

Democracy Delayed and Diminished

Risks and possibilities for Somalia's 2016 political transition

Overview

Optimism was widely felt after Somalia formed a new federal government in 2012 and promised to hold 'one person, one vote' elections in 2016, raising hopes that a quarter century of conflict and division might finally be approaching an end.¹ This optimism evaporated in July 2015 after the federal parliament passed a resolution stating that such elections would not be possible until 2020.² Although the resolution cited technical and security challenges as the reason for the delay, in reality it was the result of a lack of political consensus on the formation of federal member states (FMSs), as well as the reluctance of political elites to embark on a universal-suffrage election.

Instead, a highly complex semi-electoral system has been developed for 2016, to inject a modicum of legitimacy into the political transition. With the reluctant support of the international community and the emerging FMSs' consent, the Somali Federal Government has created a process that reverts to clan-based selection mechanisms that many in Somalia sought to leave behind, deferring direct elections for another four years.

The new election process, which will be implemented on a compressed timetable, contains opportunities for manipulation and is vulnerable to interference by violent actors. This risks exacerbating the myriad of localised conflicts that still plague Somalia. Saferworld urges all national and international actors to balance support for this process with the imperative of maintaining stability and progress toward effective and inclusive governance.

How Somalia's political transition looks

Postponing 'one person one vote' elections to 2020 has triggered a series of complex negotiations over how power will be transferred once the federal parliament and president's terms expire in 2016.

Below the level of the Somali Federal Government - appointed in 2012 using clan-based selection mechanisms - federalisation continues to gather pace. FMSs are emerging with differing degrees of autonomy and contestation, and are now seeking to consolidate their influence in the federal government.

Negotiations over the 2016 transition initially took place within a National Consultative Forum (NCF), which comprised representatives from the federal government, regional administrations, and the federal parliament, with very limited civil society engagement. Increasingly, the broader NCF structure gave way to a much narrower National Leadership Forum (NLF) consisting of the president, prime minister, deputy prime minister and parliamentary speaker as well as the leadership of the FMSs.

In April 2016 the NLF agreed upon a complicated, multi-stage new political transition model. Its main features are as follows:

- Elections will be held for the Lower House of Parliament, comprising 275 members, as well as a yet-to-be-created Upper House.³
- Seats in both houses will be allocated on the basis of clan balance, using the 4.5 formula that has been central to power-sharing in Somalia since 2000.⁴
- Each individual seat in the Lower House will be awarded by a separate 'electoral college' made up of 51 members. The total electorate of 14,025 is substantially more than in past

¹ In 2013, the 'Vision 2016' framework for constitutional review, federalisation and preparation for elections in 2016 was released by the Somali Federal Government. See: http://www.villasomalia.gov.so/wp-content/uploads/2014/12/Vision_2016_report_FINAL_DRAFT.pdf

² "As govt dismisses 2016 popular elections, UN rules out Somali leaders' possible term extension," *Hiiraan Online*, 30 July 2015, http://www.hiiraan.com/news4/2015/july/100919/as_govt_dismisses_2016_popular_elections_un_rules_out_somali_leaders_possible_term_extension.aspx

³ At the time of writing, the size of the Upper House has not been clearly announced. In January 2016, an NLF communiqué confirmed that the Upper House would have 54 members. However, in more recent communiqués the NLF has indicated that additional members will be added to represent Benadir. Recent discussions put the number of extra seats at two, which would exceed the upper limit of 54 seats in Article 72 of Somalia's provisional constitution.

⁴ The 4.5 formula, first employed in 2000 as the basis for the Transitional National Government of Somalia, apportions seats between the four major clans (Darod, Hawiye, Digil-Mirfle/Rahanweyn and Dir), with 0.5 apportionment given to minority clans and other groups.

processes, but still only extends to a tiny fraction of Somalia's population.⁵

- These electors, or 'delegates,' will be appointed by 12 September 2016⁶ by a group of 135 traditional elders, largely the same ones who took part in the 2012 process, with the approval of the NLF.
- The Lower House delegates are meant to be representative of clan diversity within each constituency, and will include civil society, youth and women. The NLF has committed that each electoral college will have at least 30% female representation, mirroring the quota to be applied in parliament. Beyond this, there are no publicly-declared criteria for electoral college delegates.
- Once delegates have been selected there will be a ten-day campaign period and the Lower House election will take place between 24 September and 10 October 2016, with a final list of elected MPs to be announced on 20 October 2016.
- The new MPs will elect a speaker on 25 October 2016.
- Upper House members will be selected by the FMS assemblies by 25 September 2016. Candidates will be chosen by the executives of each FMS and seats will be allocated to ensure clan balance within the Upper House, again using the 4.5 model.
- The two houses will jointly elect the new president on 30 October 2016.
- The next round of elections will be held in 2020 on a 'one person, one vote' basis.

A Federal Electoral Implementing Team (FEIT) will oversee the 2016 process.⁷ This body is made up of a mixture of technical experts and appointees from the federal government and FMSs. The FEIT will build the capacity of similar structures at the FMS level, known as the State Electoral Implementing Teams (SEITs) and voting by the electoral colleges will be held in state capitals. SEITs will be made up of appointees from the federal government and the FMSs.

Implications and risks of the 2016 political transition model

The 2016 model makes a few clear improvements on past election processes: the number of electors has

grown significantly and balloting will be held in secret, for instance. However, the process still adheres to clan balance as the basis for representation, so the outcome in terms of power-sharing will be somewhat predictable. Though this could serve to mitigate uncertainty and concerns that popular elections will create entirely new power dynamics, the process still faces numerous challenges with potentially destabilising impacts. Given the control over resources that political positions afford, any political impasse caused by a flawed transition process could lead to violent conflict among clans and other groups affiliated with political aspirants at worst, and poor governance and commutation of tasks by parliament and federal ministries at best.

Risks to the legitimacy of the process

The 2016 process in its current form was neither approved by legislation nor mandated by the Constitution, which was drawn up on the assumption that Somalia would hold 'one person, one vote' elections by 2016. The process itself had to be pushed through by presidential decree, a move widely questioned. This was necessitated by parliament's failure to fulfil its constitutional duty and pass the necessary legislative framework in time.⁸ The decree amplified concerns that too much decision-making has taken place within the National Leadership Forum, which is not a constitutionally-mandated structure. Requiring the FEIT to develop all the necessary electoral procedures and regulations has also impaired parliamentary oversight of the process.

It would be preferable to amend the constitution to authorise the new semi-electoral process. But this is not feasible given that the constitutional review process has been pushed back until after the political transition, and parliament is now in its summer recess. The issuance of presidential decrees that supersede parliament has been essential to keeping the 2016 process on track. Nonetheless, this is not an ideal approach in a context where the legitimacy of presidential power is widely contested.

The government has reiterated on several occasions that its current term will not be extended, and that the political transition will stick to the proposed timetable. However, amendments in June 2016 to the provisional constitution opened the possibility that parliament could continue working after its term concludes.⁹ This could de-incentivise progress,

⁵ This is compared to a total population that may be as large as 11 million. In 2012, suffrage was limited to an electoral college of 135 elders responsible for appointing all 275 parliamentarians amid widespread suspicions of financial manipulation.

⁶ All dates in this section reflect the best information Saferworld has at the time of writing, based on communication with involved members of the international community. Recent NLF communiqués have contained contradictory information on dates, and no definitive schedule is yet publicly available.

⁷ This body is sometimes referred to as the Federal Indirect Electoral Implementing Team (FIEIT). Likewise, the later-mentioned State Electoral Implementing Teams (SEITs) are sometimes referred to as State Indirect Electoral Implementing Teams (SIEITs). In this briefing, we will refer to them as the FEIT and the SEITs.

⁸ Osman, Abdulaziz, "Somali Elections on Track for August, Despite Opposition," *Voice of America*, 23 May 2016, <http://www.voanews.com/content/somali-elections-on-track-for-august-despite-opposition/3341767.html>; Uluso, Mohamed M., "Somalia: Commentary on Presidential Decree Legalizing 2016 Election," *Hiiraan Online*, 29 May 2016, http://www.hiiraan.com/op4/2016/may/105652/somalia_commentary_on_presidential_decree_legalizing_2016_election.aspx

⁹ One of the amendments removed a provision requiring that a referendum on a new constitution be held prior to the 2016 elections, or else Somalia would revert to a pre-2012 constitution. Another amendment to Article 60, changed the term of the parliament from ending after four years to ending once the new parliament is sworn in.

raising concerns that elections may not happen at all, since both MPs and the president can argue that they have the legal basis to remain in power beyond September 2016.¹⁰ It is hoped that pressure from the international community as well as the conflict risks of further delaying elections may mitigate these concerns.

Another potential point of dispute is the National Independent Electoral Commission (NIEC). Though this is the constitutionally-mandated body for overseeing popular elections, it has been side-lined in favour of the new electoral implementation teams (FEIT and SEITs). FMSs contested the NIEC from the moment of its creation in May 2015, arguing that it only possesses the mandate to oversee a direct election, not a clan-based selection process.¹¹ The FEIT and SEITs have allowed the NLF to maintain much closer control of the process than the Independent Commission would have accepted, which could open them to accusations of partisanship. This was evident in the NLF's initial attempt to appoint as FEIT members five members of parliament who were due to contest the election. After significant pressure from the international community and civil society, the government declared that the FEIT would be depoliticised and that no candidates for election would take up positions.

Risk of corruption and manipulative practices

The 2012 process was widely regarded to be corrupt, with candidates using both public and private funds to obtain votes and bribe elders and MPs. The process was characterised by attempts to manipulate the traditional elder registration process (which, although reviewed, will be used again this year) as well as harassment and threats to the Technical Selection Committee and political candidates.¹²

There has been no regulation of the 2016 campaign process yet and during the official campaign period, political candidates are likely to enjoy great latitude in 'courting' electoral colleges. This is compounded by the limited resources available for oversight (though independent observation teams and candidate agents are to be accredited by the government), the lack of clarity on how electors will be chosen, and the legitimacy issues facing the FEIT and SEITs. All of these factors could lead to controversy over the legitimacy of those elected and widen the gap between the political class and the population.

The NLF has confirmed that an Independent Election Dispute Resolution Mechanism (IEDRM) will be formed with a mandate to resolve disputes that arise through the electoral process. At the time of writing,

¹⁰ Maruf, Harun, "Somalia Moves to Shore Up Government Ahead of National Elections," *Voice of America*, 16 June 2016, <http://www.voanews.com/content/somalia-moves-to-shore-up-government-ahead-of-national-elections/3378676.html>

¹¹ Notably, some within the NIEC leadership have distanced themselves from the 2016 process, alluding to the potential reputational risks to NIEC of being associated with such a process.

¹² Monitoring Group Report (2012) – p.145-149

the IEDRM had been expanded from 11 members to 21, although the names and chairs have yet to be declared. It will likely be difficult to challenge the process effectively or its results, given the limited impartial bodies for dispute resolution, the absence of a constitutional court, the limited functionality of the supreme court and disagreements over the latter's political mandate.

Disputes and within Federal Member States

The 2016 process gives considerable power to FMSs: it enables them to appoint the majority of members to SEITs, decide upon the members of the Upper House and sign off on the final lists of MPs. As such, the process is predicated on the existence of established FMSs. However, the state formation process is far from complete and some emerging states remain locked in internal and external disagreements. The autonomy and power granted to states in the electoral process, combined with the escalating political stakes, could exacerbate tensions and pose a significant risk of trading 'blood for ballots.'

For instance, there is still no functional interim administration in Hiraan and Middle Shabelle, and as a result this emerging state has never been represented in the NLF. Its state formation process has been marred by disputes over the numbers of MPs allocated among clans and sub-clans, the clan affiliation of its president and the location of its state capital. Though the NLF has committed to finalise state formation for Hiraan and Middle Shabelle before the elections, the short timeframe and high pressure may force a consolidation of power by particular groups at the expense of others. This could lay the foundation for an intense and possibly violent confrontation over political control.

There is also an unresolved dispute over whether the national capital, Mogadishu, should become a federal entity in its own right (which would favour the Hawiye clan) or a separate political unit in which all clans could seek political representation. A committee was appointed in late June 2016 to advise on the status of Mogadishu and the Benadir region, but no conclusion has been reached. A SEIT has been established for Benadir for the 2016 electoral process, but only to select MPs from minority clans that do not reside in large numbers outside of Mogadishu.

Even in contexts where FMSs are well established (as interim entities or otherwise) these political arrangements have been contested. Clan tensions over the distribution of power within FMS governments are often contained by fragile political balancing acts, such as those between the Ogaden and Marehan sub-clans of the Darod in Jubaland and between the Darod and Digil Mirfle in the Interim South West Administration. Tensions among these sub-clans could exacerbate disputes over the winners of certain seats.

In the case of the Galmudug interim administration, its existence has been contested by Puntland, which led

to violent clashes within Galkayo in late 2015. This contestation revolved around the legitimacy of Galmudug, which consists of the region of Galgaduud and half of the Mudug region (the other half is part of Puntland). This has led to claims that the state's formation is not consistent with the provisional constitution, which stipulates that a FMS must be made up of two or more regions. It also re-opens fault lines in the fragile though broadly accepted division of Mudug in a 1993 peace agreement.¹³ Galmudug also faces internal divisions and opposition to its existence from the Sufi militia group, Ahlu Sunna Waljama'a (ASWJ), which has political ambitions to form part of the Galmudug administration.¹⁴ ASWJ have been strongly opposed to the National Consultative Forum and subsequent NLF because they were left out and the Interim Galmudug Administration with whom they were still in conflict was included.¹⁵

The decision to hold elections in FMSs that remain unformed or contested poses a considerable risk to local conflict dynamics. It could reinforce the political dominance of particular clans or groups in these areas if the distribution of power and resource sharing is still heavily disputed and political reconciliation remains a distant reality. This exacerbates a number of security risks, including the limited capacity of the Somali security sector (which is often split along clan lines), the widespread proliferation of weapons and the presence of clan militias. Groups that feel they can gain political resources through the process may resort to violence to do so. Particularly in areas like Galmudug, tensions over political accommodation have become violent in the recent past.

On a broader note, while balancing clan interests has been one imperative of the federalisation process, it has not been considered 'ethnic federalism' per se. Indeed, there have been many examples whereby minority clans within FMSs have been successfully integrated into emerging political structures. Pursuing the 4.5 model at the FMS level could reverse these gains and lead to a clan Balkanisation. Since not all clan groupings exist in equal numbers in each state, federal state capitals could be dominated by the majority clans that reside there. With the rapid arming of FMSs, this is not helpful.

Al Shabaab also poses a considerable security risk and is considered likely to make an attempt to

violently disrupt the political transition,¹⁶ use political disputes to recruit from marginalised and disaffected groups and increase Shabaab-controlled territory. AMISOM has begun working with the Somali Federal Government to secure the process,¹⁷ but convening electoral colleges in the different FMSs presents considerable logistical and security challenges. Those connected to the process, as delegates or as officials, are subject to high security risks. Publishing the names of electoral college members has elevated the transparency of the process, but it also effectively identifies targets for possible attack by groups opposed to the process.

Broader implications for statebuilding

Beyond the immediate issues facing the 2016 process, the political transition has implications for the broader statebuilding agenda in Somalia. Reverting to a clan-based selection process was presented as part of a 'twin track' process with a renewed commitment to direct elections in 2020. However, the 2016 transition will further entrench the 4.5 formula as a means for clans to access political positions. In addition, recent events demonstrate that parliament can delay the democratisation process in order to revert to the 4.5 model, empowering it to do so again in the future. Given the corruption associated with the 2012 electoral process, the current transition risks further perpetuating a culture of patronage.

In addition, the current process does little to address the frayed relationship between Somalia and Somaliland. The 2016 process will have a specific election for Somaliland representatives, but it will be held in Mogadishu and its legitimacy will certainly not be recognised by the Somaliland government.

The last-minute determination of a model and a timeline for the 2016 political transition does not bode well for direct elections in 2020. While the Federal Government speaks boldly about its commitment to this process, there is little evidence from the past four years that it is sincere. The failure to hold direct elections in 2016 fits a broad pattern of broken promises and disappointments at the national level. The Federal Government has also made little tangible progress on the constitutional review and initially attempted to violently suppress the emergence of new FMSs.¹⁸ Other disappointments include the failure to establish an effective security framework, create functional public financial management systems, or provide basic services to the population.

¹³ *Peacemaking at the Crossroads: Consolidation of the 1993 Mudug Peace Agreement*, (Garowe: Puntland Development Research Center, September 2006), http://www.iccp.gr.jp/src/sc2330/2_PDRC20-20Consolidation20of20Mudug20Peace20Agreement.pdf and Yusuf, Zakaria and Abdul Khalif, "Galkayo and Somalia's Dangerous Faultlines," *International Crisis Group*, 10 December 2015, <http://blog.crisisgroup.org/africa/somalia/2015/12/10/galkayo-and-somalias-dangerous-faultlines/>

¹⁴ "Despite opposition, Galmudug strikes deal with ASWJ," *Somali Review*, 29 August 2015, <http://somalireview.com/2015/08/somalia-despite-opposition-galmudug-strikes-deal-with-aswj/>

¹⁵ ASWJ also represents a diversity of clans, and thus does not stand to gain in the same way from the 4.5 formula.

¹⁶ "Somalia: May 2016 Monthly Forecast," *Security Council Report*, 29 April 2016, http://www.securitycouncilreport.org/monthly-forecast/2016-05/somalia_23.php

¹⁷ "The National Leaders Forum in Somalia discusses the electoral process for August," Ethiopian Ministry of Foreign Affairs website, <http://www.mfa.gov.et/-/the-national-leaders-forum-in-somalia-discusses-the-electoral-process-for-august->

¹⁸ Forging Jubaland: Community perspectives on federalism, governance and reconciliation. Safeworld (2016)

Rethinking priorities

As donors and international agencies realign their post-2016 programming, serious reflection is needed as to whether the top-down statebuilding processes they have supported since 2012 have yielded satisfactory results. The international community may consider whether a greater focus on supporting the consolidation of governance at the FMS level would elicit greater results and better advance the bottom-up statebuilding that the Somali public craves.¹⁹

Supporting democratisation and governance at the FMS level offers a number of potential dividends. Firstly, it is likely to enhance the political viability and security of the still-nascent FMSs, address the security concerns of donor governments and create an environment of political reconciliation. Secondly, it provides opportunities for greater inter-FMS cooperation through the development of common governance and electoral frameworks. This reduces the likelihood of a fragmented election architecture whereby, for example, each state develops separate voter registration systems that cannot be used for federal elections. Thirdly, such an approach could build a culture of democratic norms at a sub-national level before national elections. Finally, promoting free, fair and non-violent political competition at the FMS level would reduce the sense that elections at the national level are 'winner take all', thus providing more space for national democratic politics to prevail.

Conclusion and recommendations

There are many challenges facing the 2016 process, and a number of milestones that must be met before it can take place. Failure to achieve these will open space for contestation of the results at the federal and state level. Ensuring that the Independent Electoral Dispute Resolution Mechanism (IEDRM) is mandated and formed, with the means to conduct its work, will be essential. Furthermore, the process requires a level of federalisation not yet materialised. Attempting to hold elections in disputed FMSs is risky given that Hiraan and Middle Shabelle and Galmudug are still contested, and the latter has experienced recent deadly conflict related to state formation.

To ensure that implementing the 2016 process does not exacerbate conflict dynamics, Saferworld offers the following recommendations.

▪ To the NLF and the FEIT/SEITs:

The NLF should ensure that the FEIT and SEITs conduct their duties in a manner that avoids conflicts of interest so that they may be legitimate actors providing oversight of the process.

The FEIT should clarify rules for campaigning and gain the means to monitor the campaign period.

The FEIT should clarify procedures and regulations including candidate registration, voter registration and polling and counting.

The IEDRM must be mandated and appointed, the names of its members publicised, its terms of reference agreed and its mode and scope of dispute resolution clarified. The mechanism must be impartial and transparent, with legitimacy at both the federal and FMS levels.

The NLF should work with FMSs, AMISOM and international partners to assess of the logistical and security requirements for the election. This should include a thorough analysis of potential drivers of conflict during the electoral process.

▪ To Federal Member States

FMSs must ensure that SEIT members conduct their roles in a fully independent and non-political manner. The SEITs also need to be supported financially throughout the process by the Somali Federal Government and its international partners.

FMSs should communicate among themselves on electoral processes to ensure that mechanisms are credible and as uniform as possible.

▪ To the international community

The international community should be aware of the considerable institutional pressures affecting FEITs and SEITs. Efficient coordination with these teams, and the rapid release of funds to cover their operational costs, will be essential if they are to deliver their mandate effectively.

The international community should view the 2016 transition as one step in an incremental process of democratisation; progress toward this goal, however gradual, should be recognised and milestones and guidelines developed in a conflict sensitive manner that is aware of the risk of destabilisation at the national and FMS levels.

The international community should ensure that there are sufficient resources available for the process to take place. A basket fund with joint oversight would be the optimal means for this. Funding should include resources to enable state and non-state actors to mitigate conflicts and disputes arising during the electoral period.

▪ To civil society

Civil society should be seen as an integral stakeholder in the 2016 process. It should play a key role in delivering civic engagement activities to better inform the population, and conduct an independent observation mission. In addition, civil society can assist the IEDRM by identifying emerging tensions and assisting in their resolution.

¹⁹ Forging Jubaland Op Cit

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, the Middle East, Asia and Europe.

Saferworld has been working in the Somali region for over 10 years. Its programmatic focuses have included supporting the role of Non-State Actors (NSAs) in key decision-making processes on peace, security, and development; enhancing civil society oversight of democratic processes; supporting reconciliation and political dialogue; and facilitating stronger community security.

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