Constitutional Review And Representative Election In Somalia: The Challenges And Approaches For 2016 Election

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Abstract

This article focuses on three interrelated issues that are necessary for transitioning Somalia from current clan elite dominance which produced feeble public institution to public participation and legitimacy of elected political leaders at local, regional and national level. The article is endeavoring to propose a national process that can propel the country transition from the cluttered political conditions to stable and consolidated peace and security by jump starting a process where the present provisional constitution is reviewed and contentious issues in the constitution are addressed through consultative and inclusive process actively participated by the National federal government, representatives of regional state governments, members of civil society, representatives from regional and international community.

The article proposes multilayered electoral system including district constituency assembly (DCA) comprising of selected proportional members of different social groups from each district that are registered as voters for the election of district councilors, members of parliament at sub-national assemblies, national federal level, senate and president of the republic. The article recognizes the importance of pre-election civic and voter education for peaceful mobilization of citizen towards fostering national consciousness through which the national independent electoral commission (NIEC) play key role in its materialization. Furthermore, the article emphasizes the significance of ending the term of the federal government while reestablishing national consistency; cooperation and compromise by organizing and holding district based representative election that take place at once in all the districts.
in Somalia. Considering the limited time and the huge task that require to be accomplished before the end of the term of the federal government which is in August, 2016, the article proposes some key priorities deemed necessary for the actualization of 2016 election in Somalia. The priority tasks towards holding credible and transparent election are among others; reviewing the provisional constitution and building consensus on the thorny issues, establish NIEC; forming and regulating political parties; conducting civic education and holding local, regional and national representative election?

1. Introduction

The state-building and peace-building processes in Somalia face mounting challenges. Among others, some of the main impediments are insecurity, incompetent national and sub-national government institutions and unwillingness of the political leaders to take risks associated with restoring peace and security by challenging the current state of affairs. The dynamics of peace building are affected by dialectic human interactions and perceptions as well as the social environment. It takes time to overcome both psychological and structural obstacles resulting from protracted conflict locked in vicious cycles of confrontation. Social reconstruction, rehabilitation and reconciliation are essential elements that make a peace process durable and sustainable (Galtung, 1998 in Jeong, 2005). The country experienced one of the most protracted violent armed conflicts which made it ungovernable and dented its image in the international and regional fora. However, that does not necessarily mean the situation is hopeless and the prevailing turmoil cannot be reversed.

In the year 2012, Somalia ended the transitional period and peaceful parliamentary election was held inside Mogadishu where the president of federal republic was elected in a competitive election which sent the then incumbent president home. The government of President Hassan Sheikh Mohamud was elected on the basis of his six pillars policy program which were: 1) creating stability in the country through security sector and judicial reform and restoration of supremacy of rule of law at local, regional and Federal levels, and the promotion of good governance and public finance management; 2) Economic Recovery – Livelihoods and Economic infrastructure by creating an enabling environment for investment, public and private, domestic and foreign, as a driver for sustainable and diversified and a solid economic growth and job creation; 3) Peace Building- Social reconciliation through Building Bridges of Trust and developing social safety nets in order to protect the most vulnerable people; 4) Service Delivery – Health, Education and Environment by investing in human capital to ensure sustainable development in the future by guaranteeing access to basic services, fundamental rights and freedoms based on consensus and social peace; 5) International Relations-Building, collaborative relations and Polishing the National Image by building diplomatic, economic and trade relations with the neighboring countries and the rest of the world; 6) The Unity and the Integrity of the country through Reconciliation and rebuilding of a sovereign, unified, federal, democratic Somalia integrated into the East Africa region and the World.

However, the materialization of those six pillars remains just rhetoric as so far little has been done to achieve the same. Additionally, the federal government developed vision 2016 which is supposed to propel the country into democratic election. The vision 2016 recognizes that election is indeed an inescapable means for jump-starting a new, post-conflict political order in Somalia where people are given the opportunity of choosing their representatives and hence conferring legitimacy upon
the new political order. Again the performance of the federal government upon preparing the
country to actualize the vision 2016 popular election is dismaying as the government failed to
establish the necessary institutional and legal framework. The fact that there is very little time
remaining for the government’s mandated term in office and questions over the possibility of
holding credible election are lingering in the mind of many people. Critical issues are the timing of
inaugural elections and the ways in which to build trust and confidence in electoral outcomes. This
requires creation and design of appropriate political party systems that promote compromise among
contending groups, the building of a civil society that cross-cuts lines of conflict, close attention to
the local dimensions of conflicted urban settings, and developing innovative methods for ensuring
broad popular participation in decision making (Sisk, 2003).

This essay analyses the political, institutional and constitutional challenges that need to be
addressed if the election is to be held in 2016. This paper proposes a bottom up and inclusive
process that creates an atmosphere of dialogue and consensus building where all the stakeholders
and groups are given a chance to actively participate in and feel ownership of the same. Due to
limited time available, the author proposes an alternative and simple way of conducting district
representative elections. Since Somalia has no established political parties a centripetal system of
building multi-clan coalitions which promotes political elite bargaining, compromises and
cooperation has been proposed as a suitable approach to the situation in Somalia. In order to make
this dream true, political dialogue on contentious issues in the provisional constitution actively
participated by all the stakeholders and political actors is urgently needed. Without proper review of
the provisional constitution and determination from the side of the political class to take risks and
hard decisions for future peaceful and democratic Somalia, neither representative nor popular
elections will be materialized.

2. Constitutional Reviews

A Constitution is the supreme law of the land that shapes legal and socio-political behaviour of the
post conflict society. In order to build peace and address grievance of groups and communities in
the country, post conflict environment normally demands a new constitutional dispensation that
aims to correct past atrocities necessitated by the institutional and legal vacuums. In Somalia, the
process of constitution building is being tested as a means for arriving at a shared vision of
statehood. Thus far, the differences among the many domestic forces have proved too wide to
bridge by a constitution building process (Idea, 2011). One lesson from Somalia is that consent is
the lynchpin of any constitution building process, especially if there are insufficient domestic or
international pressures to keep all the players at the negotiating table and then implement the results
(IDEA, 2011)

In the wake of conflict or in attempts to forestall violence, reforming or drafting a new constitution
may be imperative to (re)establishing the basis of state legitimacy. This process is needed to
develop and build a political community, premised on the drawing up of rules for the allocation,
accountability, and exercise of power (Peace-Building Initiative, 2008). Given the nature of popular
sovereignty, the legitimacy of the state may necessitate this process of enacting a new constitution,
which reflects a bottom-up approach to statehood. The public participation and consultation of
different entities and stakeholders in the political divide are some of the key principles essential for
success of reviewing and building a new constitutional order in the conflict prone and divided
society. Building new constitution that reflects the aspirations of all groups and regions in the
country is indispensable for creating sustainable peace and democratic institutions in the post
conflict country like Somalia. Kirsti (2006) argues that the design of the constitution seeks both to create new democratic institutions and to assure their protection in the longer term. Unless they are carefully designed and implemented, democratic institutions can ferment conflict in sharply divided societies. A poor governance framework will undermine the sustainability of the peace. It can exacerbate fault lines, divisions, and tensions in society; entrench conflict-generating electoral or governance models, or provide a basis for contesting the government (Kirsti, 2006)

According to Brandt (2005) constitution review must ensure national ownership and the process should be conducted at an appropriate pace to allow for national actors to fully understand their role, learn from comparative experts about other experiences, weigh and deliberate upon options and enhance and build capacities where needed to effectively assume their responsibilities and implement the process. According Brandt UN experiences in East-Timor, Cambodia, Afghanistan and Iraq underscore the importance of a nationally led, transparent, participatory and inclusive process because they have the potential to:

- Garner wider support for the peace process and reduce the influence of potential “spoilers;”
- Enhance the legitimacy of the (often unelected) transitional administration;
- Illustrate a break with the past where voices were suppressed at the point of a gun;
- Provide a forum for national dialogue to promote reconciliation and forge a common vision for the nation that also recognizes minority aspirations;
- Transform the understanding of constitution-makers who learn about the aspirations and concerns of the people and see and hear firsthand the problems of their people;
- Broaden the social and economic agenda of the constitution;
- Create an educated public that understands the importance of constitutionalism to their daily lives and has greater public ownership of the resulting constitution;
- Lay a foundation for more democratic practices, a culture of rule of law and on-going participation in decision-making;
- Enhance public willingness to defend the constitution, defend their rights and support the implementation of the constitution;
- Influence the contents of the constitution by ensuring that factors contributing to conflict are addressed and that concerns and rights of minorities are reflected; and last but not least.
- Enhance the legitimacy of the final constitution

In the case of Somalia, the provisional federal Constitution is the supreme law of the land that was adopted by the national constituency assembly held in Mogadishu. This constitution is recognized by the national and sub-national authorities in Somalia except Somaliland which has opted for secession from rest of the country and unilaterally declared independence (UDI). The need for review and implementation of the provisional constitution is necessitated by the greater need and demand towards addressing contentious issues in the constitution including political power-sharing; systems and powers of different levels of government; economic distribution, models for organizing and holding national election.

2.1 Addressing Political Power Struggle

Despite the many challenges caused by intractable clan conflict and the resultant distrust between different contenders in Somalia, the design of this provisional Constitution is problematic as many of its articles were either vaguely written or had so many gaps that caused more confusions and
competitions among political leaders of the country. Nevertheless, notwithstanding its many areas of weakness, the constitution attempts to respond to historical injustices and appreciates that where security and justice are not available to all equally, grievances may develop that can cause or inflame conflict. Justice and security are also necessary for Somalia’s economic and social development that is vital for the protection of human rights, (IDLO, 2012). Additionally, constitutional design is also problematic and bone of contention as it creates intra-executive, parliament and semi-presidential systems. Despite the fact that Somalia had adopted 4.5 clan based power-sharing model which is descriptive proportional representation (PR), the design of the constitution has created perpetual political conflict. Sedelius and Ekman (2010) argued that the constitutional framework in transitional countries is a terrain on which political incumbents struggle to expand and define their influence. Under semi-presidentialism – with two separately chosen chief executives – this struggle is particularly manifested in conflicts between presidents and prime ministers. Sedelius and Ekman (2010) have done comparative analysis of eight semi-presidential systems in Central and Eastern Europe – Bulgaria, Croatia, Lithuania, Moldova, Poland, Romania, Ukraine and Russia, comprising a total of 65 instances of intra-executive (president–cabinet) coexistence between 1991 and 2007 – They examined the link between intra-executive conflict and cabinet instability. They argued that experiences of semi-presidentialism in Central and Eastern Europe have resulted in numerous disputes between presidents and prime ministers, where some of the most salient examples are the stalemating conflicts between President Lech Walesa and several prime ministers in Poland 1991–95, between President Leonid Kuchma and several prime ministers in Ukraine 1994–2004, as well as the more recent clash between President Viktor Yuschenko and Prime Minister Viktor Yanukovich in Ukraine in 2006-07 (Sedelius and Ekman, 2010). The case of Somalia is even worst of all cases as the country experiences unending power struggle causing cabinet instability. As a result, Somalia had 14 prime ministers and different council of ministers in the last 15 years. This means that each prime minister and his cabinet stayed in office just about a year, which undermined government work for restoring peace and stability in Somalia.

The provisional national Constitution in Somalia provide political power-sharing model between the President or the Head of State and Prime Minister who is also the head of government. Both of these top constitutional offices hold some executive powers. For instance Article 90 of the provisional federal constitutions gives the President power to: a) Dismiss ministers, state ministers and deputy ministers on the recommendation of the Prime Minister; b) Appoint the chairman of the Constitutional Court, the High Court, and other judges at the Federal Government Level in accordance with the recommendation of the Judicial Service Commission; c) Appoint senior Federal Government officials and the heads of the Federal Government Institutions on the recommendation of the Council of Ministers; d) Appoint ambassadors and high commissions on the recommendation of the Council of Ministers. The provisional constitution also provides executive power to the Prime Minister and his Councils of Ministers. Article 97 specifies that the executive power of the Federal Government shall be vested in the Council of Ministers, in accordance with the Constitution. Article 97 (2) also says that the Council of Ministers is the highest executive authority of the Federal Government and consists of the Prime Minister, the deputy prime minister(s), ministers, state ministers and deputy-ministers. Article 100 recognizes the prime minister as the head of the federal Government and provides the premier the powers to appoint and dismiss members of the Council of Ministers. The executive powers shared by the offices of the president and the prime minister that are enshrined in the
provisional Constitution of Somalia coupled with weak public institutions at embryonic stage creates perpetual conflict posing political threat to the peace and state-building in this country. Protsyk (2006) describes intra-executive conflict as a political competition between the president and prime minister over the control of political resources available to the executive branch of government. In this situation the president and the prime minister contest over individual appointments to cabinet and other government positions made by the other side or try to dispute decision about dismissals of government officials (Protsyk, 2006). This is true in Somalia where the intra-executive with weak parliament and absence political party system has complicated functions and independence of the cabinet. The existing clan based Parliament normally takes sides and mostly in favour of the President. As a result, parliamentarians also become part of the problems as they usually propose motion for ‘vote of no confidence’ against sitting Prime Minister. In Somalia, the Premier is neither a leader of party of majority in Parliament nor is he a leading figure from opposition, but the Prime Minister is a technocrat selectively appointed by the President and approved by Parliament through open vote of confidence. Paradoxically, the Constitution gives the President the powers to nominate a Premier of his choice, but bars the first to dismiss the latter. This manifests about the need to forming responsible political parties that can transform country from the culture of competition and instability to cooperation and compromise. The establishment of political parties will partially address prevailing cabinet instability as the premier will come from the party that won majority seats in the federal parliament. In order to reverse this power struggle problem between top offices, institutions and actors, the review and implementation commission (RIC) must work with constitution review and implementation oversight committees of the parliament, ministry of constitutional affairs and all the other institutions, political stakeholders and interest groups at local, regional and national level to deliver. Articles 133 and 134 mandate the RIC and oversight committee of the parliament to conduct review of the provisional constitution and complete the process of amalgamating all views and concerns from the citizens countrywide into a single document before August 2016. Without reviewing the constitution and addressing factors igniting power-struggle between different constitutional offices, contestation, recurrence of armed conflict, dwindling of public institutions, droopiness of civilians, government loss of legitimacy and sovereignty will be inevitable.

2.2 Formation of Federal member state

The formation of new federal member states triggered many inter or intra clan conflicts and political struggle between contenders from different clans and between federal government and political elites. The process of forming new federal states has been characterised by elite dominations, sycophancy and reward of personal loyalties by the top leadership of the federal government and external actors too. Hence formation of new states has so far widened inter and intra clan mistrust and conflict as the process disregarded the much needed reconciliation and consensus building. According to Skepstrom and Nordlund (2014), the on-going state formation process is an ad-hoc process with no mutual agreement between the emerging federal units and the FGS. There is also a risk that all that will be achieved is an agreement between narrow interest elites in the regions and the federal central government. This could clearly become elite capture, and a solution based on personal loyalties and connections. According to how peace-building objectives are defined, engaging the elite is part of the process but the process must be made more inclusive over time (warsame, 2015). This is a contravention to article 50 of the provisional constitution which
concerns on the principles of federalism in the republic. Clause (a) and (b) of the same article clearly specify that every level of government shall enjoy the confidence and support of the people while the power is given to the level of government where it is likely to be most effectively exercised. Unfortunately the opposite has been the reality in the new Jubbaland and south-west states.

Moreover, the provisional constitutional has many silent areas, gaps and vaguely written provisions and as a result the constitution has so far provided very little solution to many challenges caused by the protracted conflict and lack of strong governmental institutions at local, regional and national level. For instance, Article 49 of the constitution which concerns about the number and boundaries of the federal member states and districts in the republic is one of the vaguely written and repetitively breached articles in the constitution. Clause five (5) of the same articles presuppose Federal Member State boundaries shall be based on the boundaries of the administrative regions as they existed before 1991, yet clause one (1) up to four (4) talk about formation of the boundaries and federation commission (BFC). Furthermore, Clause six (6) of the article 49 stipulate that based on a voluntary decision, two or more regions may merge to form a Federal Member state, but the article is silent about the prerequisites and process required from regions forming new federal member state. This has created misinterpretation on the provisions of the article leading to political contestation between the feeble federal government institutions and elites pushing for establishment of clan based regional states.

Using provisions in article 49(1) and also article 111E of the new provisional constitution, federal government of Somalia was contending that formation of regional states is unconstitutional as the parliament did not pass legislation for BFC, which is an independent Constitutional body. Because of this reality, the formation of the new federal member states coupled with absence of competent national institutions, social reconciliation and distrust all pose many legal and political challenges of which the government is required to address. IDLO (2012) contends that the two of the most challenging issues must be addressed as implementation of the constitution goes forward are reconciliation and political reconstruction, and institution-building.

The constitution review should streamline the process of forming new federal member states and provide a forum for the negotiation of solutions to the divisive or contested issues that led to violence. It can also lead to the democratic education of the population, begin a process of healing and reconciliation through societal dialogue, and forge a new consensus vision of the future of the state (Kirsti, 2006). Therefore, RIC and oversight committee of the federal parliament have many roles to play in review of the provisional constitution while initiating a sustainable solution to current political impasse.

2.3 Distribution of Economic Resources

Another contentious area in which the constitution fails to provide the necessary details is how the economic resources in the post conflict Somalia would be shared. Ever since the collapse of the central government and prevailed turmoil, international aid has become the main economic sources of the government. Mogadishu which is the capital city and seat of the federal government receives the largest portion of foreign aid for humanitarian relief, reconstruction and development for the country. Attributable to lack of equitable distribution of resources many communities and regions at periphery belief that without equitable and fair distribution of international assistance for reconstruction and development, grievances from communities far from Mogadishu and its surrounding areas will persevere. Article 50 clause (d) and (e) of the provisional constitution
articulate that every part of the Federal Republic of Somalia shall enjoy similar levels of services and a similar level of support from the Federal Government and resource shall be fairly distributed. Astonishingly, the provisional constitution has no other provisions unequivocally indicating about types of resources that need to be fairly distributed. Additionally, provisional constitution is silent about the modality of equitable distribution of economic resources. However, building sustainable and positive peace is more or less impractical in an environment of discrimination and uneven access to public goods. According to Michelle (2013), a sense of injustice is aroused when individuals come to believe that their outcome is not in balance with the outcomes received by people like them in similar situations. When people have a sense that they are at an unfair disadvantage relative to others, or that they have not received their "fair share," they may wish to challenge the system that has given rise to this state of affairs, (Michelle, 2013).

Because of the poor governance and failure of the federal government to fairly distribute resources, mistrust between different groups in the country ensued. Therefore, economic distribution has become a bone of contention which must be addressed should peace and good governance in Somalia be restored. The RIC, oversight committee of the parliament, other concerned institutions and stakeholders need to fast truck the process of reviewing the constitution, so as to ensure that all the thorny issues in the document including the fair distribution of resources are adequately tackled. Furthermore the powers of different level of government pertaining to extraction, exploitation and management of natural resources remain blurred and source of dispute. The institutions and offices mandated to review the constitution should be able to determine the powers of different level of the government regarding to distribution of resources.

2.4 Powers Of Different Levels Of Government

Federalism is defined as a division of power between the national federal government and sub-national state. Despite the fact that Somalia adopted federal system of government as a model for power-sharing, decentralization and restoration of national unity, there are still many scholars who persistently question about the viability of federal system of government of which termed it as very expensive, divisive and unsustainable. However, the powers of national and sub-national governments are vaguely defined in the provisional constitution. Article 54 of the provisional constitution articulates that allocation of powers and resource shall be negotiated and agreed upon by the federal government and federal states. It is worthy to note that the federal model in Somalia remains blurred as the various roles and powers of national and sub-national government are yet to be agreed (Hersi, 2014).

Article 54 of the provisional constitution mentions four exclusive powers of federal government. According to this Article of the constitution the exclusive powers and responsibilities of the federal government are: national defence; citizenship and immigration and monetary policy. However the provisional constitution is silent about the powers of the federal member states and concurrent or shared powers between federal government and federal member states. This has created turbulent relationship and perpetual conflict between the federal government and federal member states. The exclusive and concurrent powers of the different levels of governments in Somalia are explicitly and comparatively illustrated in the graph 1: below. This graph captures issues of concurrent powers shared between two levels of government which include among others: management and protection of environment and water resources; peace and security; safeguarding national sovereignty; election; taxation and revenue generation; economic distribution; protection of human rights; trade and investment; maintaining law and order; reconciliation and public dialogue.
The absence of policies and laws unambiguously demarcating powers and roles of different level of government and vagueness of the provisional national constitution has opened a Pandora box as the political elites make use of gaps in the constitution which reignited bickering and clanism. The formation of sub-national federal units has created more problems than solutions as each and every clan or sub-clan is determined to become majority or powerful and determining constituent in the formation of new states. Article 49 (6) of the provisional national constitutional stipulates, two or more regions may merge to form Federal Member State. But different actors in the political divide interpret the same Article differently causing confusion and ignition of clan animosities and contestations. Additionally, the absence of constitutional court in the national and sub-national states have further enabled contenders to mobilize their support along clan lines which flames clan centric emotions and fierce power struggle. It is worth to mention that without the parliament passing of the necessary laws specifically written to demarcate the limits of power of the national and sub-national governments, federalism will become curse to Somalia. In order to address problems emanating from undefined powers and responsibilities of different levels of government in Somalia, the constitution need to be reviewed. Without proper review of the provisional constitution, the vision for holding 2016 representative election in Somalia will become illusion.

### 3. Election in 2016

The term of office of the federal government will expire in august 2016. One major task of the federal government was among others to reform and rebuild public institutions with the intention of materializing representative election in all regions and districts in Somalia. Notwithstanding the desirable public reforms were extremely slow and limited, the Somali people have not lost hope and desire to elect their leaders at local, regional and national level. Moreover, the tasks necessary for holding free and fair popular election including creation of national independent electoral commission (NIEC), passing electoral laws, restoring peace and security in all regions and districts...
in the country, registration of voters, delimiting of constituencies and wards and regulation of political parties are yet to be accomplished. Article 47 of the provisional constitution articulates that the regulations concerning political parties, their registration, elections at the Federal Government level and the National Independent Electoral Commission shall be defined in special laws enacted by the House of the People of the Federal Parliament of Somalia. However the Article is silent about the election at federal member states and local levels. This is one of the many gaps in the provisional constitution which if not immediately addressed can perpetuate destructive centrifugal politics that might trigger recurrence of armed violent conflict, hardened positions, increased mistrust and finally disintegration of already seriously damaged hope for national unity of Somalia. Despite the aforementioned challenges the provisional constitution grants the NIEC powers and responsibilities to administer elections. Article 111G gives the NIEC the responsibility of managing elections for presidential and parliament level, registering of voters and candidates, delimiting of constituencies and wards, regulating political party system and settling electoral disputes. Additionally the provisional constitution mandates the NIEC to develop electoral code of conduct for the candidates and political parties and voter education. According to (Reilly, 2011) elections are very necessary for building peace and democratic governance in post conflict societies. He argues that competitive elections have become one of the instruments used not only to promote democracy but also to attempt to consolidate a fragile peace. In such cases, elections provide an inescapable means for jump-starting a new, post-conflict political order; for stimulating the development of democratic politics; for choosing representatives; for forming governments; and for conferring legitimacy upon the new political order (Reilly, 2011). In order to actualize the dream for popular election in Somalia, leaders and politicians from different clans and groups need to cooperate and build pre-election coalitions that transverse the clan concoctions and divisive politics. Using centripetal political arrangement promotes inter-clan alliance building and vote seeking strategies. Reilly defines centripetalism “as a political system or strategy designed to focus competition at the moderate centre rather than the extremes – primarily by presenting rational, office-seeking politicians with incentives to seek electoral support from groups beyond their own ethnic community” (Reilly, 2002).

Reilly claims that centripetal reforms instead seek to dilute the ethnic character of competitive politics and promote multi-ethnic outcomes instead. This means that, for instance, rather than focusing on the fair representation of ethnically defined political parties, centripetalists place a premium on promoting multiethnic parties and cross-ethnic activity instead. In so doing, they emphasize the importance of institutional designs which can encourage cooperation, accommodation and integration across ethnic divides, and thus work to break down the salience of ethnicity rather than fostering its representation institutionally (Reilly, 2002). In the case of Somalia, the federal government has to expedite the process of establishing the NIEC and other relevant legislations for genuine popular elections. These legislations should be designed in manners that proscribe mono-clannism in the political parties and competitions. Designing an electoral law (as well as a party law) that goes as far as possible towards mitigating social segmentation is a key element for peaceful elections (Kühne, 2010). In this way the new electoral laws in Somalia should be explicitly design to encourage inter-clan cooperation and multi-region outlook of the political parties. This is necessary for not only holding credible election but also restoring broken relationships and sustainable peace in the country.
3.1 Approaches For Mini Election Model In Somalia

Figure 2: Approaches For Mini Election Model In Somalia

3.2 The Electoral Policies And Code Of Conduct

The NIEC to develop policies and procedures is necessary for not only holding credible representative elections but also and more importantly restoring public legitimacy of the government while strengthening peace and democratic governance in Somalia. These policies are ought to design the type of political parties needed in Somalia. This means that political parties are key in both materialization of credible election and maintenance of peace and social cohesion in Somalia as the country is recovering decades of unrest and political turmoil. The electoral policies must set the system for holding reliable elections at local regional and national level. According to UNDP, (2010) the electoral system determines the ‘rules of the game’ under which elections are held. Such rules, importantly, determine strongly who will be included and excluded in governing coalitions following electoral events. UNDP further observes that electoral systems have strong effects on how many parties are formed, whether and when they may coalesce or break up, their prospects for gaining power, and various social divisions that might exist within any given political community. Electoral systems can influence the way party’s campaign and the way political elites behave, thus helping to determine the broader political climate; and they can provide incentive for parties to be broadly-based and accommodating, or to base themselves on narrow appeals to ethnicity or kinship ties (IDEA, 2005). The electoral system is vital for protecting the rights of minority groups by allotting certain percentage to them. Considering the good representation of minority groups in the 4.5 clan power-sharing model being practiced in Somalia, the new electoral system should empower people not only to elect their leaders but also preserve the representation of minorities. Depending on the specific local requirements, the electoral system can

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be used to promote a range of peace-building priorities such as guaranteeing seats to minority groups, strengthening local autonomy, or providing for a smooth, easy-to-administer electoral process. However, each system also has drawbacks that must be taken into consideration (Tobias, 2008). Additionally, the policies and electoral system should provide incentive to cooperation and coalition building where politicians from different clans team up and design pre-election power-sharing pacts and seek votes across clan divisions. Reilly (2002) observes that electoral rules make politicians reciprocally dependent on the votes of members of groups other than their own, and more broadly the need to promote multiethnic political parties and other representative bodies. Specific institutional devices to achieve this outcome include the use of preferential or cross-regional electoral systems, political party laws which require multiregional and multi-clan party organization and legislative selection procedures which encourage median, centrist outcomes. Reilly further argues that institutions which give parties and candidates electoral incentives to pool votes across ethnic lines. The centripetalism system can encourage vote-seeking politicians to reach out across the ethnic divide and, in so doing, help to take the heat out of ethnic politics. The other benefit of the centripetal politics is significance of coalition government where the president appoints a prime minister from coalition of political parties that won the majority of the parliamentary seats. Although the president has the prerogative to appoint the premier from coalition that garnered majority seats in the parliament, the president has the obligation of strictly adhering to the spirit of power-sharing concerning clan, regional and gender balances. Dreef and Wagner (2011) observe that providing incentives for candidates to campaign for the votes of members of other ethnic groups, electoral systems can encourage interethnic bargaining and promote accommodative behavior. They argue that centripetalism favor systems of preferential voting such as the Alternative Vote (AV). This system requires voters to rank all candidates in order of preference, instead of declaring only their first candidate of choice. As candidates are reciprocally dependent on the votes of members of ethnic groups or clans other than their own, the system provides a strong incentive for candidates to broaden their support base beyond their own ethnic group or clan and to form pre-electoral inter-ethnic or inter-clan coalitions in order to gain election (Horowitz 2003, In Dreef and Wagner, 2011). Alternative Vote is a plurality-majoritarian system. The main problem of using such a system in divided societies is that it may produce highly disproportional results and may lead to permanent minority exclusion. However, using AV system alone may not be suitable for Somalia case as it may alienate the minority group representations. Therefore, the use of hybrid-system where both consociationalists proportional representation that protect minority rights for representation and centripetalistic ranking system in which the utilization of AV method become necessary voting procedure can be appropriate for the contemporary Somali electoral system. The electoral system should also provide clear guidelines and justification on the number of national parliamentary seats allocated in each district of the republic.

3.3 Determining national parliamentary seats
Situation in Somalia is very unique which demand unique and well thought solutions. There are a number of factors that require one to consider before determining the constituencies and wards in each district. There are three main challenges that impede the required process of mapping parliamentary constituencies in each district. The first is limited access as country is facing serious security threat from Alshabab militants. Despite the fact that the Somali national armed forces (SNAF) with the support of AMISOM troops managed to recapture number of districts from Alshabab, the militants are using all the brutal guerilla warfare tactics including blockading all the
routes, conducting hit and run assaults, disruption of movements and logistical supplies, use of human persons and vehicles loaded with improvised explosive devices (IEDs) to carry out deadly and indiscriminate suicidal attacks against almost everybody including civilians allegedly perceived to be not supportive to their cultic and dogmatic ideology. Any attempt of organizing representative election in Somalia will definitely attract Alshabab’s warmongering and lethal strategies against public participation in efforts for state-building and peace-building in Somalia. The second challenge is that the protracted armed conflict highly divided communities into different clans and sub-clans causing infinite competitions over power and resources. The segmentary structure and fluidity of the clan system further makes the process more tedious and time-consuming. The third challenge is about the timing as the term of the federal government is expiring in August 2016 and election is supposed to be held before the end of the government term in office. The perquisite tasks for election including establishment of the electoral management bodies at regional and district level and voter registrations are yet be accomplished. Because of the limited time, it is not feasible to exhaustively complete all the necessary tasks. Taking all the aforementioned challenges, it is plausible to suggest an alternative way of conducting representative election in Somalia without necessarily extending the term of the government. Despite the fact that there are serious impediments for expected 2016 general election, formulating workable strategies aimed at reaching the same purpose is necessary. Rationale behind this innovation is that the people of Somalia have the right to decide on the government they want to lead the country from peace-building to state-building and this can only be achieved by elections that are as democratic as possible (Skeppström and Nordlund, 2014).

Table 1: Proposed Number of Federal Parliament seats for district B and C categories, capital city, women, minority groups and persons with disabilities.

<table>
<thead>
<tr>
<th>No of B districts</th>
<th>Seats per B District</th>
<th>No of C districts</th>
<th>Seats per C districts</th>
<th>Districts in Mogadishu</th>
<th>No of seats per district</th>
<th>No of seats for Mogadishu</th>
<th>Total seats for B districts</th>
<th>Total seats for C districts</th>
<th>Total seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>4 (1 for women)</td>
<td>57</td>
<td>3 (1 for women)</td>
<td>16</td>
<td>2</td>
<td>32 (10 women)</td>
<td>68</td>
<td>171</td>
<td>271</td>
</tr>
</tbody>
</table>

Minority groups and persons with disability quota in federal member states

<table>
<thead>
<tr>
<th>No of states</th>
<th>No of seats per state</th>
<th>No of seats for minority groups in a state</th>
<th>No of seats for disabled in a state</th>
<th>Totals seats in all the states</th>
<th>seats for Mogadishu</th>
<th>Seats for minority in Mogadishu</th>
<th>Seats for Disabled in Mogadishu</th>
<th>Total seats in all the states</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>35</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>37</td>
</tr>
</tbody>
</table>

Total seats in the new national federal parliament (lower house) 308

Seats for upper house or the senate

<table>
<thead>
<tr>
<th>Number of regions</th>
<th>Number of senator per region</th>
<th>Total number of senators in the country</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>54</td>
<td></td>
</tr>
</tbody>
</table>

As per the table above, the number of seats in the federal parliament can be increased from current 275 to 308. This proposal is based on the fact that the 4.5 power-sharing model currently being
practiced in Somalia has been criticized on the grounds that the same institutionalizes segmentation and clan cleavages. The proposal tries to protect rights of women, minorities and persons with disabilities by preserving seats for them. In this regard, women will get 31% of the total parliamentary seats which is higher than the current 14%, followed by minority groups who are reserved for 7% while the persons are also allocated 4.5%. Additionally the seats for Mogadishu will be 11% of the total seats in the federal parliament. Before the eruption of the civil war Mogadishu was a cosmopolitan city where good number of all clans in Somalia reside. Due to the civil war many clans were pushed out of Mogadishu and as a result one clan by the name Hawiye has become dominant in the capital city. In order to restore the lost glory of the city and to balance clan representations, the seats in Mogadishu should be subject for more negotiations and bargaining between different clans and political actors as the seats of the capital city cannot be for one clan only. Moreover, Political parties or the coalitions should also appoint numbers of parliaments in the minorities and persons with disability from each of the seven (7) federal member states. Again proportional representation of clans and rights of minorities has to be considered. Further the constitution creates a bicameral system where there is upper house or a senate and lower house or federal parliament. Three (3) Senators are for each of the 18 regions in the country.

The representative election will require little resources compared to the popular elections which are very expensive. Furthermore, the representative election will not require mapping of constituencies and wards in each of the targeted districts. Again, holding the representative election will only require registration of representatives of each group of the community the targeted districts. However, like other conventional elections, the representative election cannot be materialized without proper use of civil society organizations (CSOs) to conduct civic education and active media involvement in the dissemination of information about the election process, procedures and benefits for peace and state-building. Public engagement and participation is critical for any successful election for conflict divided communities in Somalia.

### 3.4 Civic Education

According to Freida M’Cormack (2011) civic education (CE) can be defined as ‘the provision of information and learning experiences to equip and empower citizens to participate in democratic processes. The education can take very different forms, including classroom-based learning, informal training, experiential learning, and mass media campaigns. The civic education is one of the key strategies for any successful election. Since, the country experienced decades of chaos and instability, election is very new development to many Somali citizens. In view of the above, civic education for the proposed representative election will be very necessary for not only increasing public consciousness but also diffusing possible tensions and clan competitions. According Daniel, and Linda, (2010) CE is the linchpin to turning a society away from violent conflict and toward creating productive political relationships, through which disagreements can be negotiated non-violently. The importance of citizenship for peace-building is tied to the idea of developing the state as an object of primary loyalty, so that citizens of a state are motivated to seek the common good of society and possibly be willing to make sacrifices for other citizens. Engaging CSOs in the public education for peaceful, free and fair representative election will be very instrumental for psychologically preparing the electorates while creating a conductive environment for actualization of the process. Through the CE, the electorates will be given the essential information about number of seats in their respective district and how to elect good, responsible and development oriented leaders at local, regional and national levels.
Civil society organizations (CSOs) play an essential role in promoting political participation by educating people about their rights and responsibilities and in the context of National Elections in delivering non-partisan civic and voter education (UNDP, 2006). The CE enables the citizens to appreciate the values of dialogue, negotiation, compromise, tolerance, diversity, democracy, good governance, accountability, participation, rule of law and in the end it promotes a culture of constitutionalism (Katusiimeh, 2008). There are well established NGOs and media outlets in every district in Somalia. Therefore, the NIEC use of CSOs including NGOs and media outlets in each district can create good synergy between the state and non-state actors in the country. The role of CSOs is to inform the citizen about electoral process and their inviolable constitutional rights and duties as the citizen of the country. CE seeks to give citizens the understanding and the habit of engaging in such a nonviolent contest to participate constructively in politics and, more broadly, civic life and service to the communities (Daniel, and Linda, 2010). The citizens are given opportunity to understand the role of their district constituency assembly (DCA) how to select responsible representatives who on their behalf can elect the leaders at local, regional and national levels.

3.5 Reconciliation And Consensus Building

The NIEC closely works with the truth and reconciliation commission (TRC) to organize and facilitate district conciliation conference. Additionally the NIEC creates her devolved structures effectively functioning and implementing work of the commission at district level. NIEC may also engage highly respected experts and representatives of civil society organizations working in the area. The NIEC and TRC form technical committee whose primary responsibility is to organize and facilitate district level clan reconciliation and dialogue where all groups and stakeholders in the area attend the meeting. Additionally, the technical committee should provide backstopping support to ensure that the process is satisfactorily achieving its desired objectives. However, NIEC plays key role in implementation of electoral processes. It also prepares different pass-cards for the candidates, the press and observers while also ensuring that the biometric records and computerize system on the DCA members are collected and properly restored.

The reconciliation conference enables the participants to discuss thorny issues about the past occurrences, more specifically about grievances from different groups and the need to address historical injustice and crimes committed against any of the local clans and sub-clans. The conference deliberates about the need for collaborative efforts which focuses more on future than past. Through the support of technical team, the participants are given the chance to negotiate about the election of leaders at local district councils and members of Parliament at the federal member state and national level, senators from their regions and the president of the republic. Using clan structures such as ‘Dia’ paying group and other locally acceptable traditional formula, different clans and sub-clans should agree on how to share power of electable and nominated positions at district, regional, sub-national and national level. For this purpose, the conference determines numbers and roles of different clan elders who may be assigned to contribute the selection of candidates for the various positions at district, Parliament of the federal member state and national parliament. The conference agrees and endorses the formation of inclusive district constituency assembly (DCA). The composition and representation of the DCA is based on the proposal consensually agreed by the reconciliation conference but the selection is at discretion of the different group leaders and traditional clan elders who endorse proposed names for DCA from each district group leaders.
3.6 Formation Of DCA And Election Processes

The group leaders closely work with the traditional elders who are mandated to fulfil this critical assignment. The selected DCA members represent all groups and clans that reside in the targeted district. The elders have oversight of the selection of DCA and their role is to ensure acceptable clan-based power-sharing formula has been followed and clan balances are strictly observed. Using the same power-sharing arrangement, different clan-sub-clan elders work with group leaders to nominate their quota to the DCA. The DCA comprise of women group representatives, youth, traditional elders, religious, business and minority groups.

<table>
<thead>
<tr>
<th>Elders</th>
<th>Religious leaders</th>
<th>Youth group</th>
<th>Women groups</th>
<th>Business group</th>
<th>Minority Group</th>
<th>Total DCA members</th>
</tr>
</thead>
<tbody>
<tr>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>510</td>
</tr>
</tbody>
</table>

Number of DCA that will vote in the whole country

<table>
<thead>
<tr>
<th>Elders</th>
<th>Religious leaders</th>
<th>Youth group</th>
<th>Women groups</th>
<th>Business group</th>
<th>Minority Group</th>
<th>Total DCA members</th>
</tr>
</thead>
<tbody>
<tr>
<td>7650</td>
<td>7650</td>
<td>7650</td>
<td>7650</td>
<td>7650</td>
<td>7650</td>
<td>45,900</td>
</tr>
</tbody>
</table>

All of these groups are equally represented while the number of DCA members may vary from district to another depending on decision of district reconciliation conference. DCA member is selected on the basis of his/her credibility, knowledge, clan representation, gender and disability. The traditional clan elders are also authorized by the NIEC and reconciliation conference to select and propose at least three (3) qualified candidates for each position at district councillors and members of parliament in sub-national and national level. All candidates must have a letter of appointment from a political party and they must show interest by applying the position in writing. Elders selecting candidates from different posts are given clearly written selection criteria for the candidates vying to the district council, sub-national and national Parliaments. This criterion should state the conditions necessary for any one candidate to fulfil. The criteria also sets the minimum requirements of experience, level of education and other qualifications including ethics and integrity required from the public officer. The NIEC technical team organizes and facilitates briefing meetings attended by elders and members of DCA where the NIEC criteria for selection of candidates and related conditions are clearly elucidated. The NIEC receives a list of candidates from group leaders and the traditional elders of various clan-sub clans in the area. NIEC forms at least two (2) working groups namely registration and verification committee and election committee. The primary responsibility of registration and verification committee is to check whether the proposed candidates fulfil the selection criteria. It is the sole discretion of the committee to reject and ask for replacement of any candidate that may fall below the threshold of the selection criteria. This committee also enforces election procedures including among other candidate’s declaration form which commits all contenders to accept the result of the election while avoiding organizing or participating in any sort of violence. The election committee also handles ballot papers and boxes for the district councillors, Members of Parliament at sub-national, national, senatorial and presidential level.

3.7 Local Elections

Using the secret ballot, the DCA first starts the election of district councillors. Three candidates compete for each seat for the district council. Any of the aspirants that garner more than 50% of the votes casted is declared as the winner by the chair of the NIEC team in the district. International
observers also witness and report the validity of this representative election. The media makes live coverage on this competitive process and its results. NIEC should use an online system where viewers can transparently follow the progress of the election.

When election of all positions at local, sub-national and national levels are over, the district councillors are inaugurated and oldest councillor automatically becomes the interim chair of the new council. In a period not more 3 working days, the councillors elect their chair who is also the district commissioner (DC)/mayor, deputy mayor and executive secretary through secret ballot. Any candidate that receives more than 50% of the votes casted is declared the winner for the seat. Additionally, the DC appoints district technical team or the secretaries for different offices and comes up with his/her district budget for development and stabilization plans. The district council has the power to approve, reject or amend the district development and stabilization plans. Using electoral procedures and best practices, the district councillors elect members of regional councillors representing them in their respective district. Equally, the regional councillors shall elect a regional governor, deputy governor and regional executive secretary. Using a locally acceptable power-sharing arrangement, the governor appoints professional regional technical team/coordinators and develops regional development and recovery plans while seeking approval from regional councillors. The regional coordinators supervise and coordinate the work of district secretaries to implement priorities identified in the development and recovery plans. The principal duties of technical staff is to carry out technical administration of the regional and district councils, collect, analyze and disseminate technical information, offer technical advice to councillors, and implement Government and Councils’ programs and projects in their areas.

3.8 Election Of The Mps, Senators And The President Of The Republic

The NIEC receives and screens the list of candidates for Member of Parliament of the sub-national state and national federal parliaments. The elders submit three contenders for each seat to seek votes from DCA. All the contenders must possess an appointment letter from their respective political party, endorsement letter from clan traditional elders and letter of eligibility from NIEC. Each candidate for sub-national and national parliaments is also required to submit detailed CV and an application for the position he/she is contesting to NIEC secretariat in the district. Using secret ballot, DCA members elect Members of Parliaments of different levels of government representing their district. Any candidate who receives more than 50% of the votes casted in the ballot box can be declared as the winner by the chair of the NIEC team in the district. The international observers are present in the location which the election is taking place. Media groups are also doing live coverage throughout the process of the election and the announcement of the final result. The MPs elected move to capital or seat of the parliament of sub-national and national level to be inaugurated and to elect their speaker and deputy speaker (s). In the sub-national parliament MPs are required to organize the election of the president and his/her running mate. The president and his running mate/deputy at sub-national level are elected through competitive and transparent election in the floor of the house. Thereafter, the elected president of sub-national federal government starts consultation with all stakeholders and different clans in the region for to select inclusive and competent men and women that can move the state to the next level. Considering the views and advises from different political stakeholders, clan representatives and challenges facing his government, the president appoints his cabinet based on either pronounced or unpronounced acceptable power-sharing arrangement. The president brings his/her cabinet and program to a session of the parliament where honourable members of the assembly give their vote of confidence
for the new council of ministers and their program. The government headed by democratically elected president and deputy president is legitimate as it has a functioning governance structure that exists from the capital city to the lowest administrative unit of the federal member state. The government’s executive program must address the socio-economic, political and geographical needs and realities of the state. This democratic and legitimate government replaces the old chaotic interim administrations.

In the election of the senators and president is organized and held after MPs from different parliaments are elected. Just as was the case of other competitive positions, the president and senators are required to sign a declaration form where they show their commitment on accepting the result of the election while abstaining to cause or help any sort of violence. Additionally the runners for senatorial and presidential position are needed to have letters of appointment from registered political party or a coalition of parties and the letter of eligibility from NIEC. The contestants are given the opportunity to address DCA members and present their programs. The DCA elect senators and the president using ranking system where the voter lists his/her preferences from first to third choice. This AV is a majoritarian system used in single-member electoral districts that encourages cooperation, bargaining and compromise instead of competition and conflictual approaches from contenders of different clans. Any candidate that won the absolute majority of the votes casted by the members of DCA or electors in the district will be announced as a winner. If no candidate has an absolute majority of first preferences, the candidate with the lowest number of first-preference votes is eliminated and his or her ballots are redistributed to the remaining candidates according to the lower preferences marked (Reilly, 2002). The international observers witness and report the validity of the election methods, processes and outcome. The media houses are present in the location where the election is being conducted and making live coverage. Similarly the NIEC is also using computerised online system where the viewers can easily follow the voting processes and declaration of the final result for the senators and the president of the federal republic.

At the end of the election, NIEC announces the performance of different political parties in relation to number of national parliamentary and senatorial seats. Based on the percentage of seats in the parliamentary and the senate by different parties, the NIEC declares number of seats for minority groups and persons with disability available for nomination of different political parties. As a result 37 MPs from minority groups and persons with disabilities in seven (7) federal member states are nominated. The MPs of the federal national parliament and the senate elects their speaker and deputies.

On the other hand, president appoints a prime minister from the coalition that won majority seats of the parliament. The new prime minister appointed by the president must not come from the clan of the president and that of the speaker of the national parliament. This is to observe the spirit of power-sharing and clan political representation. The prime minister appoints his cabinet and becomes head of executive branch and government business. In this order, the president is the head of state elected by the citizens and responsible in the coordination of three (3) arms of the government while the prime minister is both a member and the majority leader of the parliament as opposed to the current handpicked and powerless premier. Hence the political wrangling and cabinet instability is reversed. The rationale behind the establishment of this system is to thwart nurturing all powerful and imperial president of the republic which can easily trigger conflict while also creating checks and balance of power in this post-conflict institution building period.
4. Conclusion

Attributable to the prolonged armed conflict and resultant disarray, the people in Somalia cannot directly elect their leaders. Traditional clan elders were in many occasions to select members of parliament who in turn elected the president of national and sub-national level. This means that citizens have not participated in any election in the last 4 decades which caused to lose faith on the government at all levels of local, regional and national. UNDP (2010) observes that if the population is excluded from the electoral process, the resulting system of governance can suffer from a lack of legitimacy, accountability and sustainability, particularly in fragile democracies or post-conflict environments. Furthermore, in order for a newly democratized nation to address its past and move towards a shared future, full participation of the society, including those who are victims of the conflict, is critical. Enfranchisement of the displaced is an important stepping stone towards transcending the wounds of conflict and moving towards sustainable peace and reconciliation. This essay attempts to correct the governance related crises that have been perpetuated in the post-civil war Somalia. This can be done by adopting the centripetal system where formation of multi-clan coalitions becomes necessary denominator for political culture in the new Somalia, the expectation is to rebuild trust and restore the broken relationship of different clans and political actors.

The proposed electoral system has the potential of transforming the country from political warlordism to tolerant, accommodative and decent politicking. Having one election time in whole country where citizens are given the opportunity to elect their leaders from lowest administrative unit to the president of the republic is very crucial step towards nation and state building. The materialization of this system will consolidate peace and stability. This is not only necessary to empowering the citizens to elect their leaders, hence promoting accountability of the government to the governed but also restoring trust towards the government. The proper use of this system will certainly create consistency in the country as it has the likelihood of generating national sentiments, pride and nationalistic visions. The system also creates an atmosphere of inter-dependency between different political actors at local, regional and national levels, as their need for support of other becomes evident to them. This also addresses the perpetual conflict between the federal government and federal member states who behave as if they are other independent and sovereign countries. The system attempts to protect rights of women and minorities the political representation by devising fair quota for these groups.

About the author

Abdullahi Mohamed Hersi is a PhD candidate and wrote thesis on: ‘The politics of power-sharing and the management of intractable clan conflict in Somalia’. Hersi is Somali Peace, public policy and governance expert based in Nairobi Kenya.

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