



REPORT

SOMALIA'S TROUBLED TRANSITION: VISION 2016 REVISITED

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I. INTRODUCTION

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 at Arta, in neighbouring Djibouti, but Somalia's arduous political transition 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 Mohamud 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, and its leadership degraded by drone strikes and 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.

But peace, stability and economic revival 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 are still 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 toward a constitutional referendum, multiparty democracy and direct elections in 2016. But in practice, the Provisional Constitution is a dense, incomplete and occasionally 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 plausible, 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. But progress has been sluggish, 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 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'. This seemingly modest proposal probably represents Somalia's best hope for a peaceful and widely accepted political transition in September 2016. At this point, 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 in which a grave political and constitutional crisis can be avoided.

II. TOWARD 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. The Provisional Constitution is a maze of a 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 the 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 the constitutional ambiguity into a coherent and achievable plan of action, the SFG began work on an initiative called *Vision 2016: A Framework for Action*.¹ The plan immediately attracted criticism from some quarters for being an externally imposed and unrealistic roadmap for “Jeffersonian representativedemocracy” in Somalia.² But Vision 2016 sets no objectives that the Provisional Constitution does not itself demand. 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 without delay and in parallel, while at the same time respecting the need for formal consultation with the yet-to-be-established FMS. And 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.

1. Review and Implementation of the Constitution: An Escherian Roadmap

The cornerstone of Vision 2016 is the review and implementation of the constitution, from which the elaboration of the federation and design of a democratic political system must proceed. But the constitutional review process 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

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

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 the 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, but 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 the FMS (since most of them don’t exist) are neither represented on the Committee, nor have been consulted on any proposed amendments, the constitutional review process is currently proceeding in a legal and political vacuum.

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 the outcome, then they will have ample grounds upon which to challenge it – or even to reject it outright.

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 ICRIC.” 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 ICRIC. 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 ICRIC 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*.

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 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 the 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 federal member states. 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 is 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, respecting the administrative boundaries as they existed before 1991. But the Constitution 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,⁷ 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.⁸ 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

⁷ Intergovernmental Authority on Development

⁸ SMG Report 1853 pp.55-56.

⁹ <http://www.aljazeera.com/news/africa/2013/06/201362782341972760.html>

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. But the SFG leadership 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, 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 back 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.⁹ 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.¹⁰ But the agreement also included less realistic provisions, such as a commitment from the IJA to hand over 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.¹¹ At the same time, he declared Ahmed Madoobe to be the "President" of an interim administration for "Jubaland" – language that the SFG had previously rejected.¹²

Southwest 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 southwestern 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, Lower Shabelle, Lower and Middle Juba. The territorial ambitions of this group, commonly referred to as 'South West 6' (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

¹⁰ hiiraan.com/news4/2013/Aug/40895/agreement_between_the_federal_government_of_somalia_and_jubba_delegation.aspx

¹¹ <http://codkajubaland24.com/?p=4745>

¹² *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://somali.raxanreeb.com/2014/12/madaxweyne-xasan-sheekh-axmed-madoobe-hoggaamiye-ma-aha-ee-waa-madaxweynemaamulka-jubba-ma-aha-ee-waa-jubba-land-dhagayso/>

the legitimacy of the IJA. On 3 March 2014, the SW6 conference elected Madoobe Nuunow as ‘President’ of a six-region Southwestern State – an outcome immediately rejected by the SFG Minister of Interior.

Meanwhile, a competing faction, known as Southwest 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 led by a veteran politician, a 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 ‘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 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 offering to mediate between the two sides. Every subsequent stage of the process involved formal SFG participation. In June 2014, the SW3 and (ISWA) camps agreed to merge their initiatives, and on 17 November 2014, Sharif Hassan Sheikh Adan was officially elected as 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 southern 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).

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 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. But 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 state building 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. But 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. But the selection process for Members of Parliament in 2012 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 represent a growing challenge to Parliament's authority. This rift is likely to sharpen if Parliament continues to take decisions upon 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 object 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. But disputes over management of the electoral process and 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 2013.¹³ In January 2014, the newly constituted parliament elected Abdiweli Mohamed Ali Gaas as Puntland President.

In Jubaland, planning for a representative parliament began even before the establishment of the IJA, in 2012, as members of the Technical Committee reviewed clan demographics and representation by district and region. But 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 regional parliament is genuinely representative and not skewed in favour of the current IJA leadership.¹⁴ 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."¹⁵ If the conditions for Jubaland's elevation to FMS status are not yet in place, then 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; its leaders appear to be committed to forming a regional parliament, but the challenges are formidable. Most of Bay

¹³ For a more detailed analysis, see International Crisis Group, Somalia: Puntland's Punted Polls, Africa Briefing No.97, 19 December 2013.

¹⁴ <http://www.garoweonline.com/page/show/post/1368/somalia-parliamentary-selection-process-underway-in-jubaland>

¹⁵ http://www.hiiraan.com/news4/2013/Aug/40895/agreement_between_the_federal_government_of_somalia_and_jubba_delegation.aspx

¹⁶ <http://somalianewsroom.com/2014/08/06/somalias-new-federalism-deal-is-a-disaster-and-its-everyones-fault/>

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 Lower Shabelle region, was designated the ISWA capital, but it remains too insecure for the administration to relocate to. 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 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.¹⁶

3. Boundaries and Demographics

Establishing the boundaries of future FMS will be one of the key elements necessary 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, "Federal Member State boundaries shall be based on the boundaries of the administrative regions as they existed before 1991." But 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 a 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.¹⁷ 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 Ceel Buur districts of southern Galgaduud region, whose inhabitants may identify more closely with a Shabelle Valley State than with Central Somalia;

¹⁷ 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

- Parts of eastern Gedo and Middle Juba, whose inhabitants – many of whom were aligned with the ‘SW6’ camp -- may identify more closely with 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 yet 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 Bosaaso and Kismayo, rather than directly controlled by the federal government.

But Article 9 of the Provisional Constitution, 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.

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 perceive prejudice in its work, then at least some of the hypothetical boundary disputes described above will rapidly become all too real.

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 FMS -- except in matters concerning: Foreign Affairs; National Defense; 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 interfere with or 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 – a period of less than 18 months. There is no legislation in place governing the formation of political parties or conduct of elections. The National Independent Electoral Commission (NIEC) has yet to be appointed. There exists no reliable data upon which to delineate voting districts and insecurity renders the prospect of voter registration hazardous, 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.¹⁸ 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.¹⁹ But 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 Mohamud’s Peace and Development Party (PDP),²⁰ the Daljir Party (associated with former president Sheikh Sheikh Ahmed)²² and the Social Justice Party (co-founded by former Mogadishu Mayor Mohamed Ahmed “Tarsan”)²³, 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.

¹⁸ http://www.somalilandlaw.com/xeerka_xisbiyadda.htm

¹⁹ 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.

²⁰ <http://english.alshahid.net/archives/20024>

²¹ <http://www.thestar.com.my/News/World/2014/11/20/Somali-leader-sees-Islamist-rebels-out-of-towns-by-year-end/>

²² <http://horseedmedia.net/2014/12/24/ala-sheikh-group-ready-to-lead-somalia-op-ed/>

²³ <http://somalireport24.com/news/mohamud-ahmed-tarsan-former-mayor-of-mogadishu-forms-a-new-political-party/>

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.

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. But since the Provisional Constitution obviates the need for elections or parties, the formation of the Upper House will be largely 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. But this progress remains fragile 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. But it would also be a grave error for either the current SFG leadership or HoP to seek an extension of their mandates as the FMS 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 option, meaning that the SFG could no longer rely on international support and recognition to compensate for its legitimacy deficit inside the country.

Nor is there 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 both a political transition and the continuity of the institutions established in 2012? The answer is to focus on 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.

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.

The Upper House is 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 establish, without further delay, the Boundaries and Federation Commission (BFC), in consultation with the SFG and FMS;

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.

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 next year's presidential election, the pressure to improvise and cut constitutional corners will only continue to grow – and as they do, so too will the space for differences and dissent to emerge.

Slavish adherence to the Provisional Constitution is no longer possible – if it ever was. But no extra-constitutional transitional process will succeed unless it is endorsed by all of the principle stakeholders: the SFG leadership, HoP and FMS. Were they to work in unison, even the most problematic and hazardous option – an 'omnibus' extension of the current SFG and HoP's term of office – could arguably be rendered risk free (a highly improbable scenario).

In such a context, the practice of 'inclusive politics' means ensuring that no actor with de facto veto power is excluded from the process. Each of these actors has the potential to play the role of 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. And the consent of the HoP is 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. Whether they like it or not – ama doon ama diid – these actors all need one another, and have no choice but to cooperate if Somalia is to stay on course for recovery.

