



REPORT

SOMALIA'S TROUBLED TRANSITION: VISION 2016 REVISITED

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EXECUTIVE SUMMARY

Somalia is politically in far better shape than when President Hassan Sheikh took office in 2012, but much of that progress threatens to unravel as the country lurches toward an uncertain and ill-prepared political transition in August 2016. The federal government's transitional framework, known as Vision 2016, has made fitful progress and is now years behind schedule. Political infighting and lack of political will account for much of the delay, but the Provisional Constitution – upon which Vision 2016 is based – is so incomplete and incoherent that it would be virtually impossible to implement under the best of circumstances. Consequently, with less than 18 months remaining in the federal government's term of office, it has become increasingly clear that plans to hold a credible constitutional referendum and direct elections by August 2016 are no longer realistic.

The greatest challenges posed by the Provisional Constitution relate to sequencing. Most core transitional tasks, such as the constitutional review process and the formation of independent commissions, require the involvement in some form of either the Federal Member States (FMS) or of the Upper House of Parliament, which represents FMS' interests. At present, only one FMS exists, the Upper House is yet to be constituted, and the modalities of how it should be constituted are not laid out in the Provisional Constitution. This scenario presents a serious dilemma: whether to delay these tasks until after all of the states are formed – and risk running out of time – or to proceed in the absence of the FMS and risk potential political and legal challenges from the member states when they are eventually formed.

In 2013 therefore, the Somali Federal Government (SFG) rolled out Vision 2016 in an attempt to translate the Provisional Constitution into an achievable and broadly acceptable framework for completion of the Constitution, development of the federal system, and election of a new parliament before the end of its term of office. Vision 2016 identified three “foundational elements” stipulated by the Provisional Constitution: constitutional review and implementation (considered in section II of this report); completion of the federal system (III); and democratisation (IV). It also proposed milestones and a timeline that would allow the transitional tasks to move forward in parallel and without delay, while at the same time respecting the need for formal consultation with the yet-to-be-established FMS. Progress however has been slow, and it is increasingly clear that even these critical objectives cannot be met. With less than 18 months now remaining in the current federal government's term of office, the space for an orderly political transition has narrowed dramatically.

The constitutional review process is dangerously behind schedule. The Constitutional Review and Implementation Oversight Committee has proven difficult to establish, leading the Lower House of Parliament to sidestep the Provisional Constitution and establish an ‘Oversight Committee’ of its own. The Independent Constitutional Review and Implementation Commission (ICRIC), established in June 2014, must now be partially reconstituted following the resignation of its chairperson in May 2015 and the decision to augment its membership with commissioners from the Federal Member States.

Greater progress has been made toward the formation of Federal Member States (FMS): since the establishment of the SFG in August 2012, two new Interim Regional Administrations (IRAs) have been established for Jubaland and South West Somalia – both of which aspire to become FMS. Dialogue intended to pave the way for two more IRAs in Central Somalia began in April 2014, but remains deeply controversial and is the source of social and political tensions in the area. The formation of these IRAs has already exposed a number of potential flashpoints in the statebuilding process, including the delimitation of state boundaries, inclusivity and representation within each FMS, and even the status of Mogadishu as the national capital.

Progress towards the formation of FMS is also engendering frictions between the federal government and Parliament over the allocation of powers and resources between FMS and the federal government. The completion of the constitutional

review process, the drafting of electoral and party laws, and other intricate issues requiring agreement between the SFG and FMS are also likely to become sources of contention and delay. The belated formation of the National Independent Electoral Commission (NIEC) and the Boundaries and Federation Commission (BFC) on 7 May 2015 may help to ease some of the inevitable strains that will emerge, although this will depend in large part on the degree to which they are able to establish their credibility, competence, and impartiality.

Overall, the kind of process that could simultaneously provide a political transition and the continuity of the institutions established in 2012 should focus solely on the most essential, non-negotiable aspects of the Provisional Constitution, and should achieve political consensus between the SFG, Parliament, and FMS, in order to minimize potential spoilers. Such a minimalist version of Vision 2016 could rest on the following requirements: the new President should be elected by a joint vote of the two House of Parliament, the Upper House should be constituted of representatives of the FMS, and the House of the People should be reconstituted.

Arguably the most encouraging sign of progress has been President Hassan Sheikh's decision, in February 2015, to convene a "Somali Leaders Forum" including the leaders of Federal Member States and Interim Regional Administrations. This body, which met for the second time in Garowe in May 2015, represents the first meaningful indication that the SFG leadership may honour its commitment to practice consultative and inclusive politics in the implementation of Vision 2016. Indeed, the initial deliberations of this forum hold out the promise of genuine consultation, negotiation, and compromise between Somalia's principal political actors over the coming months. It remains incomplete and much confidence-building will be required should it fulfil its stated purpose, but since a constitutional solution to Somalia's looming transitional crisis appears increasingly remote, a political settlement between these parties by August 2016 may be the only way to keep Somalia on the path to recovery.

I. INTRODUCTION

1. Political Background

Almost three years have passed since the Somali Federal Government (SFG) headed by President Hassan Sheikh Mohamud took office, and nearly fourteen years since the first Somali Transitional National Government was established in Arta, in neighbouring Djibouti. Somalia's arduous political transition, however, is far from over. On the contrary, the fast-approaching deadline of August 2016 for a constitutional referendum and direct elections is now almost certain to be missed, ushering in a new period of political uncertainty and turbulence.

In many respects, Somalia is better off today than when President Hassan Sheikh took office in 2012. Al-Shabaab, the jihadist movement that once dominated the entire southern part of the country, has been forced onto the defensive, its leadership weakened by drone strikes and its ranks depleted by defections. Incipient regional administrations have emerged in several parts of the country, suggesting the contours of a future federation, and the revival of Mogadishu as a commercial centre and hub for international air travel holds a promise of economic benefits beyond the capital city.

Peace, stability and economic revival however have yet to reach Somalia's hinterland. African Union (AU) forces – still the first line of defence against Al-Shabaab – remain besieged and embattled in isolated bases; many main roads remain hazardous for travellers; and in “newly liberated areas”, inter-communal rivalries and grievances that had been suppressed by Al-Shabaab have begun to re-emerge, often with deadly consequences.

Most disturbing, however, is the very real possibility that Somalia's fragile progress could be undone by mismanagement of the political transition in 2016. In theory, the formation of a new government should be guided by the country's Provisional Constitution, which charts a course towards a constitutional referendum, multiparty democratisation, and direct elections by August 2016. In practice, however, the Provisional Constitution is a dense, incomplete, and somewhat incoherent document that offers a roadmap so convoluted that it is arguably impossible to implement. Consequently, in 2013 the SFG rolled out Vision 2016 in an attempt to translate the Provisional Constitution into a credible, achievable and broadly acceptable framework for completion of the Constitution, development of the federal system, and election of a new Parliament before the end of its term of office. Yet progress has been sluggish, and it is increasingly clear that even such critical objectives cannot be met.

With less than 18 months remaining in the current federal government's term of office, the space for an orderly political transition is narrowing dramatically. Completing Vision 2016 by August next year would be a feat – in the words of one close observer, akin to “passing a Somali camel through the eye of a needle”. The steady trickle of optimistic pronouncements from federal leaders in Mogadishu is not only wearing thin, but is also misguided: hasty passage of new laws or constitutional amendments by the SFG and Lower House of Parliament would violate both the letter and spirit of the Provisional Constitution, and set the stage for a dangerous showdown with emerging federal member states.

In February 2015, President Hassan Sheikh Mohamud took the initiative of inviting the leaders of other Somali authorities to form a “Leaders Forum”, whose objectives include the joint implementation of Vision 2016. A follow-up meeting of this Forum, which took place in Garowe in May 2015, reinforced the role of the federal member states in the statebuilding process and emphasised the need for collective leadership. These seemingly modest steps probably represent Somalia's best hope for a peaceful and widely-accepted political transition in September next year: a “political compact” – in which Somalia's principle political actors shape the coming transition together through consultation, compromise, and, ultimately, reasonable consensus – is likely the only way to avoid a grave political and constitutional crisis.

2. Towards Vision 2016

Somalia's Provisional Constitution, completed in 2012 after years of deliberation and at a cost of millions of dollars, contains both the roadmap for Somalia's political transition in 2016 and its undoing. Indeed the Provisional Constitution is a convoluted document riddled with internal paradoxes that render its implementation all but impossible under the best of circumstances.

The greatest challenges posed by the Provisional Constitution relate to sequencing. Most core transitional tasks, such as the constitutional review process and the formation of independent commissions, require the involvement in some form of either the Federal Member States (FMS) or of the Upper House of Parliament, which represents FMS' interests. This scenario presents a serious dilemma: whether to delay these tasks until after all of the states are formed – and risk running out of time – or to proceed in the absence of the FMS and risk potential political and legal challenges from the member states when they are eventually formed.

In September 2013, in an attempt to translate this constitutional ambiguity into a coherent and achievable plan of action, the SFG began work on an initiative called *Vision 2016: A Framework for Action*. The plan immediately attracted criticism from some quarters¹ for being an externally imposed and unrealistic roadmap for “Jeffersonian representative democracy” in Somalia.² Yet *Vision 2016* sets no objectives that the Provisional Constitution does not itself prescribe. More importantly, perhaps, its authors were acutely aware that any deviation from the Constitution could both invite legitimate dissent and create opportunities for obstructionist behaviour by political spoilers.

Vision 2016 identified three “foundational elements” stipulated by the Provisional Constitution: constitutional review and implementation; completion of the federal system; and democratisation. It also proposed milestones and a timeline that would allow the transitional tasks to move forward in parallel and without delay, while at the same time respecting the need for formal consultation with the yet-to-be-established FMS. Perhaps most importantly, the SFG committed itself to the pursuit of *Vision 2016* in accordance with “the principle of political inclusion”, implying that it would not seek to monopolise the transitional process.

II. REVIEW AND IMPLEMENTATION OF THE CONSTITUTION

The cornerstone of Vision 2016 is the review and implementation of the Constitution, from which the elaboration of a federation and the design of a democratic political system must proceed. The constitutional review process however features some Escherian design flaws that make it virtually impossible to identify a point of departure or a cogent, linear sequence of actions.

The Provisional Constitution requires at least 12 articles to be amended and 22 laws to be enacted during the Federal Parliament's first term. The review process is to be led by an Independent Constitutional Review and Implementation Commission (ICRIC), acting under the auspices of a parliamentary Provisional Constitution Review and Implementation Oversight Committee. The amended Constitution must then be adopted by Parliament and approved by general referendum.

The criteria for the establishment of the Oversight Committee and the ICRIC are problematic since they presuppose the existence of the FMS and the Upper House of Parliament. Rather than postpone the review process indefinitely, until the FMS and Upper House are established, the SFG and the Lower House of Parliament or “House of the People” (HoP) opted to proceed nevertheless. Pragmatic though this decision may have been, it is a risky course of action that dilutes the legality of the process and sets a dangerous precedent for setting aside “inconvenient” sections of the Provisional Constitution.

In June 2014, Parliament approved a list of five nominees put forward by the Council of Ministers to serve on the ICRIC.³ However, the Commission is arguably incomplete since each FMS is also mandated to nominate a Commissioner. For political reasons, this formula was found to be unworkable, because only Puntland is currently recognised as an FMS

under the Provisional Constitution and the nomination of a sixth Commissioner by the Garowe administration would have upset the clan balance of the ICRIC. Instead, Puntland was invited to nominate the sole Commissioner from the Darod clan, maintaining total membership of the ICRIC at five.⁴

Almost a year since its formation, however, the ICRIC has been unable to begin its work in earnest.⁵ This is largely because the ICRIC, despite its name, is not truly independent: it takes its orders from the Provisional Constitution Review and Implementation Oversight Committee, which does not yet exist. Like the ICRIC, establishment of the Oversight Committee has been frustrated by the convoluted logic of the Provisional Constitution, which requires it to be constituted of five nominees from each House of Parliament, and one nominee from each existing FMS: the Upper House of Parliament, however, has yet to be established, rendering this clause inoperable. In its place, the Lower House of Parliament, or “House of the People” (HoP) has taken the initiative to set up a Constitutional Oversight Committee of its own. Yet how this Committee will function is unclear: any amendments to the Provisional Constitution must be “in conformity with agreements negotiated between the Federal Government and the existing Federal Member States and new Federal Member States”.⁶ Since no such agreements have been negotiated, and since the FMS (because most of them don’t exist) are neither represented on the Committee nor have been consulted on any proposed amendments, the constitutional review process has been proceeding in a legal and political vacuum.⁷

Such concerns should not be dismissed as legalistic carping: each deviation from the letter of the Provisional Constitution opens space for legitimate legal challenges and political dissent. Ultimately, the Somali Constitution will need the consent of the FMS if it is to enter into force. If the constitutional review process proceeds without the member states, and they do not agree with its outcome, then they will have ample grounds upon which to challenge it, or even to reject it outright.

III. COMPLETION OF THE FEDERAL SYSTEM

While the constitutional review process has slipped alarmingly behind schedule, Somalia has witnessed significant progress where it was perhaps least expected: in the development of the federal system. Since the establishment of the SFG in August 2012, two new Interim Regional Administrations (IRAs) have been established for Jubaland and South West Somalia – both of which aspire to become FMS. Dialogue intended to pave the way for two more IRAs in Central Somalia is already underway.

Efforts to create Federal Member States have not been without difficulty. Many Somalis are still deeply opposed to federalism as a system of governance for the country, believing that it will Balkanise and permanently weaken the Somali state. The Provisional Constitution offers little reassurance since it is deliberately vague about the shape and substance of a future federation, and leaves many critical issues to be negotiated between the central government and the FMS. Not surprisingly, stakeholders at all levels have seized upon these constitutional lacunae and ambiguities to advance their own, competing visions of how the federation should evolve. In the process, four principal areas of disagreement have begun to emerge: ownership; representation; boundaries; and the allocation of powers and resources.

1. Ownership

According to the Provisional Constitution, the number and boundaries of the FMS are to be determined by the HoP, based on the recommendations of the independent Boundaries and Federation Commission (BFC). It also affirms that two or more regions may voluntarily merge to form a Federal Member State, as long as they respect the administrative boundaries which existed before 1991. The Constitution however does not specify who within the regions possesses agency to effect a merger, nor does it address the procedure through which mergers should take place. The result has been confusion, acrimony, and occasionally violent contestation both between the emerging states and the SFG, and within the emerging states themselves.

Vision 2016 emphatically states that “the completion of the federal system should be achieved by dialogue and reasonable consensus and not by imposition or coercion”, but such noble ideals have often given way to baser and more bellicose dynamics. During the formation of the Interim Jubaland Administration (IJA) in 2013, tensions between the SFG and exponents of the IJA became so acute that Kismayo witnessed the most serious violence in several years, and the involvement of the regional intergovernmental bloc, IGAD,⁸ was required to force an agreement.

The Interim Jubaland Administration

Efforts to establish a regional authority for “Jubaland” – a territory comprising the regions of Gedo, Middle Juba and Lower Juba – predated the formation of the SFG by several years. In 2009, at the request of the Transitional Federal Government headed by Sheikh Sharif Sheikh Ahmed, the Government of Kenya had begun training an estimated 2,500 militia, as well as civilian administrators, to wrest control of the Juba Valley from Al-Shabaab.⁹ The primary objective of this initiative, which was spearheaded by the TFG Minister of Defence Mohamed Abdi Mohamed “Gandhi”, was to form a regional administration to be known as “Azania” that would cooperate in securing the long Kenyan-Somali border. A second, unstated aim was to undercut the aspirations of the Ras Kamboni militia, which was battling to capture the town of Kismayo, and in whose leader, Ahmed Mohamed Islam “Madoobe”, Gandhi perceived a political rival.

By the time Hassan Sheikh Mohamud succeeded Sheikh Sharif as Somalia’s president, Kenya had given up on the ill-fated Azania adventure and joined forces with Ethiopia, under the auspices of IGAD, to launch a more broadly based initiative in the Juba Valley. The SFG leadership, however, was distrustful of the initiative and demanded that it come to a halt. Mogadishu’s counter-proposal of a “bottom-up” process under its own leadership was perceived by proponents of Jubaland and their foreign backers as evidence that the SFG was inherently hostile to federalism and wanted to impose rule from the capital. In May 2013, disregarding the federal government’s protestations, the Jubaland initiative concluded with the declaration of a regional administration, headed by Ahmed Madoobe and based in Kismayo. The SFG denounced the new administration as “unconstitutional”, without citing which provisions of the Provisional Constitution had in fact been violated.

The dispute over the Jubaland administration threatened to plunge Somalia once again into large-scale conflict. Several of Madoobe’s rivals also declared themselves to be “presidents” of Jubaland, leading to violent skirmishes with Madoobe’s Ras Kamboni forces in Kismayo that left dozens dead.¹⁰ While the SFG lent its support to Madoobe’s adversaries – notably a former warlord named Barre Aden Shire “Hiiraale” – Puntland intervened on the side of Ras Kamboni, sending its troops to join the fighting and airlifting the wounded to Gaalka’yo for medical treatment. Somali perspectives on the conflict polarised alarmingly around clan-based narratives, recalling the dark days of civil war in the early 1990s.

Diplomatic intervention by IGAD, driven chiefly by the Ethiopian government, succeeded in dampening the conflict and bringing the two sides together for talks in Addis Ababa in August 2013. The negotiations resulted in an agreement on the formation of an Interim Juba Administration (IJA) with Ahmed Madobe as its “Leader”. The Addis Ababa agreement, as it came to be known, awarded the IJA a two-year mandate and acknowledged its aspirations to become an FMS – subject to parliamentary approval.¹¹ The agreement however also included less realistic provisions, such as a commitment from the IJA to hand over the control of Kismayo port and airport to the SFG within six months – a pact that has yet to be honoured.

Despite these rancorous beginnings, SFG-IJA relations have continued to improve, and received a significant boost in December 2014 when President Hassan Sheikh visited Kismayo and signed a cooperation agreement with the IJA on security, political, and economic issues.¹² At the same time, he declared Ahmed Madoobe to be the “President” of an interim administration for “Jubaland” – language that the SFG had previously shunned.¹³

South West Somalia

While the SFG and Jubaland leadership were negotiating through their differences in late 2013, preparations were being made for a second interim regional administration to emerge in south-western Somalia. As with the Jubaland initiative, tensions quickly emerged over ownership of the process, both between the SFG and local leaders, and within the SFG itself.

In December 2013, two rival conferences opened in the town of Baidoa. One group, led by former Speaker of Parliament Aden Madobe, sought to establish a Federal Member State comprising 6 regions: Bay, Bakool, Gedo, Lower Shabelle, Lower Juba and Middle Juba. The territorial ambitions of this group, commonly referred to as “South West Six” (SW6), deliberately clashed with the claims of the IJA, in what appeared to be an attempt to assert the rights of Digil-Mirifle communities in the Juba Valley and pose a direct challenge to the legitimacy of the IJA. On 3 March 2014, the SW6 conference elected Madoobe Nuunow as “President” of a six-region South-Western State – an outcome immediately rejected by the SFG Minister of Interior.

Meanwhile, a competing faction, known as South West Three (SW3), aspired to the more modest objective of a three-region FMS composed of Bay, Bakool, and Lower Shabelle. This initiative was largely driven by a veteran politician, former Minister of Finance and Speaker of Parliament, Sharif Hassan Sheikh Aden. On 27 March 2014, just weeks after the SW6 faction had named Nuunow as its leader, the SW3 conference elected Mohamed Haji Abdinur, a close ally of Sharif Hassan, as its own “President”.

Unlike the IJA process, which the SFG had initially rejected outright, the competing South West State initiatives gave the leadership in Mogadishu – and other external parties – a choice between two camps. Having officially recognised the IJA just months before, the SFG could not also endorse SW6’s territorial claim to the Juba Valley, but Parliamentary Speaker Mohamed Osman Jawari was widely perceived as being sympathetic to the SW6 group, which enjoyed significant local support. Similarly, IGAD, the AU and the UN were bound to uphold the integrity of the SFG-IJA Addis Ababa agreement, and urged reconciliation between the opposing camps. Consequently, the state formation process in South West Somalia proceeded with considerably more SFG engagement and ownership than the Jubaland initiative.

Within days of Abdinur’s election by the SW3 group, President Hassan Sheikh visited Baidoa in order to reduce tensions and offered to mediate between the two sides. Every subsequent stage of the process involved formal SFG participation. In June 2014, the SW3 and SW6 camps agreed to merge their initiatives, and on 17 November 2014, Sharif Hassan Sheikh Aden was officially elected President of the new Interim South West Administration (ISWA).

Central Somalia

Central Somalia seems to be on course to establish two Federal Member States: one comprising Hiiraan and Middle Shabelle regions, and the other uniting the southern part of the Mudug region with Galgaduud. This scenario, however, is not without its challenges. From a legal perspective, the merger of Galgaduud and south Mudug would not meet the criteria for federal member statehood established by Article 49(6) of the Provisional Constitution. Parliament would have to make an exception in this case, probably on the basis of a recommendation by the Boundaries and Federation Commission, but this could set a precedent for other regions to challenge the FMS criteria, and to lobby for changes to their boundaries (see section III.3 on Boundaries and Demographics below).

Simply organising a conference to discuss formation of a central Somali state has proven problematic. Planning for the process has been dogged by disagreements over venue, participation, and the composition of the “Technical Committee” charged with guiding the process. Some local stakeholders have accused the federal leadership of political meddling by imposing its own choice of venue for the conference and backing one of the candidates for the state presidency. President Hassan Sheikh lent further credence to such allegations when he unilaterally declared that Dhuusomareeb would become the state capital: a decision that clearly exceeds presidential authority.

Although there is little doubt that Hiiraan and Middle Shabelle will eventually merge, alternative scenarios have been floated by political figures from both regions. One patently unworkable proposal involves the division of the Hiiraan region into two parts, which could then re-unify as an FMS. Another scenario, promoted by the “Shabelle Valley State” faction, envisaged a merger between Lower and Middle Shabelle – an initiative that the establishment of ISWA has decisively derailed. A third scheme posits the addition of Banaadir region to Middle Shabelle and Hiiraan, leaving a small federal district in Mogadishu for the SFG and Parliament (see section III.3 on Boundaries and Demographics below).

Ownership and leadership of the state formation process in Central Somalia remains contentious. An SFG-backed Technical Committee for state formation in south Mudug and Galgaduud has prepared a plan for a regional conference in Adaado with a tentative start date of 25 March 2015. Yet the proposed location and the management arrangements of the conference have fuelled local tensions, with serious clashes occurring in February between pro-government forces and a faction of the Sufi militia group, Ahlu Sunna wal Jama’a. Although a ceasefire was signed on 7 March under the auspices of the SFG Minister of Defence, the underlying social and political tensions will likely need to be addressed before the statebuilding process can proceed.

2. Inclusivity and Representation

Somalia's adoption of federalism reflects a widely held desire for decentralised governance: a reaction to the pre-war experience of power and wealth being concentrated in the capital, which enabled increasingly authoritarian, abusive, and predatory governance. Yet federalism alone will not ensure benign, representative, and accountable institutions. Indeed, the current trends have highlighted specific challenges in the state formation process linked to inclusivity and representation.

The first challenge lies in the capital, Mogadishu, where the Federal Parliament nominally represents all major clans as well as all regions of the country. The selection process for Members of Parliament in 2012 however was widely perceived as flawed and corrupt, and many of the current legislators cannot credibly claim to speak for their putative constituents. As the state formation process moves forward, the newly-formed Interim Regional Administrations and emerging Federal Member States represent a growing challenge to Parliament's authority. This rift is likely to sharpen if Parliament continues to take decisions regarding which the FMS believe that they should be consulted.

A second key challenge relates to the representative value of the emerging FMS. Unless they possess relatively robust regional assemblies that are both inclusive and representative, they are likely to remain weak and isolated city-states confined to major municipalities and surrounded by large, ungoverned and unstable spaces. An even grimmer scenario could involve unrepresentative FMS administrations adopting the kind of autocratic and unaccountable leadership methods that Somalis have long fought against: the devolution of despotism rather than democratisation.

Puntland, currently the only recognised Federal Member State, offers some instructive lessons in this regard. Almost 17 years after its establishment in 1998, Puntland has not yet been able to organise a general election, relying instead on the nomination of parliamentarians by clan-based caucuses. A law for political parties was approved in 2012, after which five political associations were successfully registered. Nevertheless, disputes over management of the electoral process and over the timeline for voter registration ultimately led to local elections being cancelled in July 2013, and a return to clan-based arrangements for selection of 66 MPs in December 2013.¹⁴ In January 2014, the newly-constituted Parliament elected Abdiweli Mohamed Ali Gaas as Puntland's President.

In Jubaland, planning for a representative parliament began in 2012, even before the establishment of the IJA, as members of the Technical Committee reviewed clan demographics and representation by district and region. Yet more than 2 years since the IJA was first declared in May 2013, it still lacks a parliament and governs little more than the port city of Kismayo. Moreover, many Jubaland communities – especially in Gedo and Middle Juba regions – still perceive the IJA as little more than a front for the former Ras Kamboni militia, representing the Mohamed Subeer sub-group of the Ogaden clan. The appointment of senior officials from other clans has done little to alter this perception, making the formation of a credible regional parliament all the more urgent.

Although the selection of regional MPs is currently underway, this process must succeed in convincing the Jubaland public that the future regional Parliament is genuinely representative and not skewed in favour of the current IJA leadership.¹⁵ The first litmus of the new Parliament's legitimacy may come as early as August 2015 when, according to the terms of the August 2013 Addis Ababa agreement, the IJA's mandate shall end, and "a permanent Federal Member State will be established."¹⁶ If the conditions for Jubaland's elevation to FMS status are not in place, the IJA is likely to seek an extension of its mandate, inviting almost certain political and legal challenges from a variety of quarters.

Like the IJA, ISWA elected a president and appointed an executive before the formation of a regional assembly. Although its leaders appear to be committed to forming a regional Parliament, the challenges remain formidable. Most of Bay and Bakool regions are beyond the new administration's control, and contain a significant Al-Shabaab presence. In an important concession to non-Mirifle clan groups, the port town of Baraawe, in the Lower Shabelle region, was designated the ISWA capital, but remains too insecure for the administration to relocate there. In addition, disaffected groups, such as the supporters of the defunct "Shabelle Valley State" and die-hard believers in the dream of SW6 will have to be engaged and won over if they are not to be manipulated by Al-Shabaab or other potential spoilers.

In Central Somalia, the state formation process is still in its early stages, but it is already clear that inclusion and representation will pose serious difficulties. The original April 2014 agreement between representatives from the SFG, ASWJ, Himan and Heeb, and Galmudug administrations to unify Galgaduud and Mudug regions drew immediate criticism from groups who claimed to have been excluded. The February 2015 fighting in Guri’el is a clear reminder that disaffected communities may be both ready and able to resort to violence if their grievances are not addressed.¹⁷

3. Boundaries and Demographics

Establishing the boundaries of future Federal Member States will be key to ensuring a relatively smooth transition towards a functioning federal system in Somalia. However, a number of potential flashpoints have already begun to emerge.

The principle challenge to border delineation thus far relates to an implicit double standard in the Provisional Constitution. Article 49(5) asserts that “Federal Member State boundaries shall be based on the boundaries of the administrative regions as they existed before 1991”. Yet Article 142 affirms that the constitutions of existing FMS – in other words, Puntland – will remain in force until harmonised with a future Somali Federal Constitution. Puntland’s boundaries, as defined in Article 3 of its Constitution, explicitly sub-divide certain regions and, in one case, even one district.

Puntland’s territorial logic is based upon its self-identification with the Darod / Harti clan family, and therefore represents a clan-based variation on the “ethnic federalism” paradigm that many Somalis reject as a basis for statebuilding.¹⁸ At the same time, Puntland offers a tempting precedent for members of clans who find themselves separated from their kinsmen by inherited administrative boundaries, and are thus condemned to exist as a minority community in an FMS dominated by other clans.

As Somalia’s statebuilding process progresses, this constitutional double standard is likely to give rise to two competing lines of argument. The first is that Puntland’s Constitution should be “harmonised” with the Somali Federal Constitution, requiring it to accept the redrawing of its boundaries in line with pre-1991 administrative regions – a proposition that Puntland is unlikely to agree to. The second is that other clans should enjoy the same prerogatives as the Harti: to redraw administrative boundaries in order to remain united within their respective Federal Member States. This second proposition threatens to open a Pandora’s box of claims and counter-claims across southern Somalia. Possible areas of contention include:

- Matabaan District of northern Hiiraan region, whose inhabitants may identify more closely with a neighbouring “Central Somalia state”, than with a union of Hiiraan and Middle Shabelle regions;
- Eel Dheer and Eel Buur districts of southern Galgaduud region, whose inhabitants may identify more closely with a Shabelle Valley State than with Central Somalia;
- Parts of eastern Gedo and Middle Juba, whose inhabitants – many of whom were aligned with the SW6 camp – may identify more closely with a South West State than with Jubaland;
- Lower Shabelle, where many communities are apprehensive about absorption into a South West State, and some local elites have lobbied instead for association with Middle Shabelle, and possibly Banaadir.

The status and boundaries of Banaadir region, the historical seat of the national capital, Mogadishu, may emerge as a highly-charged territorial issue. Some local political entrepreneurs have argued – not entirely without merit – that the SFG and Parliament should be assigned a “federal district” within Banaadir, leaving the rest of the region in the hands of a local administration. One of the central themes of this argument is that the port and airport of Mogadishu should be owned and managed by a regional, or FMS, administration, like Boosaaso and Kismayo, rather than directly controlled by the federal government.

Article 9 of the Provisional Constitution, however, which relates to “The Capital City of the Nation”, does not specifically identify Mogadishu (or any other locality) as the capital city, leaving this to be determined in the course of the constitutional

review process and subject to a “special law” enacted by both Houses of Parliament. Any attempt to alter Banaadir’s presumed status as a “capital region” and restrict the federal institutions to a special district would threaten Mogadishu’s cosmopolitan tradition and potentially invite the question as to why it should remain the capital city at all. In May 2015, President Hassan Sheikh weighed in on the debate, asserting in a radio address that Banaadir would not be merged with any other region, but since he appeared to overstep his authority in doing so, his statement seemed likely to inflame the issue further.

Ultimately, such issues are to be decided by Parliament – or, technically speaking, by the HoP – acting on the recommendations of the Boundaries and Federation Commission, which has yet to be established. With time fast running out, the Commission should be appointed without further delay, but the credibility and impartiality of the BFC is no less important: if any FMS perceives prejudice in its work, then at least some of the hypothetical boundary disputes described above will rapidly become palpable.

4. Allocation of Powers and Resources

The allocation of powers and resources is chiefly addressed in Articles 44 and 54 of the Provisional Constitution, which state only that these shall be negotiated and agreed upon between the SFG and Federal Member States – except in matters concerning: Foreign Affairs, National Defence, Citizenship and Immigration, and Monetary Policy, which lie exclusively with the federal government.

Attempts by both the SFG and the FMS to pre-empt negotiations have predictably led to a series of disputes over issues that include the oil and gas sector, fisheries, and the management of economic infrastructure such as ports and airports. Other important areas of contestation will no doubt emerge.

Issues of power and resource allocation are not directly relevant, in their own right, to the transitional process and Vision 2016. Negotiations, and the consequent passage of legislation governing these sectors, cannot take place until the FMS have been formed. Whether these issues are completed under the current SFG administration or the next one is largely immaterial. The importance of power and resource allocations, however, lies in their potential to poison the political dynamics between the SFG and the FMS in ways that obstruct progress toward the core transitional tasks.

IV. DEMOCRATISATION

The third pillar of Vision 2016 is democratisation: a term that refers in the current context to specific tasks referred to in the Provisional Constitution: the establishment of an Upper House of Parliament, direct election of representatives to the HoP no later than August 2016, and election of the next President by both Houses of Parliament the following month.

1. Elections

It is clearly already too late to organise credible direct elections by August 2016 – in less than 18 months. There is no legislation in place governing the formation of political parties or the conduct of elections. The National Independent Electoral Commission (NIEC) was only appointed in May 2015 and has yet to begin its work. Finally, there exists no reliable data upon which to delineate voting districts, and insecurity renders the prospect of voter registration hasardous, if not impossible, across much of the country.

Even if, from a technical perspective, the preparations for elections could be completed in time, it would be reckless to rush such a sensitive and potentially divisive process. Power-sharing in the current government and parliament is based, broadly speaking, on the clan-based “4.5 Formula” that has been in use for nearly fifteen years. The transition to multiparty democracy will inevitably upset these arrangements, leaving some communities feeling disenfranchised and disaffected. Far more time for research, consultation, and reflection is required if Somalia is to adopt an electoral system that unites society, rather than one that entrenches divisions, re-opens old wounds, and risks plunging the country back into conflict.

2. Political Parties

The formation of political parties is another issue that demands extensive consultation, debate, and sober reflection. Post-independence Somalia's democratic system rapidly degenerated into a clan-based, corrupt marketplace, which became so discredited that many Somalis actually welcomed the army's 1969 coup. Somaliland, which has conducted several successful presidential and parliamentary elections since 2003, has attempted to counter the influence of clan politics by capping the number of legal political parties at three,¹⁹ while requiring that political parties establish an office in every region, have a "party structure", and receive at least 1,000 signatures from registered voters in each region.²⁰ Yet Somaliland's political parties each remain closely identified with specific clan interests, and restrictions on political organisations have produced parties that are little more than electoral vehicles, dominated by personalities instead of issues, and deficient in internal democracy. While there is much that Somalia can learn from Somaliland's democratic experience, there are also serious pitfalls to be avoided.

The question of religious-based parties will also eventually have to be addressed. Despite the proliferation in Mogadishu of prominent political associations like President Hassan Sheikh's Peace and Development Party (PDP),^{21 22} the Daljir Party (associated with former president Sheikh Sharif Sheikh Ahmed),²³ and the Social Justice Party (co-founded by former Mogadishu Mayor Mohamed Ahmed "Tarsan"),²⁴ undeclared religious associations exercise much greater political influence. In the 2012 election, four of the six top contenders for the presidency were backed by religious organisations – affiliations that none of the candidates had openly acknowledged while campaigning.

Lastly, and perhaps most importantly, Somalia's future electoral and party laws must be endorsed by the FMS or they will prove impossible to implement. It would therefore be not only irresponsible for the SFG and Parliament to forge ahead on their own with hastily-drafted legislation, but also self-defeating: there is little point in preparing the ground for elections in which much of the country will likely refuse to take part.

3. The Upper House of Parliament

Formation of the Upper House of Parliament is likely to be far less problematic than elections to the Lower House. The Provisional Constitution is silent as to how members of the Upper House should be selected: Article 72 stipulates only that there should be no more than 54 members "based on the eighteen (18) regions that existed in Somalia before 1991", equally distributed amongst the FMS, and that they should be "representative of all communities of the Federal Republic of Somalia."

Designing a formula that meets these criteria will not be easy: the reference to Somalia's eighteen administrative regions, for example, appears to contradict the requirement that "all FMS should have an equal number of representatives in the Upper House of the Federal Parliament", since some FMS will comprise three regions and others two, Puntland claims roughly four regions, and a Central Somali State may comprise just one and a half. Moreover, at an average of three representatives per region, it is hard to imagine how the Upper House could represent "all communities" of Somalia, especially minority groups. Yet since the Provisional Constitution obviates the need for elections or parties, the formation of the Upper House will largely be a matter of negotiation – not a vast, complex and costly electoral exercise.

V. VISION 2016 REVISITED: THE WAY FORWARD

Somalia holds far greater promise today than at any other time since the collapse of the state in 1991. This progress remains fragile, however, and mismanagement of the political transition in 2016 would further damage the credibility of the federal institutions – possibly even leaving the SFG without a mandate to govern. If so, differences over how best to reconstitute the SFG and parliament could prove paralysing, requiring third-party mediation and effectively rewinding Somalia's political clock back to the transitional era.

Key aspects of the transition, as envisaged by the Provisional Constitution, are evidently no longer achievable: a credible constitutional referendum and parliamentary elections by direct, secret vote by the August 2016 deadline are now beyond

reach. Yet it would also be a grave error for either the current SFG leadership or the HoP to seek an extension of their mandates since the Federal Member States are almost certain to reject such a manoeuvre, leaving the SFG isolated and deflated. A growing chorus of international actors have already expressed their opposition to this move, meaning that the SFG could no longer rely on international support and recognition to compensate for its legitimacy deficit inside the country.

Likewise, there isn't much appetite, either inside Somalia or amongst its international partners, to witness a return to the type of constituent assembly that selected the present Parliament and brought the present SFG into being. Most observers acknowledge that the 2012 political transition was deeply flawed and marred by corruption: its redemption being essentially that Hassan Sheikh, a figure not previously associated with warlordism, cronyism or graft, emerged as President. A re-enactment of that process would be tantamount to an admission of failure.

The question, therefore, is what kind of process could simultaneously provide a political transition and the continuity of the institutions established in 2012? The answer is to focus solely on the most essential, non-negotiable aspects of the Provisional Constitution, and to achieve political consensus between the SFG, Parliament, and FMS on a minimalist version of Vision 2016 – an exercise in constitutional reverse-engineering. Such requirements are as follows:

1. The new President must be elected by a joint vote of the two Houses of Parliament

Such an election requires the establishment of the Upper House. The simplest way to achieve this goal would be for the FMS to begin consultations on a formula that addresses the need for regional representation while at the same time maintaining a degree of equilibrium between Somalia's major clans in line with the "4.5 Formula". Since the Provisional Constitution does not require an election for this process, allowing the FMS to nominate representatives should be feasible – at least for the Upper House's first term.

2. The Upper House must be constituted of representatives of the FMS

The existence of the FMS is a prerequisite for the establishment of the Upper House. This is a challenging, but achievable goal in the time remaining:

- State formation processes in Central Somalia and the Shabelle Valley should be taken forward as a matter of priority;
- The HoP should ensure that the Boundaries and Federation Commission (BFC) and National Independent Electoral Commission (NIEC) receive the political support and requisite resources to undertake their work without further delay.

3. The House of the People must be reconstituted

Although it is not possible to conduct a direct election of members of the HoP by secret ballot, a unilateral extension of the current assembly's term of office would be clearly unconstitutional and fraught with political risk. Similarly, any alternative procedure for election or selection of new MPs will represent a deviation from the Provisional Constitution and could be challenged on legal and political grounds.

Some observers have proposed indirect elections, involving electoral colleges at the district level. Although superficially attractive, this is a complex proposition and almost certainly unworkable in the time available. Insecurity will preclude many areas from participating in the electoral process. Fragile, newly established FMS are unlikely to welcome the potential for political turbulence surrounding elections, and would seek to exercise a high degree of political control over the process. Achieving consensus between five FMS, the SFG and Parliament on a common electoral procedure – including the contentious issue of criteria for members of electoral colleges – is likely to prove beyond reach.

A simpler proposition would be to have each FMS parliament identify its own representatives, while respecting basic, agreed criteria for representation, including the need to maintain some degree of equilibrium between major clans. Whether each FMS parliament chooses to select its representatives through some kind of electoral process, or simply by nomination, could be a matter left to the discretion of the FMS – at least for the first term of the Upper House.

VI. EMBRACING “INCLUSIVE POLITICS”, “*AMA DOON AMA DIID*”

Vision 2016 may be Somalia’s best hope for a stable political transition next year, but as the clock counts down toward the presidential election, the pressure to improvise and cut constitutional corners will only continue to grow – and as they do, so will the space for differences and dissent to emerge.

Slavish adherence to the Provisional Constitution is no longer possible – if it ever was. Nevertheless no extra-constitutional transitional process will succeed unless it is endorsed by all of the principle stakeholders: the SFG leadership, the HoP and the FMS. In such a context, the practice of “inclusive politics” means ensuring that no actor with de facto veto power should be excluded from the process since each has the potential to play the role of the political spoiler. If the SFG proceeds unilaterally, it will waste precious time for negotiation and compromise to take place, steadily undermining the prospects for consensus to emerge. If the FMS reject a process crafted in Mogadishu with insufficient consultation, one or more of them may disengage or reject it outright, undermining its legitimacy. Finally, the consent of the HoP is also needed in order to pass enabling legislation, or constitutional “sunrise” and “sunset” clauses that would help to anchor the transitional process in the rule of law.

The establishment of the Somali Leaders Forum represents the most promising step to date toward a national-level compromise. It remains incomplete and much confidence-building will be required if it is to fulfil its stated purpose. Yet since a constitutional fix is no longer possible, keeping Somalia on the course of recovery requires a political settlement between these actors, *ama doon ama diid* – whether they like it or not.

Endnotes

- ¹ The Puntland administration has also consistently protested that several articles have been modified without proper consultation after the document had been approved by the Independent Federal Constitutional Commission (IFCC).
- ² See, for example, Abdihakim Ainte, “Somalia: government must downsize its vision over democracy project and Vision 2016” in African Arguments, 16 September 2013, accessed at: <http://africanarguments.org/2013/09/16/somalia-government-must-downsize-its-vision-over-democracy-project-and-vision2016-by-abdihakim-ainte/>
- ³ The term ‘Parliament’ refers here only to the Lower House, since the Upper House has yet to be constituted.
- ⁴ Adding to the confusion, the United Nations Assistance Mission in Somalia issued an erroneous statement, claiming that “Article 134 (2) of the Provisional Constitution stipulates that the Federal Member States will nominate five (5) delegates to the ICRC.” In fact, the number of Federal Member States has yet to be determined, and Article 134(2) therefore contains no reference to the number of delegates they would contribute to ICRC. See <http://www.unsom.unmissions.org/Default.aspx?tabid=6254&ctl=Details&mid=9770&ItemID=28263&language=en-US>
- ⁵ Part of the delay can be attributed to the Puntland administration, which recalled ICRC Chairperson Asha Gelle to Garowe for consultations because of a dispute with the SFG, and in so doing violated the basic principle that an Independent Commission is “a body that is independent of government or political control”.
- ⁶ Provisional Constitution of the Federal Republic of Somalia, Schedule One (C): Proposed Amendments to the Constitution in the First term of the Federal Parliament.
- ⁷ In early May 2015, May 2015, ICRC Chairperson Asha Geelle Dirie resigned her post, citing political interference from various quarters and the incompetence of some Commission members.
- ⁸ Intergovernmental Authority on Development
- ⁹ SMG Report 1853 pp.55-56.
- ¹⁰ <http://www.aljazeera.com/news/africa/2013/06/201362782341972760.html>
- ¹¹ hiiraan.com/news4/2013/Aug/40895/agreement_between_the_federal_government_of_somalia_and_jubba_delegation.aspx
- ¹² <http://codkajubaland24.com/?p=4745>
- ¹³ Madaxweyne Xasan Sheekh: “Axmed Madoobe hoggaamiye ma aha ee waa madaxweyne, maamulka Jubba ma aha ee waa Jubba-land” . Raxanreeb.com, 19 December 2014. Accessed at <http://somaliraxanreeb.com/2014/12/madaxweyne-xasan-sheekh-axmed-madoobe-hoggaamiye-ma-aha-ee-waa-madax-weynemaamulka-jubba-ma-aha-ee-waa-jubba-land-dhagayso/>
- ¹⁴ For a more detailed analysis, see International Crisis Group, Somalia: Puntland’s Punted Polls, Africa Briefing No.97, 19 December 2013.
- ¹⁵ <http://www.garoweonline.com/page/show/post/1368/somalia-parliamentary-selection-process-underway-in-jubaland>
- ¹⁶ http://www.hiiraan.com/news4/2013/Aug/40895/agreement_between_the_federal_government_of_somalia_and_jubba_delegation.aspx
- ¹⁷ <http://somalianewsroom.com/2014/08/06/somalias-new-federalism-deal-is-a-disaster-and-its-everyones-fault/>
- ¹⁸ One important exception to Puntland’s clan-based territorial logic is that its constitution claims all of Gaalka’yo district, which is inhabited chiefly by members of the Hawiye / Habar Gidir clan and serves as the capital of the Galmudug administration. The SFG appears to have accepted this claim when it signed an agreement in October 2014 that acknowledges Puntland’s existing borders. See http://igad.int/attachments/978_141014%20Agreement%20between%20SFG%20and%20Puntland%20%28Eng%29.pdf
- ¹⁹ http://www.somalilandlaw.com/xeerka_xisbiyadda.htm
- ²⁰ See http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/03/28/feature-01. Puntland’s electoral law, which emulates Somaliland’s, requires that the five existing political parties “[open] regional offices and [bring] the verified signatures of at least 1,500 supporters across Puntland’s eight administrative regions.” But Puntland has yet to put this system to the test in a general election.
- ²¹ <http://english.alshahid.net/archives/20024>
- ²² <http://www.thestar.com.my/News/World/2014/11/20/Somali-leader-sees-Islamist-rebels-out-of-towns-by-year-end/>
- ²³ <http://horseedmedia.net/2014/12/24/ala-sheikh-group-ready-to-lead-somalia-op-ed/>
- ²⁴ <http://somalireport24.com/news/mohamud-ahmed-tarsan-former-mayor-of-mogadishu-forms-a-new-political-party/>