



PDRCTalks



PDRC



TOPIC

**The Incompletion of the Federal
Constitution's Review
and the Elections of 2020/2021**


Guest Speaker

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Former Speaker of the House of Representatives of the Federal Republic Somalia

PDRC TALKS
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BACKGROUND TO THE PDRCTALKS

In March 2019, the Puntland Development and Research Centre (PDRC) initiated a monthly event dubbed PDRCTalks. This event is a new initiative to spread ideas, messages, and awareness on issues related to the betterment of Somalia. These issues cover topics ranging from governance, democratization, peace, and development, which are the key PDRC's focus areas.

PDRCTalks is an interactive platform in which prominent Somali scholars, veteran politicians and/or retired civil servants are hosted once a month to serve as guest speakers and to deliver an expert presentation at a uniquely themed talk-event at PDRC. PDRCTalks aim to spark conversation within the Somali community and, through this useful dialogue, change the attitudes and lives of Somalis. Social media is used to spread the messages throughout Somali communities living in the diaspora and within the country through live streams. PDRCTalks has been received well and has featured prominent figures in Somali society to bring to the fore a multi-faceted number of topics in politics, economics, social issues as well as cultural themes.

PDRCTalks is a value-addition component to PDRC's vision as a solutions-oriented organization that prides itself in offering useful tools to bring about peaceful coexistence and economic development for and by all Somalis.

PDRC Talks 9

The ninth PDRCTalks themed "The Incompletion of the Federal Constitution's Review and the Elections of 2020/2021" took place at PDRC on 29th January 2020 with the former Speaker of the House of Representatives of Federal Republic of Somalia H. E. Mohamed Sheikh Osman (Jawari), as the Guest Speaker.

H.E Mohamed Sheikh Osman has had a long career as a distinguished civil servant whose career spans over five decades. He has continually played a critical role in the constitutional making process in Somalia. Mr. Osman was instrumental in supporting the Said Barre's regime in the constitutional making process and has been active on the same for the last thirty years in which Somalia has been undertaking this review processes.

Somali is poised to head to the 2020 polls later this year and a presidential election early 2021. It is against this backdrop, that the Puntland Development and

Research Centre organised the 9th PDRCTALKS themed "The Incompletion of the Federal Constitution's Review and the Elections of 2020/2021", to discuss the upcoming elections and the required legal framework that needs to be constitutionalized incorporating the constitutional review process that has been ongoing for a while now.

Organization of The Event

The 9th PDRCTalks event was held on 29th January 2020 at the PDRC compound, Garowe, Puntland State of Somalia. The event included a lecture by the keynote speaker the former Speaker of the House of Representatives of Federal Republic of Somalia H. E. Mohamed Sheikh Osman (Jawari), followed by a panel discussion and audience Q&A interaction. The event's significance was also boosted by live State TV coverage and other social media outlets. The event was fully backed by the diverse audience due to its unique importance for both the local community as well as the Somalia diaspora community.

The event was attended by more than 250 participants, drawn from the government, civil society groups, human rights and advocacy groups, local government, women, youth politicians, and senior citizens who braced the chilly cold evening on January 29 to participate in this crucial event.

The event was streamed live on Facebook with live updates on Twitter to reach a cross-section of audiences all over the world. PDRCTalks prides itself on giving ample time to the guest speaker, panellists and contributors, and, most importantly, the audience to exchange ideas learn from each other, and further to deepen their understanding of the subject of discussion.

Introductory Remarks

The minister of Interior, Federalism and Democratization of Puntland, H. E. Abdirahman Mohamed Dhabanad, and the State Minister of Constitution and Federal Affairs of Jubbaland, H. E. Ahmed A. Haji Hassan (aka Sitiin) were invited to this event. Earlier in March, these two ministers were members of a joint Puntland and Jubbaland committee who drafted a joint political declaration in Bosaso on the constitutional review process.



The Puntland Minister of Interior, H.E. Mohamed Dhaban'ad, in his opening remarks thanked PDRC for hosting such a crucial event more so the presence of the keynote speaker Jawari. He noted that the current political process was being manipulated by personalities in the ranks of the Federal Government of Somalia with total disregard of the real political issues which undermines the rule of law and constitutionalism thus the import of such forums that lay bare these issues and proffer solutions.

THE KEYNOTE SPEECH

The former Speaker of the House of Representatives of Federal Republic of Somalia H. E. Mohamed Sheikh Osman (Jawari), commended PDRC for initiating this novel idea, and for facilitating such discussions at the PDRCTalks. He noted that the constitutional making process was a long and tedious one that had taken a lot of time and resources. This is a process that needs to be completed at the earliest possible time to ensure that Somalia has a smooth, peaceful and agreeable transition.



In his remarks, the former speaker Ambassador intimated that the constitutional making and review process had undergone numerous stages to the culmination of the Somali provisional constitution in 2012. This provisional constitution has been under continuous review especially in regards to inclusive

politics and the electoral law which are expected to guide the nation in the forthcoming 2020/21 elections. An electoral model needs to be agreed upon by all stakeholders before the date is set. An uphill task considering the numerous challenges and time constraints.

History of Somalia's Constitution-making Process

Somali's constitutional making process has taken decades of consultations, revisions, and numerous changes, a process that began in 1947 and culminating in the provisional constitution in 2012. The first Somali constitution was made on 21st November 1949, by adoption in the 250th General Assembly of the United Nations, including the Resolution of the Trusteeship of UNO, which entrusted Somalia's transition to self-governance to the Italian Government. The first constitution had 17 articles that were similar to Libya and Ethiopia with 9 articles specific to Somalia.

The period between 1960 and 1969, saw the transformation of the State of Somalia into an independent self-governing nation as envisaged in the second constitution, recognizing Somalia as a fully-fledged democratic nation. This process began in 1956 with the draft of the constitution that was passed by first National Assembly in 1960 and later adopted through a national popular referendum in 1961.

The period between 1969 and 1990 is known in Somalia history as the *dawn of the revolution* which took place in two phases; 1969 - 1979 and 1980- 1990. In the first phase, in October 1969 when the National Army took over power, it immediately abolished the 1961 Constitution, banned all Political Parties, assumed all powers of the legislative, executive, the presidency and the judiciary branches of the government. This military regime governed the nation using "Declarations" of the Supreme Revolutionary Council (SRC). The SRC issued three declarations for ten years culminating in the formation of Somali Socialist Revolutionary Party (SSRP) on 1st July 1976.

The second phase of the revolution 1980 – 1990, saw the adoption of the third constitution that established the 3rd Republic – The Somali Democratic Republic through the people's assembly in 1979. This constitution recognized Somalia as a single-party state with a centralized system of governance under the scientific socialism system. In 1989, the third constitution after a review sought to transform Somalia into a multi-party

democracy with a centralized system of governance. These reviews were adopted by the People's Assembly on 12th October 1990 resulting in the 4th Constitution which was unfortunately never implemented as the civil war broke out soon.

From 2000 to 2011, Somalia reeling from a devastating civil war sought to put its governance structures in order. This involved an intense period of reconciliation and restructuring. It was during this period that the federal system of governance was adopted as a means of restoring people's trust in their government. In 2004, the Federal Charter was adopted as the 5th constitution that led to the establishment of the Transitional Federal Government (TFG) of Somalia. The TFG formed a commission (IFCC- the Independent Federal Constitutional Commission) in 2010 and in 2011 the commission went around the nation raising awareness on the constitution-making process and collected people's views resulting in a raft of recommendations.

The final phase of the constitutional process began in 2012 and is still ongoing until today in 2020. During this period all political actors, elders and civil society organizations rallied together, despite their ideological differences to establish governance institutions. In March 2012, the IFCC began lengthy discussions and wide consultations aimed at reviewing the constitution and submitted a draft to the Constituency Assembly, formed in July 2012, and which ratified this draft and adopted it as the 6th Constitution in August 2012. This is what is popularly known as the provisional constitution of Somalia.

Stages of the Federal Constitution's Review Process

The Federal Constitution review process began in 2000 and was completed in 2012, resulting in the adoption of the current provisional constitution by a constituency assembly of 800 delegates on 1st August 2012. The onus to review the constitution was placed on the 9th parliament that appointed two committees: - the Oversight Committee (OC) and the Independent Commission for the Review of the Constitution (ICRC). These two committees presented their drafts to a joint session of the federal parliament which stipulated what needed to be reviewed and agreed upon. The 9th parliament taking cognizance of the enormity of this task passed a resolution to extend the constitutional review process to the 10th parliament under the stewardship of the two committees.

It is important to note; the two committees have been working harmoniously with the Ministry of Constitutional Affairs at the Federal level. Despite this progress, there seems to be a misunderstanding between the Federal Government of Somalia and the Federal Member States arising from the misinterpretation of some articles of the provisional constitution that has resulted in a stalemate. Notwithstanding, there also needs to be a clear agreement of Article 44 on sharing resources, Article 54 on the separation of powers and Article 122 on the management of public funds.

Barriers to the Completion of the Constitution

Like any other process that is critical for the success of a nation, the constitutional review process has been rocked with several obstacles that have impeded its completion. The former speaker of the Federal Parliament of Somalia in his remarks noted that these barriers were:

1. The lack of good faith negotiations on contentious issues that has impeded any meaningful progress on the review process. Both the FGS and FMS have adopted strong positions on some key issues including:

A. The status of the capital city: The FGS and FMS have failed to agree on this issue in accordance with Article 9 of the Constitution. The Federal Parliament Committee on Constitutional Review and Implementation Monitoring (GKDHD/OC) and the Independent Constitution Review and Implementation Commission (GMKDHD / ICRC) proposed three options on the status of the national capital of Mogadishu (or the Benadir region). These options are:

- Mogadishu be designated as the capital city of the Federal District;
- Mogadishu be designated as a Member State in Federal Somalia;
- Mogadishu be designated as a district within the territory of a Federal Member State.

B. Sharing of Natural Resources: The FGS and FMS have been unable to agree on how to share natural resources as stipulated in Article 54 of the Constitution. The issue was previously discussed in Baidoa meeting in 2018 and a preliminary agreement reached, it seems that its considered

ambiguous by both parties as the issues appear not have been properly addressed.

- C. The Electoral System and the Political Parties Role: It appears that the FGS and FMS haven't agreed on these contentious issues as stipulated in Article 47 of the Constitution. Despite reaching a preliminary agreement in Baidoa in 2018, it seems that there are still disagreements on the extent to which the Federal Government and other federal agencies can influence elections at the federal and member-state levels.
- D. Separation of political powers and separation of functions: As stated in Article 54 of the provisional constitution, this is considered as one of the most critical and key elements as far as the federal system of governance is the system of choice for Somalia in the future. Both levels of government have tried to resolve this to no avail as a process initiated in March 2012 was stoooped because it was parallel to the then on-going negotiations to adopt the provisional federal constitution which was considered a transitional document that would be reviewed at a later date.
- E. Management of Public Funds: Article 122 of the Constitution that deals with the management of public funds seems to be unclear and insufficient in addressing this critical element thus pitting the FGS and FMS at each other throats. The bone of contention is that this Article which was formulated in 1862 is based on the 1960 constitution. Fundamentally, what needs to be addressed in this article is the general principles that forms the basis of public finance policy including tax collection, revenue sharing, credit and donation processes, preparation and approval of the national and state-level forecast budgets, auditing and monitoring procedures, etc.
- F. The National Security System: Article 130 lays the ground on how the national security issue needs to be handled. Both the FGS and FMS haven't agreed on a clear definition of roles and responsibilities of the national army and security agencies at the federal level, and the type of forces and security institutions that should be accorded to the Member States and their mandates.

The 2020 Elections of the Two Houses of the Somali Federal Parliament (SFP)

The keynote speaker in making his remarks stated that national political elections are one of the fundamental pillars of a country's sovereignty. Sovereignty is categorically a God-given feature which lays the basis for governing a nation in a fair and just manner. To this end, the Somali Federal Constitution, in alignment with this principle, affirms that: "Besides Allah (SWT), all power belongs to the people and exercises that power directly" Article. 1 (2); the constitution also acknowledges that: "The power of self-governance begins and ends with the people." Article 46 (1). The combined meaning of these two articles indicates that the constitution is referring to "Universal Suffrage" which is a system expressly stipulated by the previous constitutions of Somalia, such as Article 51 (1) of the 1960 Constitution.

The principle of universal suffrage that recognizes the right of the citizens to determine how they are governed has been used in Somalia before. In March 1959, during the election of the 90 members of the House for the southern Somali regions and on February 17, 1960, in the election of 33 members of the House for the Northern Somali regions,

Somali is poised to elect members of its two houses of representatives in 2020 and a president in 2021. Taking into consideration the prevailing circumstances and general situation of the country, including other factors such as human resource, logistics and finance etc., the question that needs to be considered is:

- Is it possible to hold a nationwide election today and guarantee a peaceful and conducive environment in which elections can be conducted nationwide in a coordinated and transparent manner?
- Or should there be a politically agreed upon, alternative election model that would allow elections to be held on time and not lead to further tensions?

It is important to note that the amendment of the electoral law and constitutional review are two interconnected issues that need to be prioritized, first by finalizing the Constitution. Somalia can only go into elections when an electoral model which forms the basis of the elections at the three levels of government (federal, state and local) is agreed upon as specified in Chapter 4 of the Constitution. This will then culminate in

the drafting of laws, regulations and procedures for conducting elections and institutions mandated for the implementation of the law identified and the political parties are legally recognized.

There are some legitimate concerns the elections for members of the Upper house is skewed as it based on Article 72 that relies on the 18 Somali regions that Somalia had in 1991 which doesn't take into consideration current political and population dynamics. Some administrative authorities comprise of more than two or three regions thus disfranchising others in terms of numbers or will be under-represented. This is an issue that needs political negotiations to agree on a system of representation that is cognizant of the prevailing demographics.

It isn't feasible to hold nationwide elections in an environment where requirements for the same have not been met and a scenario where there is no constitutional court to handle any disputes that may arise during or after the elections in accordance to Article 14 (15) of Law No. 4 of 2015 on which the Independent National Electoral Commission was established.

Of concern is that the current Supreme Court is based on the 1960 Constitution and the Judicial System Act 3 of 12 June 1963, and to transform the Supreme Court to into a Constitutional Court, will require the addition of two (2) members of the Council of Ministers approved by the President and two (2) members of the Parliament, and approved by the Parliament in a majority of fifty-one (50 + 1) of the total MPs, to meet the constitutional threshold mentioned in Articles 98, 99 and 100 of the 1960 Constitution and in accordance to be transformed into the Supreme Judicial Court, it requires each parliament session to add six (6) members from citizens who have met the criteria for voting in accordance with Article 102 of the 1960 Constitution.

The former speaker opined that unless the aforementioned issues are resolved, it would be an uphill task to hold truly democratic elections based on the "one man, one vote" model. Nevertheless, the envisaged road map to ensure that universal suffrage is achievable in Somalia, and thus, the following steps need to be undertaken:

A. February - April 2020: It is imperative that the national political leaders engage in negotiations and agree upon an inclusive and peaceful mutually acceptable electoral model to conduct elections in the two Houses of the Parliament before their term of office expires;

- B.** April - May 2020: The electoral model agreed upon by the leaders including all necessary agreements are made into law and submitted to the federal parliament for approval;
- C.** May - August 2020: All political players and actors to collaborate on the operationalization of the required agencies responsible for conducting federal and state elections and ensure that all regulatory and logistical, financial and other necessary resources are availed to them;
- D.** September - November 2020: The elections for members of both Houses of the Federal Parliament done and concluded by no later than 25th November 2020;
- E.** 25th November - 24th December 2020: Resolution of disputes and arguments over the elections and complaints about the voting and the election process are handled satisfactorily and conclusively;
- F.** 25th December 2020: The final announcement of the Election results of the 11th Parliament of Somalia;
- G.** 27th December 2020 - 15th January 2021: Swearing-in and holding of the first Session and Elections of the leadership both of the Houses of the 11th Parliament;
- H.** 16th January - 6th February 2021: Preparation of the presidential election of the Federal Republic;
- I.** 7th February 2021: Election of New President for the Federal Republic of Somalia;
- J.** March 2021 - March 2022: Focus on the review and approval of the Federal Constitution.

PANEL DISCUSSION

The PDRCTalks platform is designed a way in which the audience and the keynote speaker aided by a panel of experts have two-way interaction, which is central to the discussions. The second part of the session (panel discussion) offers an opportunity for the participants to interact with the guest speaker and ask questions.

The Jubbaland State Minister for the Constitution and Federal Affairs, H. E. Ahmed Abadirahman Haji Hassan (Ahmed Sitin) noted that the constitution review process had not been given the due attention and importance it

deserved. Minister Hassan intimated that the electoral law that was currently being discussed by the House of Representatives and Upper House was likely to be signed by the president had a few articles that were unconstitutional coupled with the fact that the law hadn't gone through the required process. He reiterated the continuous lack of consultation between the federal government and federal member states and little or no public participation on these critical matters, he decried the lack of public awareness on the changes being pushed by the FGS.

In his contribution to the discussion, Puntland's Minister of Interior, H.E. Mohamed Dhaban'ad, slammed the whole political processes in Somalia as being manipulated by personalities at the Federal level with total disregard of the real political issues. He alluded that the constitutional review process had stalled due to the neglect of the adoption of the federal system, the implementation of the power-sharing system between the FGS and FMS as stipulated in article 54, on issues such as education, health and other essential services, complicated by either the total absence of the FMSs in the process or its misrepresentation.

An issue of major concern is the presumed enacted electoral law that is unconstitutional which states that the president shall be elected through a popular vote thus ignoring article 89 (Election of the President of the Federal Republic of Somalia) which clearly states that the president shall be elected through a joint session of the two Houses. He lamented that the whole process is being botched and derailed and thus called for political consensus among the leaders driving the process, otherwise the nation was poised for a period of heightened political polarization.

RECOMMENDATIONS

The panel made some key recommendations to address the challenges to the completion of the constitutional review process which are:

- A national Political Agreement is of utmost importance and urgent for Somalia to transit from the present critical juncture as well as from the clan-based to a fully democratic system of governance;
- To halt the present constitution review process and shift it to the next administration, but with a clear and defined legally binding framework;

- Focus on the completion of the Articles that require technical and syntax fine-tuning, and the undisputed articles, to immediately present them to both Houses of Parliament for ratification;
- The creation of a national dialogue platform is of utmost significance for a credible and sustainable reconciliation process.

CONCLUSION

In his concluding remarks, the keynote speaker, former Speaker of the House of Representatives of Federal Republic of Somalia H. E. Mohamed Sheikh Osman (Jawari) noted that despite the numerous challenges and the uphill task for Somalia, it was still possible to achieve a number of accomplishments if all political leaders and stakeholders consulted and broadly involve the public. He noted that it was time for all Somalis to wake up and make the nation a haven of peace where everyone enjoys equal rights and obligations and equal status in the eyes of the government.

He extended his thanks to the people and the government of Puntland, for the warm welcome and hospitality accorded to him and his entourage during their short stay in Puntland, and also expressed his gratitude and appreciation to the Advisory Board, the staff and the management of PDRC for organizing and professionally facilitating of the PDRCTalks platform.

The Keynote Speaker, the panel and most of the participants unanimously reckoned that it was unfortunate that the term of the present federal government was coming to an end and it had failed to accomplish the tasks necessary for the conduct of a one-person-one-vote election in 2020/2021. The consensus was therefore that there being no political agreement, it was necessary to create an environment that would support political cohesion and participatory all-inclusive consultations to drive the transition agenda.

