⁰ Aucoin, L., Murray, G. & Anderson, G., (2015) 'Issues Raised by the 2012 Constitution', UNSOM Paper.

⁸¹ FGS proposed an Electoral Model which envisages the establishment of the Upper House before August 2016.

⁸² C The Provisional Constitution, Article 111 (2).

⁸³ The Provisional Constitution, Article 54.

⁸⁴ The Provisional Constitution, Article 44.

⁸⁵ The Provisional Constitution, Article 132 (6) (f).

⁸⁶ The Provisional Constitution, Schedule One (C) (6).

⁸⁷ The Provisional Constitution, Article 111E (5).

⁸⁸ The Provisional Constitution, Article 53.

split their focus and attention between the preparation of the constitution and their campaign for re-election. These circumstances have created the space for Puntland President Farole, who aggressively pursued a stronger role for the Federal Member States in the constitution. It is not certain, that IFCC and CoE, or the Transitional Federal Parliament would have agreed with such arrangements. Obviously, these provisions have been implemented with unease by the federal institutions. A typical example is the establishment of the National Independent Electoral Commission and the Boundaries and Federation Commission without consultation with Puntland.

The lack of trust in the federal institutions also has a clan dimension. The FGS is seen as Hawiye-controlled and Puntland and Jubaland (both Darod-dominated states) see it with scepticism, and do not trust that it can defend the interests of all Somalis.⁸⁹ These clan dynamics reflect in the work of the NLF. Jubaland often mimics the position of Puntland, while Galmudug is, mostly, close to the position of the FGS. In reality, however, Puntland leadership is using the constitutional provisions, and the fact that it has control over its territory, to exercise a de facto veto power over important national issues.

Working through consensus is necessary to rebuild the mutual trust among groups in Somalia. However, in the long run, some of the current constitutional arrangements might be an impediment to a functioning federal system. Once there is an agreement about the mechanism of representation at the Federal Parliament, the Somali leaders should agree to “equip” the FGS with sufficient powers to carry out its mandate. In this respect, having a national consensus on the 2016 electoral model was critical, because without such consensus, Somali constitutional arrangements would not have been likely to evolve into a more effective and practical system.

3. ELECTIONS

Elections are an important part of the implementation of the Constitution strengthening legitimacy and accountability of the government. The Provisional Constitution, Article 47, stipulates that the Federal Parliament should pass laws on political parties, the National Independent Electoral Commission (NIEC) and elections. It further delineates the mandate of the NIEC in the Article 111G, making the NIEC responsible for managing the election of the President and the Federal Parliament. Article 135 (e) requires the NIEC to be established within 60 days of the formation of the Council of Ministers. Article 111, which regulates the formation of the Independent Commissions stipulates that the “Federal Member States must be consulted when appointing the commissioners.” Clearly, the Provisional Constitution intended a broad consensus about the membership of the NIEC and envisioned that preparations for elections start early after the formation of the federal Council of Ministers. However, huge delays characterized the process of preparations for elections, which will be discussed in the next sections.

THE NATIONAL INDEPENDENT ELECTION COMMISSION (NIEC)

⁸⁹ Mogadishu situation elaborated earlier has a direct impact in the relationship between the federal and state governments.

It took almost three years to establish the NIEC. Actually, it was the initiative of the Federal Parliament to draft the bill on the establishment of the NIEC that sparked up the activism from the government. In May 2014, the Federal Parliament formed an ad-hoc parliamentary committee to draft the bill on the NIEC. Another committee was formed to draft the bill on the political parties. This initiative triggered a reaction from the Minister of Interior and Federalism Abdullahi Godah Barre, who considered that drafting those bills was a prerogative of his Ministry.⁹⁰ The parliamentary committee insisted that they have the right to draft legislation. Eventually, two bills were drafted, one in the Parliament and one by the government. The government tabled their bill on the NIEC, in December 2014. Parliament passed the law, with amendments, in February 2015. Notwithstanding the dispute over who should draft the bill, the initiative from the Parliament to draft the bills has accelerated the process.

In May 2015, the Council of Ministers approved members of the NIEC, a decision which was immediately opposed by Puntland authorities who claimed that they will not recognize the Commission because they were not consulted during the nomination process, as is required by the Provisional Constitution.⁹¹ Despite this, the Federal Parliament approved the NIEC membership in July 2015. Puntland remained adamant about the issue and, consequently, the members of the NIEC were not allowed access into Puntland's territory.

By mid-2015 it became clear that direct elections, often referred to as "one man, one vote", would not be possible. The UN Security Council passed the Resolution 2232 (2015), which among other indicates the "Council's expectation that there should not be an extension of electoral process timelines for either the executive or legislative." This part of the Resolution must have intended to respond to the hopes of many government officials, within the executive and legislative, for an extension of their term. Puntland government too was openly opposed to the extension.⁹² At end of July 2015, the same day that UNSC passed its Resolution 2232 (2015), the Federal Parliament passed a resolution confirming that direct elections were not going to be held in 2016 due to political, technical and security challenges but that there will be transition nevertheless. By mid-August the FGS circulated an action plan about reaching an agreement for the electoral system for transition in 2016.⁹³

Having been prevented access in most parts of the country, the NIEC has been left out of the election process of 2016. In fact, the NIEC members wanted to observe the public consultation meetings on the 2016 electoral model, but they were not allowed, missing an important experience, at least to advance their capacity.⁹⁴ In January 2016, the UN Secretary General's

⁹⁰ One argument that was used was the fact that Article 80 (1) (b) of the constitution stipulates that members of parliament can sponsor draft laws, "except draft legislation that concerns the annual budget which shall be initiated only by the Council of Ministers." It is a question of interpretation whether this means that parliament cannot sponsor bills that have financial implications.

⁹¹ The BFC and the NIEC were endorsed in the same time. See Horseed Media (2015) Somalia Electoral and Boundaries Commission Named, Available at: <https://horseedmedia.net/2015/05/08/somalia-electoral-and-boundaries-commission-named/>

⁹² Puntland Government Press Release (29 July 2015), Available at: <http://puntlandi.com/wp-content/uploads/2015/07/PUNTLAND%E2%80%99S-POSITION-ON-THE-HLPF-MEETING-HELD-IN-MOGADISHU-ON-THE-29-OF-JULY-2015-PDF.pdf>

⁹³ United Nations Security Council (2015) Report of the Secretary-General on Somalia, Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/702

⁹⁴ Author's interviews.

report indicated that the NIEC had “started preparations for the eventual conduct of ‘one person, one vote’ elections in 2020.”⁹⁵ The NIEC is now hanging, unable to achieve its mission of managing direct elections – a constitutional requirement. The Somali leadership has been astonishingly calm with the situation. Instead of making it a priority item in the agenda of the National Leaders Forum, an alternative way was chosen to deal with the problem – creation of the National Consultative Forum (NCF).

THE NATIONAL CONSULTATIVE FORUM (NCF) AND THE ELECTORAL MODEL

The HLPF meeting of July 2015 endorsed the Guiding Principles for the 2016 election process, which opted for an “enhanced legitimacy” through an inclusive process that has agreement of the emerging Federal Member States. The NCF included members of the federal legislative and executive branches, regional administrations and civil society. Highest Somali dignitaries were part of the NCF, including the President, Prime Minister, Speaker, Presidents of Regional Administrations, the United Nations and other international partners.

A Taskforce comprising of senior FGS ministers and other officials would assist on implementation of the consultative process, while a Technical Support Team provide technical advice and produce relevant documents.⁹⁶ The NCF was launched in October 2015. The actual public consultations involved different segments of society including women, youth, civil society and minorities. During November and December 2015, consultation meetings were held in main cities in Somalia and diaspora.⁹⁷

The public consultation meetings focused on four options. A key feature of each option was the “enhanced legitimacy”, which consists of the proposition that new MPs would be elected by electoral colleges and not traditional elders. The four options differed depending on the level that electoral colleges will operate, which could be at the federal level, of the Federal Member State level, district level, or clan-based.⁹⁸

The results of the public consultation process were communicated to the public on December 16, 2015. It was noticed that none of the four options obtained clear support by the participants but that each option had features that were preferred. The NCF decided to propose a model, which would combine the ‘strengths’ of each option, including a balance between clan and geographic representation, and state-level electoral colleges consisting of diverse memberships.⁹⁹ However, soon it became clear that the aspired consensus was not going to be easy.

⁹⁵ United Nations Security Council (2016) Report of the Secretary-General on Somalia, Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/27

⁹⁶ The Somali National Consultative Forum (2015) Facilitation Guide, Available at: <http://www.villasomalia.gov.so/wp-content/uploads/2015/10/Facilitation-Guide.pdf>

⁹⁷ United Nations Security Council (2016) Report of the Secretary-General on Somalia, Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/27

⁹⁸ The Somali National Consultative Forum (2015) Facilitation Guide, Available at: <http://www.villasomalia.gov.so/wp-content/uploads/2015/10/Facilitation-Guide.pdf>

⁹⁹ Ibid.

A meeting of the National Leaders Forum held in Kismayo in January 2016 could not secure the consensus on the electoral model, although progress in negotiation was reported. Puntland articulated publicly its position for the Lower House to be based on the pre-1991 districts and the Upper House on the pre-1991 regions. The Leaders Forum was convened again in Mogadishu later in January, but unfortunately again with no result.

The main point of dispute was the form of representation in both chambers. Puntland insisted that in the upcoming transition the '4.5 formula' should be replaced with representation based on the pre-1991 administrative districts. In fact, in December 2011, in a conference in Garowe, the Somali leaders had agreed not to use '4.5 formula' in the future. Similar to the dialogue we are seeing now, the conference adopted Garowe Principles, which were supposed to be the basis of the new Constitution.¹⁰⁰ The provisions of Garowe Principles state that "the 4.5 power sharing formula shall never become the basis for power sharing in any future political dispensation" and that "the new federal parliament that comes into being in June 2012 shall not amend or enact any law or implement any policy that takes into account or attempts to reinstate the 4.5 power sharing formula." The same has been agreed again.

In early April, the Somali Prime Minister Sharmarke and Puntland President Abdiweli, in the presence of IGAD, UN, EU and other diplomatic offices, brokered an agreement about the electoral model, in which Puntland accepted the model proposed earlier by the FGS.¹⁰¹ The agreement stipulates that the '4.5 formula' should not be used in the future and that "its use shall cease with the elections of 2016." A few days later, the agreement was welcomed by the NLF, which confirmed its determination not to extend the term of the current government institutions, and laid out additional structures and modalities for the August 2016 elections.

IMPLEMENTING THE ELECTORAL MODEL

Although certain aspects of the electoral model have been defined, there are still many details that remain unclear or undecided, which have to be sorted and implemented within the very short time left. The agreement is expected to go to the Federal Parliament for endorsement and that raises a few issues. First, there should be a clear plan because it should be clear what the parliament has endorsed. Secondly, the re-election of the very Members of Parliament will be at stake. It is difficult to anticipate the extent to which personal interests of Members might affect their decision and how would that manifest.

In any case, unlike 2012 the Parliament is not being bypassed, which is very positive. Now, it is up to the Parliament to demonstrate that it is up to the task. The Members know that the Somali public's eyes will be on them, and they oppose any means of extension to the transition.¹⁰² Thus, delays that are not justified in the eyes of the public will reflect negatively on the image of parliamentarians and - by extension - their re-election. Another consideration

¹⁰⁰ There were two such conferences in Garowe. Second one was held in February 2012. The Provisional Constitution makes reference to Garowe 1 and Garowe 2 Principles in its Article 138.

¹⁰¹ Agreement between the Federal Government of Somalia and the Government of Puntland State of Somalia (2016).

¹⁰² The Heritage Institute for Policy Studies (2015) 'Selection of Somalia's Next Parliament: Citizen's View', Available at: <http://www.heritageinstitute.org/wp-content/uploads/2015/12/Selection-of-the-Next-Somalia-Parliament-The-Citizens%E2%80%99-View.pdf>

for the Members to have is that the Provisional Constitution grants the President the power to dissolve the Parliament when its term expires.¹⁰³ Hopefully, that will not be necessary and the process will move forward without a big drama. But, according to the recent agreements, the first worry is the Upper House, which should be established before the House of the People.

A) THE UPPER HOUSE

The new model does not specify the Upper House's number of seats and their allocation to each state, leaving the assumption that Puntland has agreed to the allocation proposed by the FGS in January, according to which Puntland and Somaliland would get 11 seats each, and the other four states¹⁰⁴ each get eight seats. In this way, the number of seats adds up to 54, which complies with the Provisional Constitution. The challenge with this scenario is that it does not provide for the representation of Mogadishu¹⁰⁵ population in the Upper House, as advocated by the OC and ICRIC. Puntland and Jubaland are not thrilled about Mogadishu being represented in the Upper House because that would change the clan rapport in the chamber, as Mogadishu is predominantly Hawiye.¹⁰⁶ If Mogadishu gets representation in the upper chamber, Darod may react by taking an initiative to form a new state in the disputed territory between Somaliland and Puntland¹⁰⁷, which is inhabited by Darod clans.¹⁰⁸ There has already been declaration of Khatumo and Maakhir states, but they have not been formally recognized. Somaliland sees the initiatives as infringement in its territorial integrity and has been in constant pursue of the leadership of Khatumo.

Another challenge is the power that the electoral model gives to the state leaders. Namely, the "state executives" will nominate two candidates for each seat belonging to the respective state.¹⁰⁹ The state legislatures will then vote for each seat separately. This solution has few negative effects: it limits the choices of the state legislators, limits the freedom of citizens to run for the seat, and puts huge power on the hands of state leaders, practically allowing them to determine the Upper House members from the respective state. Given the fact that some of the state leaders are not perceived as unifying figures, such arrangements might intensify political divisions at the state level. The de facto power of leaders to nominate may incentivize patronage. Other, political consequences might follow. In the past, state leaders did not hesitate to call back the members of the Federal Parliament when they had major disagreements with the FGS. With the power to decide who sits in the Upper House, the leaders will be in a better position to control the Upper House members, which might directly affect its functionality.

¹⁰³ The Provisional Constitution, Article 90 (o).

¹⁰⁴ Jubaland, South-West, Galmudug, and the Hiran and Middle Shabelle.

¹⁰⁵ The Banadir region, as defined in the pre-1991 period, is de facto the city of Mogadishu, although some would differentiate between the two.

¹⁰⁶ Not all interviewees share the same opinion about the clan composition of Mogadishu. Some believe that all other clans together are numerically more than Hawiye. This suggests that even distribution of seats among clans living in Mogadishu can be a sensitive issue.

¹⁰⁷ Author's interviews.

¹⁰⁸ Dulbahante and Warsengeli are Harti/Darod clans that make majority in areas of Sool and Sanaag, part of British Somaliland and now contested by Puntland and Somaliland.

¹⁰⁹ Federal Republic of Somalia (2016) The National Leaders Forum Communique, Available at: <http://www.villasomalia.gov.so/the-national-leaders-forum-communique/>

Thus, it is not clear what the reasoning behind this solution was, other than appeasing the state leaders.

A better solution would have been to open up the process of candidates for the seats, while creating vetting mechanisms – and this would, under the Provisional Constitution be the NIEC - to verify that constitutional requirements for candidates are met.¹¹⁰ In fact, it would be a violation of the current Provisional Constitution if the candidates that meet criteria, as set by the Article 58, are not allowed to run.

On a positive note, determining candidates by nomination will increase chances for implementation of the quota for women members.¹¹¹ The challenge, however, would remain because the state legislatures might favour male candidates, even if women candidates are proposed. One way to be certain that women get elected is if only women candidates are proposed for specific seats. In effect, that would mean that specific sub-clans would agree to be represented by a woman in the Upper House.

B) THE LOWER HOUSE

Each of the 275 members of the Lower House will be selected by a 50-member electoral college, which traditional elders will select, making sure that different sectors of society are represented.¹¹² This is a step that will enhance legitimacy of the Parliament and is likely to diminish chances of corruption. However, it is not clear how candidates for seats will come forward. Again, it would be advisable not to limit artificially the number of eligible candidates. As elections are planned to take place in respective capitals of the states, the state administrations have to agree among themselves about how - what used to be clan seats - will be distributed among the states. Alternatively, the specific sub-clans can decide in which capital they want their electoral college to deliberate. Election of women members will be a great challenge, unless extra arrangements are made before elections.

4. CONSTITUTIONAL COURT

Article 135 (2)(b) of the Provisional Constitution requires the Constitutional Court to be established within 60 days after formation of the Council of Ministers. According to Article 109B, the Judicial Service Commission (JSC) nominates the judges for the Constitutional Court, while according to Article 109A (2) (a), the Chief Judge of the Constitutional Court is a member of the JSC. In any case, the spirit of the Constitution suggests that the JSC should be formed before the Constitutional Court to be formed.

Although legislation for the establishment of the Judicial Service Commission was introduced quite early, the Commission is still not in place.¹¹³ Due to a peculiar interaction of goals between the President and the Federal Parliament, the Constitutional Court was never established. On one side the President saw the existence of a Constitutional Court as a

¹¹⁰ The Provisional Constitution, Article 58 (2) mandates the NIEC to do the vetting of the candidates for the Federal Parliament.

¹¹¹ Federal Republic of Somalia (2016) The National Leaders Forum Communique, Available at: <http://www.villasomalia.gov.so/the-national-leaders-forum-communique/>

¹¹² Ibid.

¹¹³ Bill for the Establishment of the Judicial Service Commission was signed into law on 8th July, 2014.

limitation of his power or potentially against his interest because of its roles during the procedure of impeachment of the President.¹¹⁴ On the other side, the parliamentarians were concerned that Hassan Sheikh would appoint judges that were his cronies.¹¹⁵ Even the UN, reportedly,¹¹⁶ shared the concern that the Constitutional Court could be politicized or corrupt, or both. In absence of champions to push the process forward, the Constitutional Court was never established.

The absence of the Constitutional Court had consequences because there was no ‘arbiter’ to give an authoritative interpretation of the Constitution. This has had a negative impact on the political process and implementation of the Provisional Constitution. For example, the President cannot be impeached if there is no Constitutional Court. In addition, we have seen regular disputes between the President and Prime Ministers regarding the powers over the Council of Ministers. Had the Constitutional Court been there, it could rule on the issue and prevent recurring political stalemates.

POWERS OF THE PRESIDENT AND THE PRIME MINISTER

Prime Minister Sharmarke is the third Prime Minister serving under the current term of the government. The first two Prime Ministers had disagreements with the President over the power to make final decisions about the Council of Ministers. Prime Minister Abdi Farah Shirdon was removed due to disagreement he had with the President over the reshuffle of his cabinet, while Abdiweli Sheikh Ahmed’s problems started when he decided to move the Minister of Justice and Constitutional Affairs Farah Abdulkadir, a close ally to the President, to the Ministry of Livestock and Agriculture. Both Prime Ministers were removed through no-confidence motions in Parliament, sponsored by MPs¹¹⁷ close to the President. The process of voting raised allegations that corrupt activities had taken place to “persuade” MPs to support the no-confidence motions.¹¹⁸ Typically, in time of motions of no-confidence, the salaries of MPs would be delayed deliberately¹¹⁹ to make MPs more vulnerable and in need for cash. Some MPs and even Ministers were enticed¹²⁰ by the prospects of future positions in the cabinet. This created situations where Ministers or Deputy Ministers were lobbying against the cabinet they were members of because they were promised better positions in the next one.¹²¹

The political struggle over the motions of no-confidence took a toll in terms of time. For few months all energy of the political actors would focus on the motions in question, neglecting transitional priorities. Typically, the last few months of an outgoing Prime Minister and the first

¹¹⁴ Author’s interviews.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Monitoring Group on Somalia and Eritrea (2015) Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2182 (2014): Somalia, Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_801.pdf

¹¹⁹ Author’s interviews.

¹²⁰ Ibid.

¹²¹ Ibid.

few months of the incoming Prime Minister would be lost in terms of implementing the transitional agenda. For example, after Prime Minister Abdiweli Sheikh Ahmed assumed office in December 2013, he and the Speaker of the Federal Parliament agreed to withdraw all the bills that were in the parliamentary procedure, having been introduced by the previous cabinet. The bills were re-introduced, without many changes, at the end of May 2014. In October 2014, Prime Minister Abdiweli was already in trouble¹²² with the President because of his cabinet reshuffle, and was removed in December 2014,¹²³ having had little chance to focus on his program objectives.

Power struggles between the President and the Prime Minister should be expected in the future, as well. In the absence of organized political parties in Parliament and, by extension, in the absence of organized majorities in Parliament, nomination of the Prime Minister is left completely to the discretion of the President, which may be creating a perception that the Prime Minister is a subordinate of the President. The essence of the parliamentary system is – however – that the Prime Minister has the confidence of Parliament, not that he or she has to be nominated by the President. Amendments thus can be made to create an alternative process for nomination of the Prime Minister. A very clear delineation of powers between the President and the Prime Minister would also help minimize the chances for future disputes.

Therefore, it would be advisable for the constitutional review process to address this important issue. From the perspective of governance, it is not possible for the Prime Minister to deliver if he cannot control his Ministers, namely, if they are de-facto controlled by the President. Unless there is agreement for a presidential system, the new constitution should anticipate no role for the President in appointing or dismissing the members of the Council of Ministers¹²⁴. Having said that, the constitutional argument was not the most critical one in removing the Prime Ministers from the office; it was instead the President's ability to mobilize political support for the motions of no-confidence in Parliament.

FACTORS THAT CONTRIBUTED TO THE DELAYS

It is difficult to identify the causes of delays in the implementation of the constitution, or at least, it is difficult to do it with sufficient degree of certainty. Therefore this paper identifies specific factors, which might have played a role in the delays. These factors include:

Lack of ownership from the Somali actors. The process through which the Provisional Constitution was developed included a very small group of people, with the technical assistance by a team of international experts. In 2012, as the end of the transitional period was coming, the pressure for results from the international community was used to exclude from

¹²² Somalia Newsroom (2014) As Somalia's President and PM Battle, the Constitution Gives Way Again to Realpolitik, Available at: <https://somalianewsroom.com/2014/10/26/as-somalias-president-and-pm-battle-the-constitution-gives-way-again-to-realpolitik/>

¹²³ Aljazeera (2014) Somali MPs vote out prime minister, Available at: <http://www.aljazeera.com/news/africa/2014/12/somali-mps-vote-prime-minister-out-201412610147160270.html>

¹²⁴ The current Provisional Constitution, Article 90 (e) grants the power to the President to "Dismiss ministers, state ministers and deputy ministers on the recommendation of the Prime Minister."

the process some of the legitimate institutions like the IFCC, CoE, and the Transitional Federal Parliament. Consequently, the Provisional Constitution was perceived as a document imposed from outside, not Somali-owned. Also, main political exponents in Mogadishu, did not agree with some aspects of the Provisional Constitution, therefore the FGS lacked the enthusiasm to implement specific provisions, especially those that require direct involvement of the Federal Member States in the decision-making at the federal level. The current paralysis of the NIEC and BFC are a clear consequence of this.

Lack of the political will was another factor. The law establishing the Constitutional Court is yet to be passed by Parliament. It took a long time to create the ICRC, only to leave it without a budget for months. Drafting legislation on the NIEC started as a reaction to the initiative from Parliament, not as a part of the government plan. The bill on political parties, drafted by Parliament was submitted to the government for comments in May 2015 and is still awaiting feedback. The progress made in the state-formation process was because the FGS had to react to developments outside its control, not because of its proactive plan or prioritization.

Power struggle and political infighting. In politics the power struggles are normal but in Somalia they have been more consequential. President Hassan Sheikh has behaved like an executive President despite the fact that the Constitution does not give him that role. He has presented a program with policy priorities, which would have been more appropriate for his Prime Minister to do. There were also disputes between Ministries and Parliament about drafting legislation. Often these struggles are motivated by the interest to have access to financial resources and they are to be expected in future as well.¹²⁵ Thus, the new review process should address ambiguities in the Constitution to diminish space for dispute.

The agenda was unrealistic, especially given the current capacity of the government institutions. Within four years, the FGS had to finalize the federalization process, the review of the Constitution through a process of public consultation and ratify it in the referendum, expand its control throughout the territory and create security conditions to conduct free and fair elections in 2016. This was probably too much to ask from a government, which despite outside support, could not control more than parts of Mogadishu.

II. WHAT NEXT?

FROM THE PRESENT TO AUGUST 2016

The next transition and elections of the new members of Parliament will be the main focus in the period between now and August 2016. The FGS and the Federal Parliament have probably until the end of June to finalize all preparations for the next transition. These two institutions, in coordination with regional interim administrations, have the duty to create the legal basis for the new transition to unfold. In this respect, the plan to have the electoral model endorsed by the Federal Parliament is appropriate. Constitutional amendments, as suggested earlier in this paper, should also be done before August 2016. Again, the last NLF's communiqué dated

¹²⁵ Author's Interviews.

on 12th April 2016 gives encouraging news about an upcoming constitutional conference. Hopefully, the state-formation initiative between Hiran and Middle Shabelle will be finalized before the establishment of the Upper House.

CONSIDERATIONS FOR THE NEW GOVERNMENT

The new government and its international partners should recognize the fact that the progress can be gradual and is best undertaken if the foundations of the new Somali states are built first. In this respect, there will be a need for prioritization of tasks and appropriate sequencing. The focus should be on the activities that strengthen prospects for peace and stability, and build on the progress made so far. In addition, the future activities should aim to build trust among communities as this remains one of the biggest challenges that Somalia is facing.

The regional administrations carry the greatest potential for stability because they represent state structures that are closest to the people today. They also deal with fewer groups and may be in a better position to reach out to the disenfranchised to negotiate their inclusion in the institutions. To improve the security situation, the state administrations should consider assisting communities to resolve local conflicts and work to set up district administrations. If such work is done in an impartial manner, it can boost their legitimacy. Once the administrative structures are in place, the creation of a tax base to finance the state structures should be appropriate.

Carrying out these tasks with the limited resources will be challenging, therefore the administrations will need external financial and technical support. The international community should prioritize this because consolidation of the state administrative structures is fundamental to other processes like national reconciliation, review of the constitution and elections.

Another sensitive task will be the demarcation of the inter-state borders. The OC and ICRIC have courageously proposed an amendment that provides a mechanism for the revision of inter-state boundaries, but the status and mandate of the BFC remain a challenge. The mandate can be clarified through the review of the Constitution, but the reality on the ground requires, at the minimum, clarification of Puntland boundaries, disputable on both its ends. While any demarcation process is sensitive, it is clear that the dispute with Somaliland will take a longer time to resolve. This has implications regarding representation at the federal institutions.¹²⁶ In order for any demarcation to happen, Somali leaders must find a way to build consensus over the BFC and the National Leaders Forum seems like an appropriate forum to tackle the issue.

National reconciliation is long overdue. The current national politics is still about outsmarting the rival groups as opposed to finding common ground on moving forward together. The Somali leaders should consider changing these attitudes as the domination of one or few groups over the others can only foster conflict. The status of property in Mogadishu poses a

¹²⁶ As long as there is a dispute about parts of Sool, Sanaag and Togdheer, it will be difficult to determine whether members of the Upper House representing these regions should take seats from those allocated to Somaliland or Puntland.

challenge, but is also an opportunity to commence the national reconciliation process. Arrangements on the reconciliation can then be incorporated into the constitution.

The constitution is about the basic principles of the state and organization of the government. Review of the Provisional Constitution is about agreements on the milestones of the new Somali state, which in addition to national reconciliation can include government systems, sharing of natural resources and division of power between federal and state governments. Somali leaders may decide to take up these difficult issues in a phased approach, in a sequence that makes most sense to them, and within a reasonable amount of time.

The implementation of the constitution would be very difficult without a competent and impartial Constitutional Court, with the power to make independent decisions. While a Court with all those attributes may not be realistic in the near future, it is important that such a vital institution is established through a wide political consensus. The Court would be vital to resolving disputes between the federal institutions, state and federal government institutions and even over elections.

Without any doubt, elections are critical to ensuring legitimacy and accountability of the institutions. However, holding direct elections is a major undertaking, which requires a minimum of security and functionality at all levels of government, from the federal down to the local. If these minimum conditions are not met, elections may exacerbate violence. Thus, the decision to hold elections should also consider security implications.

Like the BFC, the NIEC has to be recognized and accepted nationally. It needs to build its capacity gradually and even before the next national elections are due. Organizing elections in safe districts, including those in Mogadishu and other main towns all over Somalia should be considered because that can be beneficial for many obvious reasons. The past practice has shown that legislative initiatives by the Federal Parliament can accelerate the process of implementation of the government's legislative agenda. The next federal legislature should not wait long to do the same. Also, the state administrations now represent a political power that the federal government has to reckon with. They too should keep federal government on its toes to make sure that, come 2020, the Somali people will elect their leaders directly.

Finally, elections are one way to strengthen legitimacy, but not the only one. Legitimacy can also be strengthened by improving performance of the government.¹²⁷ The public's confidence in the institutions can be strengthened even by curbing corruption and using resources to deliver more services to the population. Thus, fighting corruption should be high on the agenda of the next government.

CONCLUSION

Despite significant delays in the implementation of the Provisional Constitution, comparing with the previous government, important progress has taken place. The formation of the National Leaders Forum has improved communication between the federal and state governments and has become a venue where national consensus is built. But, the "efficiency"

¹²⁷ Shively, W.P, (2007) Introduction to Political Science, McGraw Hill, 10th Edition, Boston.

of the Forum, currently behaving as a 'quasi-federal government' takes its toll on the institutional development. As a positive effect though, in the Forum's image, federal Ministers are coming together with respective counterparts from the state administrations to discuss relevant issues.¹²⁸ After more than two decades, institutions are settling in Mogadishu; with actual offices and staff. The institutions function better, although there is still a long way to go. Direct elections could not be accomplished, but efforts to enhance the legitimacy of elections through allowing the Somali public to take part in shaping the electoral system and the decision to include electoral colleges, deserve credit. The discussion for constitutional amendments, which would make the Provisional Constitution to feel Somali - owned, has started and should continue with the next government, without delays.

The international community is also building on the previous experiences. Comparing with the hasty process of 2012, more commitment is noticed to let Somalis take responsibility about their own country. Most solutions, although often brokered with the help of regional of international actors, derive from processes taking place inside Somalia. Determination to respect Somali laws and the Constitution of the country helps the long-term development of the institutions.

The assistance from the international community was critical in making a reality the single most important political process that took place during the term of the current government - the formation of the state administrations, which SRSK Kay rightly described as the foundation of the new Somali state and gave it most of his time and energy. However, this paper argues that the process of federalization – while critical to the future stability - is far from over. The conflicts at the state level should not be neglected. These conflicts are the reason that Galmudug and South-West administrations cannot go to their capitals, while Jubaland administration can hardly leave its capital. Thus, the next few years, both Somali leaders and international community should focus on building legitimate and effective state and local administrations. When that is done, chances for elections and lasting peace will increase tremendously.

¹²⁸ Author's interview.