



Puntland
Development &
Research Center



SOMALIA'S Transition Option for 2020/2021 Elections

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Puntland State of Somalia

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ACRONYM

FMS	Federal Member State
FP	Federal Parliament
HoP	House of People
NLF	National Leaders Forum
OPOV	One-Person-one-Vote
PC	Provisional Constitution
SPA	Somali Public Agenda
TFG	Transitional Federal Government
TNP	Transitional National Parliament
TNG	Transitional National Government
FG S1	Federal Government of Somalia, 2012-2017
FG S2	Federal Government of Somalia, 2017-2021
UH	Uppers House

INTRODUCTION

One of the most contentious issue in Somalia after the collapse of the central state, and subsequent efforts to reconstitute the nation (1991-2000), has been to strike an agreement on an interim representation model that would be used to establish an interim national governing authority, which would then lead the rebuilding process. The Somali Peace and Reconciliation Conference hosted by the Djibouti Government in 2000, and attended by delegates representing Somali communities agreed that the allocation of seats for the Transitional National Parliament be based on a clan power sharing model dubbed "4.5". Using this agreed model, the first Transitional National Parliament (TNP) of 245 MPs (Later become 275 in 2004, Embagathi, Kenya) was inaugurated in Djibouti on 13th August 2000. The TNP elected H. E. Abdi-Qasim Salad as the interim president on 25th August 2000 who then appointed a Prime Minister on 8th October 2000 in Djibouti. With these positions filled up, the interim governing authority was relocated to Mogadishu.

The nascent authority was tasked with the realization of three national objectives in three years from the late 2000 to early 2003. These were:

1. Enacting of National Constitution approved in a popular referendum;
2. The reconstitution of the national state that shall oversee the entire territory and all citizens under its jurisdiction both in de-juror and de-facto and
3. To conduct universal suffrage elections often referred to as One-Person-One-Vote (OPOV) election.

The holding of the national election was expected to end the reliance on the 4.5 clan power sharing formula as a system of putting leaders into office. As such, this was an indication that this criterion was only meant for a transition or a temporary arrangement. While it might have been very unrealistic to accomplish these tasks in three years, it is however, a colossal failure that the 4.5 formula is still in use after 20 years. The transition from the clan based system to a democratic one, in particular, was not even in the agenda during the discussions that led to the establishment of first Transitional Federal Government – TFG1 – (2004 -2008), the second Transitional Federal Government – TFG2 – (2009 – 2012) as well as the first Post- Transitional Government – the Federal government of Somalia (FGS1 and FGS2) – 2012 – 2016/17. This was due to the great uncertainties that surrounded whether a smooth transition from one government to the next would actually take place.

The approval of the Provisional Federal Constitution (PFC) established a post-transition state, enjoying the status of a permanent government. This has created relative level of confidence of a peaceful transition from one government to next, which is not any more in jeopardy like the pre-transition era (2000 -2012). The beginning of formal recognition of FGS1 by major world players became an indication of the beginning of new opening to the nascent Somali authority in the world arena. In pace with the new atmosphere of high expectation, the issue of holding non clan-based general elections in Somalia by the end of 2016 figured at the helm of the national priorities. Holding a parliamentary general election by August 2016 was stressed in the New Deal agreed by FGS1 and Somalia's International Partners in early 2013, in London.

To assess the possibility of holding the first post-state collapse universal suffrage-based parliamentary election in Somalia, a two-days meeting was held in Mogadishu on 19th- 20th December, 2015. A National Leaders Forum (NLF) consisting of the leadership of Federal Institutions (FIs) and Presidents of the Federal Member States (FMS) attended the meeting. This was just less than 8 months from the constitutional timeline of 20th August, 2016. On 21st October 2015 the forum deliberated that and agreed it wasn't feasible to hold the envisaged one-person, one-vote elections and thus agreed on an indirect election as an alternative.¹

Following the deliberation of the NLF, an ad-hoc arrangement was set up which culminated in the election of the 10th House of People (HoP) of the Federal Parliament (FB), on 27 December 2016, which was labelled as an Enhanced and Indirect 4.5 Model. The first Upper House (UH) of FB, as it is required by the PC, was also inaugurated on the same day on 27th December 2016. Subsequently a joint session of the two houses elected H.E Mohamed Abdullahi Mohamed as the President of the Federal Republic of Somalia on the 8th February 2017.

The onus of the transition from the clan based 4.5 system² to a Multiparty universal suffrage parliamentary election by December 2020³ was placed on the second post-transition Federal organs (2016/17 – 2020/2021).

¹ Communiqué of the First Plenary Meeting of Somalia's National Consultative Forum, October 21, 2015

² <https://www.peace-agreement.org>

³ HIPS_report_english_version.pdf doorashada2016.so – NLF _communique_English.PDF

ELECTION IN CONUNDRUM (2020/2021)

The failure by the current government to fulfill the necessary requirements to conduct universal suffrage endangers the continuity of the historic precedent of holding elections on time and the transfer of power at the end one's mandate since 2000. Taking away the rights of the citizens and the opportunity to exercise and cast their votes to preferred candidate, would lead to the rule of an illegitimate authority that holds the power by extension beyond its term. Heritage Institute noted in its report of July 2019: "it's highly improbable — if not impossible – that a credible, free and fair one person, one vote election can be organized throughout the country within the remaining 18 months of the Farmaajo administration"⁷. The report further noted "an extension would dampen the country's weak but steady march towards a new democratic culture".⁸ Confronted with such reality, it was suggested "key stakeholders (the federal government, the federal member states and registered political parties/associations) have the time to engage in productive discussions and agree on workable electoral models for the next election"⁹.

Thus far with no much time left to prepare the country for the 2020/2021 election, it's unfortunate that not only no agreement has been reached until the present time but also no discussion on this important matter has taken place between federal government and other stakeholders. Election does not, however, include the functions assigned exclusively to federal government by the provisional constitution. In spite of the suspension of federalization by the current government, Somalia belongs to the worldwide family of cooperative federalism, this requires cooperation between National and State level authorities. Cooperative federalism is unequivocally explicit in Somalia's Provisional Constitution because according to Article 51.3 it is mandatory that "annual conference of Executive heads of the Federal Government and the Federal Member State governments shall regularly be convened, so as to discuss and agree on: (a) Strengthening national unity; (b) Security and peace of the country;

⁸ Ibid

⁹ Ibid

(c) National socio-economic development, and common market policies of the country; (d) Promotion of the wealth of the people; and (e) Information sharing”.

Consequently, FMSs have legitimate stake to claim significant share not only in decisions concerning the organization and conduct of National Federal elections but also all other matters that have national relevance. The second chapter of the PC also provides advanced coverage bill of rights and guarantees their exercise including “Redress of Violations of Human Rights” (PC, Article 39).

Calls by the FMSs, political forums, and active political associations urging president Farmaajo to engage in consultation on electoral matters have not produced any tangible outcomes. This despite the Inclusive Policy Framework agreed jointly by Federal Government and FMSs with the International Community in London on May 2017, the frequent statements by UN Security Council, Special Envoy of GS of UN to Somalia and all Somalia’s International Partners calling for cooperation between FGS2 and FMSs.

A number of independent public policy centers and freelance intellectuals started thinking of options for 2020/2021 election. Among the publicized options include 2016 Plus, Participatory Indirect Election, Enhanced Legitimacy Election and variety of nomenclature all referring to 2016 election as base line. Levels of increased enhancement, participation and election varied between authors but all concur application of 4.5 for the sixth cycle not by choice but by necessity.

Puntland Development and Research Center (PDRC) a renowned research institution undertook an interactive and participatory research on the course of the dynamics that have led to the precipitation into stalemate in holding of election. It could be the publicized direct election or any other type securing the transition to the next Federal Parliament on 27th December 2020 and the election of a President scheduled to take place on the 7th February 2021. PDRC applied multiple approaches to achieve in-depth understanding of the primary source of the current impasse as well as the exploration of opportunities to embark on the path to conduct timely election of the two houses of the federal parliament and the president.

STUDY METHODOLOGY

The initial scope of the study was mainly attuned to the organization interactive forums to take place in major centers of the country covering at least the national capital – Mogadishu - and capitals of FMSs. The imposition of travel restriction and promotion of social distancing in response to the worldwide outbreak of Coronavirus thwarted the initial plan of PDRC. Faced with the objective limitation of larger Participatory Action component of the study, it was confined to a smaller scale.

The study narrative and its findings are articulated in sections IV and V. Section IV in particular is mainly based on combination of desk study and objective scrutiny of performance of the current national federal organs and exposes the unfortunate finding confirming that conditions to hold universal suffrage parliamentary election in 2020 had not been accomplished. Consultative forums held in Puntland are principal sources of this section. The sixth section is an attempt to formulate the difficult challenge of forging political agreement on an electoral deal that rules out both holding OPOV election and extension of the mandate of the incumbent federal organs.

PERFORMANCE OF FGS2 ON ELECTIONS

The current federal government has always insisted on its commitment to hold OPOV election and that the conditions to conduct it on schedule will be made available. Holding OPOV election has recently become the most frequent catchword in Somalia but it seems that it is equated with the day that citizens cast their votes. Elections are however phased processes involving of pre-election – election event – post-election phase.

In the first place the election model of a country must be established in its constitution. Once the choice of electoral model is defined in the constitution it enjoys broader public consent because constitutions result from political negotiations, public consultation and finally approval by public plebiscite or by constituent assembly. Electoral systems incorporated in the constitution provides basis for adjudication over election related controversies. The Chief Justice of Kenya, David Maraga declared the August 2017 Kenya’s presidential election “invalid, null and void” on the grounds that “it had not been conducted in

accordance with the constitution”¹⁰. The provisional Constitution is almost silent on Somalia’s Electoral Model while a finalization process that resolves this matter in the constitution had not been undertaken by FGS1 as well as by current FGS2. In nutshell there are no constitutional basis for holding general parliamentary election in Somalia by the end of 2020.

The electoral law assented by the president on 20 February 2020 is not only lacking constitutional basis but all policy papers by renowned research institutions consider the law not practicable. The deficiencies in the law include “assigning seats to constituencies, representation for Somaliland and Benadir, ensuring women’s quota and clarifying the role for political parties”¹¹. The legalization of 4.5 is matter of concern by all democratic-minded Somalis that believe on equality of votes casted as fundamental democratic principle that guarantees legitimacy of the outcome of an election. The Somali Public Agenda policy (SPA) notes that 4.5 formula “had long been used in Somalia, but hitherto was not written in any government legislation”¹².

While the law assigns the seats to clans according to the same order of distribution of the current HoP of 275 MPs, the law also legislates the allocation of the seats along area-based constituencies. This kind of arrangement would require potential voters to vote in favor of a candidate decided upfront for them. In spite of the presumed universal suffrage of the legislation, this would violate the chief principle of the solemn right of all citizens to elect and to be elected. It is because of that, Puntland President publicly stated on various occasions that Puntland will never accept legalized 4.5 that renders permanent criteria and not as interim arrangement¹³. Regarding the election of the Upper House (UH), the law lacks provisions related to electoral arrangements other than the stated requirements of the election of both houses in Article 12.

The problem is not limited on the serious gaps in the law and its non-implementable character but further in the inexistence of laws of political parties, voter registration and range of statutory norms and codes of conduct that are an

¹⁰ <https://www.aljazeera.com/news/2017/09/kenya-supreme-court-annuls-result-presidential-polls-170901084743579.html>

¹¹ [Heritage-Institute-Policy-Brief-on-the-2020-Election.-English.pdf](#)

¹² [SPA Governance Briefs 07 2020 ENGLISH.pdf](#)

¹³ Monthly Puntland Presidential public address, 1st June 2020

integral part for a credible electoral cycle. There is no certified list of parties that will compete in the election nor a voters register, and according this law should be based on biometric registration. However, there are no identified would-be electable officials nor eligible voters five months to the date that the polls for parliamentary election should take place, according the provisional constitution.

In addition, the absence of constitutional and legislative requirements for holding general election, the National Independent Electoral Commission (NIEC) falls short of the stature to hold General Elections while, there is no sufficient time to capacitate to level commiserate to the task. In addition, the closing of NIEC offices in Puntland and Jubbaland is not promising. NIEC's statement confirming the identification of voter registration centers in Benadir and three Federal Member states (SWS, HSHS and GMS) obviously excludes areas controlled by Al-Shabaab. Identification of voter registration centers, the provision of operationalization facilities at the centers and actual conduct of the registration are two separate matters.

It is beyond any doubt, that the current government has fallen short of fulfilling its mandate of holding direct elections.

FEASIBLE ELECTORAL OPTION

The PDRC consultative forum on feasible electoral option was organized into three phases.

The first principal forum that set the pattern of the process in the first place. This stage was split into two separate days apart in early December 2019 and late January 2020, at the library of the center. Participants included legal experts, politicians, members from Civil Societies, youth and women. After the endorsement of objective and agenda of the forum background, briefing note on the post-state collapse transitions from TNG to the election of the current was presented to participants. The presentation was concluded with a recall of first plenary meeting of NLF on December 2015 stating “condition for holding OPOV election in 2016 do not exist”. The lead question of “whether the conditions for holding OPOV election in 2020 exist or possible to accomplish on schedule during the reaming time?” was answered unanimously by unanimous that “conditions do not exist and cannot be accomplished on time”. It was also concurred that extension of the term of the federal institutions that are currently in office is unacceptable.

The second day and subsequent stages of the consultation were dedicated to search for an alternative electoral option always short of OPOV. After setting the direction of the consultation, PDRC study team undertook three important activities consisting of processing of the two days participant’s inputs, focused opinion gathering from selected participants and other key informants, desk study and compilation of final draft report incorporating the outcomes of each of the study into a systemized fascine. The findings of the study were then presented in high-level forum attended by CSOs, legal experts, Puntland Government officials, politicians, women representatives and independent thinkers.

The below sub-sections present both consensus proposals considered resulting from synergy of views of mainstream participants and sponsoring institution of the consultation ad separate highlights of specific views raised during the consultation process. This is important for presenting the institutional perspective and at the same time gives chance high held concerns to be heard.

ELECTORAL OPTION PROPOSAL

The proposed option is conceived in a spirit of “DO NO HARM”¹⁴ by curbing the emerging polarization of political class and its spillover to communal grassroots while at the same time cementing centripetal tendencies and spirit of popular collective will and strong citizenry. The design, conduct and outcome of the election is oriented to:

- (a) Safeguard parliamentary system of government started from 2000 and established in the PC. The outcome of the election should be launching pad to transformations of multiparty general election in 2024 and continuum consolidation of representative democracy;
- (b) Safeguard Federal System chosen in 2004 and established in the PC and propel the federalization process;
- (c) The 10th HoP and the 2nd UH would nurture culture of representativeness and responsiveness to needs of the citizens exercise effective and consciously their constitutional obligation of oversight over the presidency and the executive. Elected federal parliament must study profoundly, question the appointed Prime Minister on the content of government program and demand improvement on areas that legislators found limping instead of giving flat confidence. The accountability starts from the beginning and grows until it becomes in-built in the governance system;
- (d) Next Prime Minister must exercise his/her powers as head of Council of Ministers and in consistence with the PC according to which “The executive power of the Federal Government shall be vested in the Council of Ministers” (PC, 79.1).
- (e) Next Federal President must discharge his/her constitutional obligations of head of state prescribed by Article 90 of the PC and not as head of the executive reserved to the Prime Minister.

As criteria of safeguarding the federal character of the republic, the replication of FMSs distribution of the two houses of the federal parliament in 2016 shall be retained in 2020. The current draft resolution that is under plenary debate at the HoP concerning the new allocation of the seats of HoP in 2020 is based on regions

¹⁴ HIPS_report_english_version.pdf

and disregards of the existence of FMSs is an indication of impending threat of the federal system. Table 1 below shows the distribution of the Members of the Federal parliament between FMSs in 2020 same as 2016.

Table 1. FMSs Distribution of HoP and UH by FMSs in 2020

State/Region	States Capital	Distribution of HoP Seats by FMSs	Distribution of UH by FMSs
Puntland	Garowe	37	11
Galmudug	Dhusamareeb	36	8
Hirshabeelle	Jowhar	37	8
K/Galbeed	Baidoa	69	8
Jubaland	Kismayo	43	8
Somaliland	TBD* by Concerned	46	9
Benadir community	Mogadishu	7	?
Totals		275	54

* TBD: - To Be Decided.

Considering the advanced level of intervention and the bypass of FMSs by the current government, measures to safeguard their status of autonomy guaranteed by FC and state constitutions include holding polls in state capitals, place the security of the polls under states in addition of the selection/election of the members of UH by states executives and legislatives.

The level of enhancement of 2020 election in comparison to 2016 will be reflected in size of the electorate and coverage area of election. Regarding the electorate, the standard starting criteria will remain the Electoral Clan Constituency (ECC) that share one or more seats. The most senior traditional leaders will determine sub-unit that a seat shall go within ECC in consultation with other traditional leaders as in 2016, the candidates that will compete for seat shall hail only from the awarded sub-unit. Delegates selected for one seat will be increased from 51 in 2016 to 101 in 2020.

Table 2 below exhibits the size of electoral per seat, state and Nationwide in 2016. Nationwide enhancement of the electorate increases from 14,025 in 2016 to 27,775 in 2020 which is relatively modest. Since significant increase of the electorate per seat in 2020 is important criteria for reducing vote paying, which was staggering in 2012, the proposed 101 delegates is not that prohibitive for well-resourced candidates. In order to circumvent the relatively small size of delegates per seat after 100% increase, an additional leverage to increase delegates has been identified. The increase of the coverage area of provenience of the delegates electing one MP of HoP is introduced as another criteria of enhancement of 2020 election.

Table 2 size of the Electorate per state and Nation Wide

SN	State	Seats per State	Delegates per seats	Total electorate per State -2020	Total electorate per State - 2016
1.	Puntland	37	101	3737	1,887
2.	Galmudug	36	101	3636	1.836
3.	Hirshabeelle	37	101	3737	1,887
4.	K. Galbeed	69	101	6969	3519
5.	J. Land	43	101	4347	2193
6.	S. Land	46	101	4646	2346
7.	Benadir	7	101	707	375
8.	Totals	275		27,775	14,025

The Election of 2016 was conducted in two stages by first accrediting the delegates through clan selection system and holding the election in capital cities of FMSs. Proposed 2020 Model passes through three stages requiring first selection of the delegates by concerned communities, followed by merging the delegates to form Single Regional Voting block (SRVB) and finally proceed the actual voting grounds located at state capital and expand (1-2 region) the geographic coverage scope of the election, devolution of election to other localities where the conditions permit region beyond the capital, to elect jointly the MP from candidates hailing from a region irrespective of clans.

Table 3 shows Puntland as a sample of region-based election in 2020. The candidate ranked at the top in terms of the number of votes casted in his/her favor will be announced winner according the system of First Pass the Post (FPP).

Table 5. Puntland region-based sample – City State plus

S. N	Regions	Seats	Voters per Seat	Size of Delegates/region	No. of votes casted
1.	Nugal	4	101	404	1,616
2.	Sool	7	101	707	4,949
3.	Bari	10	101	1010	10,100
4.	Sanaag	5	101	505	2,525
5.	Mudug	11	101	1,111	12,221
6.	Total			3737	31,411

EXISTING CONCERNS

Repudiation of 4.5 clan-based formula was during the consultations and in support of district-based approach. Proponents of this view suggested that the 92 districts should form the base of allocation of the seats of the next HoP and not the 4.5 formula. According to this view the transition to OPOV election will not take place as long as 4.5 clan-based formula is applied.

According to some participants in the consultation meetings the traditional elders are considered bias, therefore their role in the election must be kept minimal as much as possible.

It had been also suggested that Puntland government should play an important political role by, primarily, insisting on district-based. It is worth noting, however, that prominent Puntland politicians urged Puntland to retain “fall back option” by invoking Article 4.4 of Puntland Constitution, which authorizes Puntland government to review the position of Puntland state vis-a-vis national state.

CRAFTING POLITICAL AGREEMENT

The most urgent political agreement that Somalia's political stakeholders should reach is the stipulation of deal on agreed electoral model for the sixth post-state collapse transition due to take place on 27th December 2020 for parliament and 7th February for the president. The stakeholders include a range of actors without whom it is hardly conceivable to attain any practicable and peaceful solution to the current electoral impasse.

It is in the interest of the nation that the head of federal state approaches FMSs from uniformed perspective and not from the stand of allied and non-allied. The federal government would also refrain from relying one house of the federal legislative at the expense of the other. Moreover, it is important to acknowledge the existence of opposition groups that dissent the conduct of the federal government on how it is handling electoral matters.

Engagement into political process between these stakeholders (and others) with clear objective of reaching compromise solution is the most single proper strategy. This requires that **“Different interests need to be negotiated, and the result to be a compromise – a compromise that probably does not make everybody perfectly happy, but a compromise that everybody could live with”¹⁵**.

The essence of the political compromise is to accept an outcome that is below the best desired threshold by each of the negotiating parties in order to give a chance a result that all concerned actors can live with it.

Three options floats in the current debate on electoral Models. These consist holding **1) OPOV election on time, 2) extension of the term of federal organs, and 3) holding indirect election on time**. The first option is the most desirable option, but conditions for fulfilling it do not exist, hence must be ruled out. The argument in favor of extension is to allow time for OPOV election implementation. In reality, however, universal suffrage election implementation needs a fresh term of four years. Scenarios of short extension of one year or caretaker/national unity government of two years for the same end would not resolve requirements of OPOV election. Rather it would create conflict. The choice of an electoral model

¹⁵ Political Process – an Overview | ScienceDirect Topics, 2003

and its establishment in the constitution would take one year and half to two years of genuine commitment.

As per corollary of the above, the **Enhanced Indirect Election 2016** is model around which all interested stakeholders could converge albeit not being ideal to anyone. The governing rules and regulations of the elections hold not constitutionally binding except in number of the MPs of the houses of FP and of timeline of four years election cycles. Statuary norms from legislative proceedings shall not be applied in the management of this indirect election. Ad-hoc arrangements resulting from political agreements by the stakeholders will establish the rules of the game of the polls. The implementing bodies of the election shall also be temporary institutions that will cease existence after the finalization of the polls.



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