

Puntland Democracy: The Need for an Effective Judiciary System.

BACKGROUND

An all-inclusive Community Conference held in Garowe from May-August 1998 established Puntland State of Somalia. A guiding three-year Provisional Charter¹, endorsed in the Community Conference, sanctioned the formation of basic governance functions divided into the executive, legislative and judiciary organs. It defined the mandates of each organ and underscored the independence of each organ to set up a system of checks and balances. The Charter also envisaged a speedy transition from a clan-based political system, where traditional elders nominated legislators, to a multiparty democratic system of one-person-one-vote. The Charter further charged the executive to draft a constitution to be ratified in a referendum. When the term of the Charter expired in 2001, no constitution was in place. It was not until 18 April, 2012, that a Puntland Constituent Assembly adopted a Provisional Constitution.

The Provisional Constitution of Puntland and the Provisional Constitution of Somalia promulgate the separation of powers and define the functions of the three organs of government. The Executive is ascribed to guide policy and administration, the Legislative organ deals with making the governing laws and amendments, and the Judiciary administers justice and adjudicates pertinent legal conflicts during the implementation of laws.

The Puntland constitution accords the state a constitutional court and a regional Supreme Court, and the Somali Constitution specifies formation of federal level Constitutional and Supreme Courts. The competencies of these state and federal level courts overlap, which future political processes and mechanisms will have to resolve. According to the Puntland Constitution, the Supreme Court constitutes the apex of courts of law, dispensing final ruling on penal and civil cases. The regional Constitutional Court interprets the law and arbitrates on Puntland constitutional issues.

AN OVERVIEW OF THE JUDICIARY IN PUNTLAND

The Puntland Provisional Constitution stipulates that the Judicial Organ consists of a) the Supreme Court of Justice, (b) the Constitutional Court, (c) the Regional Appeals Courts, (d) the Magistrate Courts, and (e) the Judicial Service Council. It underscores that “In the exercise of their functions the Judiciary branch will have complete independence from the Legislative and Executive organs of the Puntland State and shall be subject only to the Constitution and the Laws. Judges shall not be subject to interference in their judicial functions from any persons”.²

Explicitly, Puntland’s formal courts compose of three tiers: The Magistrate Courts (1st Instance Courts), the Regional Appeals Courts, and the Supreme Court. A Magistrate Court is established in each district, and each of the nine Puntland regions has a Regional Appeals Court.

1 Puntland’s Political Transformation, PDRC, Nov 2014
2 Puntland Constitution

Cases commence at the District Magistrate Court and, upon the instigation of litigants, can proceed upwards and culminate at the Supreme Court, which pronounces the final ruling. The Supreme Court is composed of five permanent members with two alternate members who are called up whenever a judge is on a leave of absence or recuses himself or herself in a specific case.

The executive branch nominates Supreme Court judges that the Puntland House of Representatives then confirms³ for a term of four years. A judge can be re-elected only once with a total term length of eight years. Despite a challenging environment, lower courts have variously operated since the formation of Puntland State in 1998. Nevertheless, a regional Constitutional Court has not been established as the Puntland Constitution stipulates. It is worth noting that in a federal system, a Constitutional Court pertains to all the federal entities and not an individual regional state. Until such date that a federal level constitutional court is established and is functional, regional constitutional courts have important roles to play and Puntland's judiciary suffers in its absence

PREVAILING CHALLENGES TO THE PUNTLAND JUDICIARY

Most of the outcomes of the present Policy Brief Paper are based on the deliberations of an inclusive Consultation Forum held at PDRC on the 6th of October 2022. It was in this forum that the main challenges were spelled out. However, and despite clear stipulations of the constitution, a series of challenges have undermined the effectiveness and independence of the Puntland legislative and judicial organs.

Both continue to be overshadowed by the powerful executive branch. Stakeholders acknowledge that the Puntland judiciary suffers from a multitude of weaknesses. Among them, the absence of a constitutional court has exacerbated the situation as there has been no legitimate entity to arbitrate on constitutional and legal conflicts that often arose.

Absence of a Puntland Constitutional Court

For twenty-four years of Puntland's Existence, the executive and legislative organs resisted the formation of a Puntland Constitutional Court. Politicians were afraid that its jurisdiction would curb their political interests and their authoritarian tendencies.⁴ The political leadership of Puntland is keeping the establishment of the Constitutional Court at bay out of fear of its legitimate powers. Exploiting the sentiment of the elites and the public during campaign periods, each presidential candidate promised to create a constitutional court if he won the top post, but no president has fulfilled this particular pledge. This is a serious concern as the political leadership often infringes on the law and the constitution. On a number of occasions, the absence of a constitutional court endangered the security and stability of Puntland, leading to tensions among powerful politicians, each of whom Claimed to be supported by various constitutional articles. These included:

- > Tensions over President Abdullahi Yussuf's term extension with endorsement from some of the traditional leaders, while others opposed, after expiry of the three-year Charter

3 The House can turn the proposed judges back to the executive for replacement

4 This applies to both the executive and legislative organs

- > The conflict between President Abdullahi Yussuf and his Vice President, Hon. Mohamed Abdi Hashi on the competencies of the Vice-President in the absence of the President (Article 80, Sections 1-5, of Puntland Constitution)
- > The conflict between President Abdweli Ali Gas and his Vice President, Hon. Abdihakim Abdullahi Amey over the decisions of the nomination of the Conflict Resolution and Ratification Committee (CRRC) approving the clan nominees to the seats of the new Puntland Parliament (Article 80, Sections 1-5, of Puntland Constitution)
- > The lack of a constitutional court to interpret disputed constitutional articles, resolve any controversy among the different organs of the of Puntland State, about its constitutional powers and responsibilities as wells as citizens' or political associations' petitions (Article 95, Sections 1-5, Puntland Constitution)
- > The conflict between the incumbent President Said Abdullahi Deni and his Vice President, Hon. Ahmed Osman Elmi—Karash over the authority of the Vice-President when the President is outside Puntland State (Article 80, Sections 1-5, of Puntland Constitution)
- > The disagreement over the legality of the Supreme Court, whose term expired a year ago (Article 62, Section 11, of Puntland Constitution)

The current government of Said Abdullahi Deni audaciously took up the question of a constitutional court. In accordance with Sections 1-10 of Article 94 of the Puntland Constitution, the Constitutional Court is expected to be composed of all the five members of the Supreme Court and four other judges. Of the four additional judges,

the executive nominates two and the House of Representatives the other two before the latter ratifies all four of them. Complying with the procedure, the Executive Branch nominated the two judges and submitted their names to the Puntland House of Representatives for approval. Not only is the Puntland House of Representatives delaying approval of the executive's nominees, but it is also yet to nominate the two remaining judges required to establish a credible Constitutional Court.

Deficiency of a Judicial Service Council

The Puntland State has not set up a Judicial Service Council (JSC) even though Articles 99 and 100 of the Puntland Constitution provide for it. The JSC is expected to be composed of the President of the Supreme Court, who chairs the Council, two judges from the Supreme Court, and two lawyers selected from the public sector to be nominated by the executive and ratified by the legislature. The responsibilities of the council include appointment, dismissal, transfer, promotion and disciplining of all judges of the Appeals and Magistrate courts and all other personnel of the judiciary. In the absence of the JSC, the Supreme Court has been fulfilling the role of this council as all six successive administrations that have governed Puntland have failed to create this central body.

Defunct Supreme Court

The Puntland Supreme Court's mandate expired on 15 August 2021 and until 1 November 2022, Puntland remained without a Supreme Court that wielded legitimate mandate. While election preparations were taking place all through 2021, the Puntland executive and legislative bodies clashed over the renewal of term of the Supreme Court judges. This led to the Early Local Government Elections being held without a legitimate supreme court in place to certify election results and rule on any formally lodged disputes. Consequently, the outdated Supreme Court approved the election results, about which opposition political associations voiced serious concerns. As one informant put it, "We cannot hold elections without a legitimate supreme court. Simply this is not feasible; who is going to decide on the election results or arbitrate on electoral disputes?"⁵

It is noteworthy to mention that the Puntland Supreme Court Judges were nominated by the president before the Policy Brief was published, however our deep advocacy work contributed to this. It was only on 1 November 2022 that the mandate of the Supreme Court judges was tabled in the Puntland House of Representatives. In a testament of the parliamentarians' acute awareness of the consequential legal and institutional gap, they near-unanimously confirmed the judges with only one abstention, and the judges were immediately sworn in.

Queried Independence and Accountability of the Judiciary

Many of the policy dialogue participants agreed that the Puntland Judiciary system is independent in principle because that is clearly stipulated in the Puntland Constitution.

⁵ A prominent member of one of the competing political associations

In practical terms, however, some doubt the independence of courts when it comes to the courts' jurisdiction over political and clan-based matters. They argue that courts sometimes succumb to political pressure from the executive and legislative bodies. On accountability, despite nonexistence of a Judicial Service Council, stakeholders believed that the Supreme Court and the Parliamentary Sub-committee on Legal Affairs could fulfill the functions of the missing Judicial Service Council and ensure that judges/courts are accountable for their infractions and misconducts. Nonetheless, the judiciary system as a whole is suffering from acute financial resources dependencies to the Executive organ. Both the remunerations of judges and other staff members of judiciary system and the timely transactions of financial resources are in the hands of the Ministry of Finance. Unless an adequate and independent system of financial management is guaranteed by the executive the independence of the judiciary and the legislative organs of the government will in question.

Limited institutional capacity of the Puntland judiciary

Even though not directly relevant to the democratization process, the day-to-day administration of justice in Puntland has been making a steady progress, major challenges notwithstanding. That is a central facet of the rule of law that requires sufficient attention for any democracy to thrive. Puntland's courts have been dispensing justice all over the districts even though critics accuse judges and other court personnel of corruption, nepotism, and personal preferences. The courts have successfully adjudicated complex cases, which the other regions of Somalia have embraced.

However, many interviewed experts believe that their performance was lower than the expected standards and pointed out shortcomings in both human and material resources. These include:

- > Judges are underpaid and the courts lack sufficient financial resources to run their day to day affairs.
- > Judges are not provided with physical security, which makes them vulnerable to physical threats and attacks.
- > Limited capacity building to the judges and other personnel of the judiciary.

POLICY RECOMMENDATIONS

To the Puntland Government;

- > Establish expeditiously a Constitutional Court for Puntland State.
- > Set up a Judicial Service Council.
- > Ensure that mandate of Supreme Court judges are up-to-date.
- > Uphold the independence of the judiciary and cease executive and legislative interference in judicial decision making.
- > Guarantee full financial management independence to the judiciary system.
- > Furnish adequate support to enable smooth operation of the courts

To the Political and Judicial Leaderships;

- > Employ judges based on merit and qualifications and ones with the highest moral and ethical standards.
- > Provide regular capacity building and upgrading to judges at various levels of the ladder.
- > Strengthen accountability of judges/courts through internal and external review mechanisms.
- > Conduct regular oversight and performance review of judges and other court personnel.
- > Strengthen the physical security of judges and court facilities.

To International Partners;

- > Support the strengthening of the institutional capacity of the Puntland Judiciary.
- > Provide expert, technical and financial assistance to improve capacity of officers of the courts and establish a specialized training institute.
- > Provide framework for sharing best practices among similar legal systems in Somalia as well as across the region and the world.



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