

## **POST-UNITARY FEDERALIZATION IN SOMALIA**

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### Abstract

Recent studies on federalism in Africa in comparative perspective suggest that African cases of federalism converge with the classical conceptions of federalism in terms of form and design, while diverging from those classical conceptions in terms of political regime, as well as eclectic innovations related to form and design. Federalism has not been popular at all in post-colonial Africa, where exists a small number of relatively recent examples, in which federalization of formerly unitary states is a process that is typically running within a larger conflict resolution process. This process is aimed at addressing ethnonational diversity and territorial integrity and which is driven by the relative powers of ethnonational groups and their political agendas. Hence, concepts like *post-conflict federalism* or *holding-together federalism* are conveniently applicable to these cases. This article will try to contribute to the developing body of comparative research on African federalism with a brief case study on the emerging federalism in post-conflict Somalia that has been rebuilt for more than two decades by the combined efforts of the Somalis and the international peace support.

**Keywords:** Post-unitary federalism; federalization process; power sharing; international peace support; Africa; Somalia

## Öz

Karşılaştırmalı bir perspektifte Afrika'da federalizm üzerine yapılan son çalışmalar, Afrika'da federal sistemlerin biçim ve tasarım açısından klasik anlamda federalizmle örtüşmekle birlikte, biçim, tasarım ve özellikle siyasi rejim yönlerinden eklektik farklılıklar gösterdiğini ortaya koymaktadır. Afrika'da federalizm pek yaygın olmamıştır; yeni yeni gelişen örnekleri ise üniter devletlerin çatışma çözümü kapsamında federalleşmesiyle ortaya çıkmaktadır. Etno-ulusal çeşitlilik ve toprak bütünlüğünü bir arada ele almayı amaçlayan bu süreç etno-ulusal grupların görece güçleri ve siyasi gündemleri tarafından yönlendirilmektedir. Bu nedenle bu örnekler *çatışma sonrası federalizm* veya *birarada tutucu federalizm* gibi kavramlarla ele alınmaya uygundur. Bu makale, Somali'de uzun süreden beri devam etmekte olan devlet inşası süreci kapsamında gerçekleşen federalleşme sürecini ele alarak Afrika federalizmi üzerine gelişen karşılaştırmalı araştırmalara katkıda bulunma amacındadır.

**Anahtar Kelimeler:** Üniter sonrası federalizm; federalleşme süreci; güç paylaşımı; uluslararası barış desteği; Afrika; Somali

## Introduction

Somalia has recently rescheduled again the long-delayed elections for the lower house of the bicameral national legislature – the House of the People at the Federal Parliament (FP),<sup>1</sup> which is one of the key institutions of the nation-state that has been rebuilt since the fall of the militarist regime in 1991. The elections will be held not under direct universal suffrage but an indirect system of voting that vests the power in the hands of 135 clan elders rather than the individual citizens. Yet it would still be fair to consider the peaceful completion of elections and convention of the new House as an important step in the decades-long development of post-conflict state building based on federalization and directed toward democratization. According to the power scheme introduced by the 2012 *Provisional Constitution of the Federal Republic of Somalia (PC)*<sup>2</sup> designed as a combination of federalism and parliamentarism, the Federal Parliament elects the Federal President, who will appoint the Prime Minister who will in turn appoint the Cabinet. The cabinet list will then be submitted to a vote of confidence at the House of the People. The repeated postponement of the House elections within last two years has been due to a number of factors involving tensions arising from conflicting agendas at the federal government level or member state level actors.

Within the two decades after the formation of the Transitional National Government (TNG) in 2000, state-building in Somalia has come a long way as enshrined in the 2012 *PC*. Yet there is also another long way ahead toward a meaningful fulfilment of the state-building goals enshrined therein. Federalism and parliamentarism are the two basic elements of the adopted constitutional design governing the separation of powers under the 2012 *PC*. Unlike parliamentary government, which has been the usual way of separation of powers in the horizontal sense at the national level in Somalia, federalism is a constitutional novelty that was introduced in 2004, in the transitional government period, and further architected by the 2012

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<sup>1</sup> For a recent account in Turkish, see Mohamed Ahmed Adan, “Somali seçimlere hazırlanıyor”, *Mecra*, August 6, 2021, available at <https://www.gzt.com/mecra/somali-secimlere-hazirlaniyor-3594760>. Also see the United Nations Security Council Meeting Coverage entitled “Crucial Election Plans in Somalia Now Advancing Following ‘Period of Uncertainty’, Special Representative Tells Security Council, Spotlighting Women’s Quota/Mogadishu Says African Union Mission ‘Cannot Stay Forever’, as Bloc’s Representative Calls for Establishment of Joint Successor Mission”, SC/14601, August 12, 2021, available at <https://www.un.org/press/en/2021/sc14601.doc.htm>.

<sup>2</sup> *Jamhuuriyadda Federaalka Soomaaliya Dastuurka Ku-Meel Gaarka La Ansixiyey* August 1, 2012 (*Provisional Constitution of the Republic of Somalia* adopted on August 1, 2012) available in both languages at <https://villasomalia.gov.so/soomaali/dastuurka/>. For the English text also see [http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94693/111147/F1279445166/Somalia\\_Provisional-Constitution\\_2012\\_ENGLISH.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94693/111147/F1279445166/Somalia_Provisional-Constitution_2012_ENGLISH.pdf).

PC.<sup>3</sup> Parliamentarism, on the other hand, prevails at both levels of government – federal government and member state government.

This article aims at providing a brief discussion of the Somalia federalization process with reference to a conceptual framework that focuses on the post-conflict federalization of unitary states as well as a reference to a comparative framework that outlines the common features of the few cases of federalism in the wider African context. In order to contribute to the comparative study of African federalism in particular, and federalism in general, we will discuss the motivators, strengths and challenges in the Somalia case. Based on the widely held observation that the twin promises of federalism, i.e., *self-rule* and *shared rule* are the main strengths of a federalist vision in a post-conflict state-building setting, we will argue that the same set of motivators that highlight the federalist option in such settings also introduces a main challenge to the further fulfillment of those promises.

### **Federalism as an option for post-conflict state building under international support**

The case of Somalia is an example of federalization within the larger process of conflict resolution and state building under international support. In this sense, it is similar to other recent examples such as Nepal and Iraq, both of which are currently cases of incomplete or emerging federalism, as none have so far fulfilled the federal institutional design commanded by their constitutions.<sup>4</sup>

Post-conflict federalization of formerly unitary states has long been a usual element of international support to promote peace-building and state-building process. However, peace-building and state-building realized throughout international intervention has been generally criticized for having little impact in accomplishing sustainable peace.<sup>5</sup> Moreover, majority of states which came out of conflict have relapsed to conflict with only a small number of states having achieved partial democracy. With this said, there has been more emphasis placed on the

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<sup>3</sup> See for example, Oliver M. Chevreau, *Federalism & post-conflict statebuilding: The case of Somalia*, Thesis submitted to the University of Bradford, 2017, available at: <https://bradscholars.brad.ac.uk/handle/10454/17441>.

<sup>4</sup> *Op. cit.*, p. 9-12. Also see Ali Yassin Sheikh Ali, Abdinor Hassan Dahir, Zahra Daud Hersi, “Federalism in post-conflict states: Assessing Somalia’s challenges and the way forward”, *Perspectives on Federalism*, Vol. 11, issue 2, 2019, pp. 54-94.

<sup>5</sup> See for example, Roland Paris, “International Peacebuilding and the ‘Mission Civilisatrice’”, *Review of International Studies*, 28, 2002, pp.637-656; also see Marina Ottaway, “Rebuilding State Institutions in Collapsed States”, *Development and Change*, 33 (5) pp. 1001-1023.

role the constitution-making process and constitutional design can play in the political and governance transition process.<sup>6</sup> In this regard, constitutional design efforts have provided federalism with an institutional tool to balance the interests and concerns of multiple powers that are parties to the conflict being resolved.<sup>7</sup>

Federalism, in the context of nation-states, can be viewed as the shared exercise of powers originating from national sovereignty, by different levels of government, under the rule of law.<sup>8</sup> The classical explanations of federalism has been reconsidered by the recent debate on the comparative study of the growing number of cases of contemporary federalism. From this, we can draw the following elements or minimum conceptual requirements of federalism: (1) at least two *tiers of government* endowed with original powers on some matters, (2) and a non-unilaterally amendable supreme written *constitution* with horizontal and vertical division of powers with representation mechanisms of (3) *self-rule* and *shared rule* and (4) an *umpire*.<sup>9</sup>

*Power sharing* is obviously the most important agenda in post-conflict politics and state building, i.e., transitional government, constitution making, etc. Compared to its conceptual alternate, unitarism, federalism offers a more spacious power sharing scheme, i.e., separate branches at each of the separate levels of government. Separation of powers as such is guided by the twin principles of federalism – self-rule and shared rule. States at the subnational level rule themselves and participate in the national level government in accordance with their constitutional share. The twin principles also suggest a form of a fair deal between the parties of the conflict, one that could accommodate their respective agendas throughout the ongoing process into the future, thus guiding them from violent hostility to the peaceful exercise of checks and balances. The twin principles of shared rule and self-rule, together serve as a

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<sup>6</sup> Kirsti Samuels, “Post-conflict peace-building and constitution-making”, *Chicago Journal of International Law*, 2005 6 (2), pp. 663-664.

<sup>7</sup> Op. cit. See also, Eghosa E. Osaghae, “Federalism and the Management of Diversity in Africa”, *Identity, Culture and Politics*, Vol 5, Nos.1 & 2, 2004, pp.162-178.

<sup>8</sup> For a definition of federalism as an arrangement where the “two levels of government rule the same land and people, each level has at least one area of action in which it is autonomous, and there is some guarantee of the autonomy of each government in its own sphere.”, see William H. Riker, *Federalism: Origin, Operation, Significance*, Little, Brown, 1964, p. 11; simply as self-rule plus shared rule in a polity, see, Daniel J. Elazar, *Exploring Federalism*, University of Alabama Press, 1987, p. 12; or as “multi-tiered government combining elements of shared-rule and regional self-rule.”, see, Ronald Watts, *Comparing Federal Systems*, McGill-Queen’s University Press, 2008, p. 8. See also, Thomas O Hueglin and Alan Fenna, *Comparative Federalism: A Systematic Inquiry*, University of Toronto Press, 2015, pp. 31–36; and also, Edward McWhinney, *Comparative Federalism: States’ Rights and National Power*, University of Toronto Press, 2019.

<sup>9</sup> Alfred Stepan, “Federalism and Democracy: Beyond the U.S. Model” (1999) 10:4 *Journal of Democracy*, pp. 19-22. Also see Berihun Adugna Gebeye, “Federal Theory and Federalism in Africa” *VRÜ Verfassung und Recht in Übersee*, 53 (2) 2020, pp. 95-115.

common basis when addressing the unity and diversity issues within deeply divided polities, i.e., a basis where sub-national level government enjoys substantial self-rule, while political unity and territorial integrity at the national level are maintained as shared common goods under shared rule. It is then no coincidence that federalism is a key element in the toolbox of international expert advice on post-conflict constitutional design.<sup>10</sup>

### **Federalism in Africa**

Cases of federalism in Africa are few and relatively new. African experience in federalism has been limited and not effective as compared to the well-established federations of developed countries. Yet, there are various federal states in Africa such as Nigeria, Ethiopia, Comoros, South Africa, and Somalia, which have departed from unitarism to adopt federalism in order to resolve ongoing political conflicts and to promote peace and stability. Federalization process in Africa is mainly promoted by conflicts based on deep divisions in societies, i.e., ethnic, historical, cultural, and racial differences among other lines along which citizens are divided.

In a comparative study of the Nigerian, South African and Ethiopian cases, Berihun Gebeye has argued that “the primary purpose for the adoption of federalism in Africa is to accommodate the competing demands of ethnonational groups within a single state” whereas “the accommodation of diversity and the maintenance of territorial integrity are the twin justifications for federal formation, while the political strength of ethnonational groups during the constitutional moment is the determining factor.”<sup>11</sup> In that sense, federalism in African context is initially a tool applied in the search of a fair balance amongst competing ethnonational claims and their respective powers or “political strengths”. The twin justifications of federalism can also be viewed as the two indispensable main goals of the federalist moment, hence being the criteria against which we can measure the success or failure of the federalism experience in a given case: Maintaining territorial integrity and peaceful politics in relation to ethnonational diversity.

Having observed that syncretic convergences, adaptations, and innovations are common elements of African federalisms, as it is blended with ethnicity and socialism in

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<sup>10</sup> Neophytos Loizides, Iosif Kovras, Kathleen Ireton, “Introduction: Federalism, reconciliation, and power-sharing in post-conflict societies”, *Federal Governance*, 8(2), pp. 1-14.

<sup>11</sup> Berihun Adugna Gebeye, “Federal Theory and Federalism in Africa”, *VRÜ Verfassung und Recht in Übersee* 53(2) 2020, p. 105.

Ethiopia, militarism in Nigeria, or liberalism and Ubuntu in South Africa, Gebeye concludes that the common “elements of federalism in Africa manifest convergences with classic federal theory with respect to forms, structures, and discursive practices, on the one hand, and shows divergences related to the syncretic normative and institutional adaptations and innovations, on the other.”<sup>12</sup>

Gebeye’s work provides us with a framework for comparative study that includes a common explanation of post-unitary federalization and a number of common features among African cases of federalism, wherein we can bring the Somali experience of federalism into comparison with its other African cases. Accordingly, throughout this paper, we will be offering a discussion of Somalia’s federalism along these lines of inquiry, and we argue that it is also a case that fits into the typical framework of explanation suggested by Gebeye. We observe that comparative inquiry about these four country cases of federalism in Africa from four aspects, i.e. political legacy (I), political moment (II), institutional architecture (III), values and ideology (IV), reveals a number of important common points.

(I) In terms of *political legacy*, common points among all of the four country cases are strikingly numerous, such as, constitutionalism, equal rights, electoral politics, parliamentarism<sup>13</sup>, unitarism, popular consent, rule of law, minority/majority issues, authoritarian rule, discrimination, oppression, privilege, etc. – not to mention the perils of postcolonialism. Democratic elements in political legacy are outweighed by elements of authoritarian rule. Somalia in this regard can be viewed as another postcolonial democracy quickly swallowed into long-lasting authoritarian rule.

(II) Similarly, the inquiry about the *political moment* is informed by numerous important common points, such as, underdevelopment favoring authoritarian rather than democratic rule, deep societal divisions challenging political unity, regime consolidation, etc. Institutional change is another common point in this regard, where Somalia political moment is marked with rarity in scope that involves decades-long political turmoil and state building under international peace support, with cooperative federalism as the decided name of the game, and how strong a federal government is needed being the decisive question. The process of state-building that introduced

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<sup>12</sup> *Op. Cit.* p. 105.

<sup>13</sup> Also note that none of the four cases has ever experienced presidentialism.



federalism as an institutional element did achieve to adopt a Provisional Constitution in 2012, yet an important part of the state-building goals set by the 2012 PC still awaits to be met. No matter how long-elaborated the process has been, federalism in Somalia is yet to be built through continued future efforts of various parties involved, and without jeopardizing the achieved level of peace, security and governance under the rule of law. Being built within that political moment is a *holding-together* type of federalism rather than the *coming-together* type, again similar with the other three examples compared. Also noteworthy is the *ethnofederalism* question. Among the four country cases compared, Somalia scores outstandingly in terms of ethnic homogeneity, with a very large majority of the nation being ethnically *Somali*. Clan-level divisions, however, has gained ever-growing depth since the days of General Barre, when they functioned as the basis of discrimination and oppression under the militarist regime. Clan membership gained more significance as the usual source of solidarity/hostility dynamics in the following decades of political turmoil. Clan-based power sharing formula has governed the public affairs, since agreed upon in Arta Peace Talks, which was an early milestone in the development of federalism in Somalia.

(III) In terms of *institutional architecture*, the four basic conceptual elements of federalism, i.e., constitutionalism, self-rule, shared rule and umpire, are in a certain sense present in all of the four country cases, with one important exception: The umpire is institutionally lacking in Somalia, with the Constitutional Court and some independent commissions constitutionally charged with the mandate but not formed yet. Also note that in Somalia, the self-rule element is lacking for those regions that have not yet organized into federated member states. In that regard, Somalia federalism diverges from the other examples as institutionally incomplete.

(IV) Variations amongst examples of African federalism in terms of *values and ideology*, is particularly noted by Gebeye, while drawing attention to the eclecticism in combining non-democratic ideological elements and political values with the political philosophy of federalism. That is when the democratic promise of federalism is easily outweighed by its mechanical benefits in search of state/regime survival, as a convenient way to resolve conflicts and to address unity-and-diversity questions. Gebeye also notes that the principles of cooperation and collaboration rather than competition and checks-and-balances are enshrined in the constitutional description of federalism in the African examples. The Somali case again fits in the comparison: The

2012 PC mentions power sharing as a founding principle, and refers to cooperation and collaboration as principles governing the relations amongst the tiers of government. Islam is accompanying gender equality and human rights in the showcase of supreme values upheld by the constitution, while Sharia is referred to as an important source of the law of the land.<sup>14</sup>

Having summarized those observations that depict the Somalia case with reference to conceptual elements of federalism and typical features in comparative perspective, we will now proceed to discuss Somalia’s federalism in historical context, i.e. post-conflict state building under international support, and then take a closer look at the institutional architecture that has been developed within that context so far.

### **Historical Context: Post-unitary federalization within post-conflict state building**

The history of government and administration in Somalia since independence involves huge variations in terms of political regimes and government types, interestingly yet with less variations in terms of tiers of government or the number of second-tier divisions. In terms of government structure, where we would locate federalization, we initially observe a history of unitarism and centralization that lasted until the state collapse in 1991. Following the collapse, the first transitional governments were initiated without challenging the legacy of unitarism, but state building efforts soon embraced federalization as the optimally plausible option for the multiple parties involved. Table 1 below provides with a chart of seven basic variables in the historical development of government and administration in Somalia.

**Table 1. Government and Administration in Somalia<sup>15</sup>**

<b>Government Type</b>	<b>Time</b>	<b>Government Structure</b>	<b>Tiers of Government</b>	<b>Political Regime</b>	<b>No. of Regions</b>	<b>No. of Districts</b>
Civil Governments	1960-1969	Decentralized Unitarism	-Central Government -Regional Administration	Emerging democracy	8	12

<sup>14</sup> In that aspect, the case of Somalia is also comparable to several other examples of post-conflict federalism involving state-building under international intervention, such as, Afghanistan and Iraq, both of which are also senior examples of incomplete federalism without much hope for near future completion.

<sup>15</sup> Mohamed Ahmed Adan, *Development of Public Administration in Somalia: The Impact of Historical and Sociological Factors*, Thesis submitted to the Department of Public Administration, TODAIE, Ankara, 2018.

			-Local municipalities (Districts)			
Revolutionary Socialist Single Party Government	1969-1991	Centralized Unitarism	-Central Government -Regions -Districts	Single party rule	18	92
State-building & Transitional Governments	1991-2012	-Centralized Unitarism (2000 to 2004)  -Federalism (2004 to 2012)	-Central Government -Regions -Districts  -Federal Government Level -Federal Member States -Local governments	Emerging democracy	18	98
Federal Government	2012-Present	Federalism	-Federal Government Level -Federal Member States -Local governments (Regions, districts, villages)	Emerging democracy	18	102 approximately

As briefly summarized in Table 1 above, the territorial organization of national sovereign power, i.e. the structure of government and administration, has developed in Somalia historically in three stages: decentralized unitarism, centralized unitarism and post-unitary federalism. Also noteworthy is the fact that each of these stages is marked by an official name change for the Somalia polity due to great political moments, such as, independence, regime change or rebuilding the nation-state after its collapse.

The post-colonial national history of Somalia has witnessed three official name changes. In 1960, the new independent *Republic of Somalia* was admitted to the membership of the United Nations.<sup>16</sup> The Constitution of Republic of Somalia adopted in 1961 entailed a modern democracy, wherein the sovereignty was vested in the nation and organized in the form of a unitary nation-state with considerable decentralization and equipped with parliamentary government at the national level. Subnational levels of government included the eight regions

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<sup>16</sup> A/RES/1479(XV). Admission of the Republic of Somalia to membership in the United Nations. Adopted at the 864th plenary meeting, 20 Sept. 1960.

and 12 districts. Political regime in the initial decade was an emerging democracy. This was, however, short-lived.<sup>17</sup>

A successful military intervention commanded by General Siyad Barre and his Supreme Revolutionary Council in 1969 ended civil government and multi-party politics, and introduced a new political regime based on revolutionary single party politics and an official political ideology that was a nationalist blend of militarism, socialism, and Islam. In order to reflect the scope of the revolution, the SRC regime renamed the polity as the *Somali Democratic Republic*. The revolution kept the unitary form and three-tier architecture of government, while introducing centralization under military rule and single party politics.<sup>18</sup> Subnational levels of government in the Somali Democratic Republic included the 18 regions and 92 districts.<sup>19</sup>

The militarist regime, oppressive at home and aggressive in the neighborhood, sought and managed to find recognition and allies within the international community, i.e. the USSR led Socialist Bloc and the Arab world. Oppression and aggression resulted in disenchanted citizens and concerned neighbors, which together powered increasingly successful organizations of armed resistance in the 1980s. The collapse of the USSR in 1991 also paved the way for the collapse of its ally in the Africa Horn – the militarist regime collapsed amidst growing political unrest. Civil war broke out while various political or armed organizations effectively controlled, and claimed political authority on, various parts of the national territory.<sup>20</sup>

The 1991 state collapse resulted in decades-long international intervention, such as, the United Nations peace-building support mission (UNOSOM) or the African Union mission force (AMISOM) in Somalia. International peace support was a slowly developing success as it took more than a decade for the first transitional government, the Transitional National Government (TNG) between 2000-2004, to be formed. This was followed by the Transitional Federal

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<sup>17</sup> Mohamed Ahmed Adan, *Development of Public Administration in Somalia: The Impact of Historical and Sociological Factors*, Thesis submitted to the Department of Public Administration, TODAIE, Ankara, 2018, pp. 30-65.

<sup>18</sup> Mohamoud Abdullah, Abdullah Mohamoud, “*State collapse and post-conflict development in Africa: the case of Somalia (1960-2001)*”, Purdue University Press, 2006.

<sup>19</sup> Mohamed Ahmed Adan, *Development of Public Administration in Somalia: The Impact of Historical and Sociological Factors*, Thesis submitted to the Department of Public Administration, TODAIE, Ankara, 2018.

<sup>20</sup> Bongartz Maria, “*The civil war in Somalia: Its genesis and dynamics*”, Nordiska afrikainstitutet, 1991.

Government (TFG) between 2004-2012. As a result of the initial steps taken during the Transitional Federal Government, in 2012 Somalia adopted a Provisional Constitution<sup>21</sup> that also introduced a change in the official name of the polity: *Federal Republic of Somalia*.

At this point we would like to highlight that the notion of federalism was introduced into Somalia's constitutionalism after the failure of the first transitional government, the TNG, which was organized according to the principle of unitarism in line with the national constitutional legacy and the administrative map that comprised of the 18 regions. The second attempt to form a transitional government, the TFG, was instead based on the principle of federalism. The 2004 Transitional Federal Charter entailed a number of transitional federal institutions, which later would be further developed by the 2012 Provisional Constitution.<sup>22</sup>

The Provisional Constitution has provided the institutional design of post-unitary federalization in Somalia. One major achievement in terms of implementation of the Provisional Constitution, and post-conflict state-building, was the formation of government, the Federal Government of Somalia, in September 2012 – the first one that won the official diplomatic recognition and support of the international community, since the state fall in 1991. Hassan Sheikh Mohamoud was elected by the federal legislature as the first president of the federal government. During the term of President Hasan Sheikh Mohamoud (2012-2016) Hirshabelle, South West, Galmudug and Jubaland federal member states had been successfully formed. Prior to that, the northern states (Puntland and Somaliland) were already running their own affairs. Thus, Somalia currently has six functioning federal member states plus Mogadishu, which is the capital of the federal government.<sup>23</sup> As shown in Table 1 above, the number of administrative regions remained unchanged within this period.

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<sup>21</sup> *Jamhuuriyadda Federaalka Soomaaliya Dastuurka Ku-Meel Gaarka La Ansixiyey 1.08.2012 (Provisional Constitution of the Republic of Somalia adopted on 1.08. 2012)*, <https://villasomalia.gov.so/soomaali/dastuurka/>. Also available in English at [http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94693/111147/F1279445166/Somalia\\_Provisional-Constitution\\_2012\\_ENGLISH.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94693/111147/F1279445166/Somalia_Provisional-Constitution_2012_ENGLISH.pdf), Accessed: 08.04.2021.

<sup>22</sup> Drafted under the auspices of United Nations and adopted by the National Constitutional Assembly, the Provisional Constitution upholds principles of democratic government and provides for a combination of federalism and parliamentarism. The text is comprised of 15 Chapters and 143 Articles. The principle of federalism is embodied in Chapters 5 and 12. For a detailed early note on the text, see Antonios Kouroutakis, "Note on the Provisional Constitution of the Federal Republic of Somalia", *IConnectBlog*, 2013, available at <http://www.iconnectblog.com/2013/09/note-on-the-provisional-constitution-of-somalia/> . Accessed: 22.09.2021.

<sup>23</sup> Among those member states, Somaliland bears some distinct features related to deep divisions cutting across the post-colonial national history. Somaliland government declared independence as early as 1991 yet without winning official recognition from the international community since then. For further discussions on the issue see for example Marlene Renders and Urf Terlinden, "Negotiating Statehood in a Hybrid Political Order: The Case

The completion of the common tasks related state building envisioned in the Provisional Constitution requires principled cooperation amongst different levels of government. Although the Provisional Constitution strictly provides for cooperative federalism, as discussed under the next title in detail, the element of competition amongst Federal Member States and the Federal Government has also prevailed in most instances.<sup>24</sup> As a result, the element of competition functioned as a major setback before the timely completion of common tasks of institution building.

A key document that initially guided the federalization process according to the 2012 PC was the new Somali New Deal Compact agreed in December 2012 between the federal government, federal member states and the international donor community, in order to harmonize common efforts for peace-building and state-building goals scheduled in the 2012 PC: (1) completing the Federal Member States formation process, (2) reviewing the constitution and (3) preparations to hold fair and direct elections of ‘one person one vote’ across the country.<sup>25</sup> The 2012 PC required those tasks to be finished within the term of the first federal parliament, thus the year 2016 becoming a deadline constitutionally set. After about one year of combined efforts and slow progress, the Federal Government under international pressure adopted another document entitled Vision 2016 Compact. The Compact was basically aimed at meeting the constitutionally set deadline. However, the Compact has faced various criticism in relation to the envisioned roles of the political institutions roles in contrast to their participation in the preparation and adoption of the deal. As briefly stated by Jan Schmidt: “One major problem of the Vision 2016 Compact seems to be the fact that this document was

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of Somaliland”, *Development and Change*, 41, 2010, pp. 723-746. Somaliland is also is also subject to the Somaliland Special Arrangement under the 2013 New Deal Compact.

<sup>24</sup> Ali Yassin Sheikh Ali, Abdinor Hassan Dahir, and Zahra Daud Hersi, “Federalism in post-conflict states: Assessing Somalia’s challenges and the way forward”, *Perspectives on Federalism*, 11(2) 2019, pp. 54-94.

A particular topic of debate is related to international affairs: The Provisional Constitution exclusively mandates the federal government in the field of foreign affairs, while also granting the federal member states the right to be consulted during international negotiations. *See also*, Hussein Abdirazak, “The future constitutional structure of the Somali Republic: Federal or decentralized unitary state?”, *Hiiraan Online*, 25.04.2011,

[https://www.hiiraan.com/op2/2011/apr/the\\_future\\_constitutional\\_structure\\_of\\_the\\_somali\\_republic\\_federal\\_or\\_decentralized\\_unitary\\_state.aspx](https://www.hiiraan.com/op2/2011/apr/the_future_constitutional_structure_of_the_somali_republic_federal_or_decentralized_unitary_state.aspx). Accessed: 02.09.2021.

<sup>25</sup> The Somali Compact, 26.03.2013, [https://eeas.europa.eu/sites/eeas/files/20130916\\_the\\_somali\\_compact.pdf](https://eeas.europa.eu/sites/eeas/files/20130916_the_somali_compact.pdf). Accessed: 01.03.2018. For a brief assessment, *see*, Sarah Hearn and Thomas Zimmerman, *A New Deal for Somalia?: The Somali Compact and its Implications for Peacebuilding*, NYU Center on International Cooperation, 2014.

Also *see*, for a brief introduction to the “New Deal” approach in international aid and peace building support, Yannick Hingorani, “The New Deal For Engagement In Fragile States: Where Are We Now?”, *Journal of Peacebuilding & Development*, 10 (2), 2015, pp. 87-93.

never presented to and approved by the Federal Parliament. This is even more striking considering the key role of the parliament in most processes outlined in the Compact that are to be reflected in a revised constitution and implementation legislation to be adopted by Parliament.”<sup>26</sup> Retrospectively, the efforts organized within the framework of the Vision 2016 Compact must have been too late and too little to achieve their manifest goal – as those constitutionally set tasks of state building and constitution making still await to be completed as of today, some five years beyond the constitutionally set deadline.

Despite those shortcomings and setbacks, institution-building process under the 2012 Provisional Constitution nevertheless witnessed certain achievements such as the formation of key bodies of constitution making process, i.e., the Constitutional Review and Implementation Oversight Committee and the Independent Constitutional Review and Implementation Commission (ICRIC).<sup>27</sup> Most importantly, Somalia has created and succeeded to keep functioning a bicameral national legislature consisting of the House of the People (lower chamber) and the Senate (upper chamber). Members of the House are elected based on the so called 4.5 clan power-sharing formula<sup>28</sup> through Indirect Elections (Doorasho Dadban), which can be simply illustrated as in the Figure 1 below:



<sup>26</sup> Jan Amilcar Schmidt, “Vision 2016 in Autumn 2015: What can still be achieved in the Somali peace-andstate-building process?”, *Constitutionnet*, 30.10.2015, <http://www.constitutionnet.org/news/vision-2016-autumn-2015-what-can-still-be-achieved-somali-peace-and-state-building-process>, Accessed: 12.12.2017

<sup>27</sup> Jan Amilcar Schmidt, “Vision 2016 in Autumn 2015: What can still be achieved in the Somali peace- and state-building process?”, *Constitutionnet*, 30.10.2015, <http://www.constitutionnet.org/news/vision-2016-autumn-2015-what-can-still-be-achieved-somali-peace-and-state-building-process>, Accessed: 12.12.2017

<sup>28</sup> The 4.5 clan formula was adopted as a power-sharing model in the early stages of transitional politics, during the peace talks held in Arta city, Djibouti, in order to bring an end to the power struggle. The talks resulted in an



Figure 1. The Election Process in Somalia<sup>29</sup>

A total of 14,025 electorate members distributed in accordance with the clan-based 4.5 formula of power-sharing in the clan families picked by 135 clan elders are to elect 275 lawmakers, while the 54 senators of the upper house are chosen by the federal member states' parliamentarians. Both houses then elect the president of the federal government. Current parliament of federal government has elected Mohamed Abdullah Farmajo as president of Somalia on February 8, 2017. The Farmajo administration had a four-year mandate to finish the constitutional review process and hold 'One person One vote elections' with the collaboration of National Independent Commissions, but they failed to accomplish this goal and the country is on course to witness another round of indirect elections (Doorasho Dadban).

Table 2. Number of Seats per voting location in the Lower House<sup>30</sup>

2016 Elections				Proposed 2020 Elections		
Federal Member States	Lower House Seats	Polling Stations	Electoral College Delegates	Lower House Seats	Polling Stations	Electoral College Delegates
Puntland	37	Garowe	1,887	37	Bosaso 21 Seats and Garowe 16 Seats	3,774
Somaliland	46	Mogadishu	2346	46	Mogadishu 46 Seats	4692

agreement among stakeholders on the Transitional National Government with Abdiqasim Salad Hassan selected as the president. In addition, a 245-member parliament was formed in accordance with the 4.5 formula, which divided parliamentary seats among the four big clan families of the Dir, Daarood, Hawiye, and Digil-Mirifle, with the remaining minority clans such as the Benadir and the Somali Bantu being recognized as point five. In this regard, the 4.5 formula can be seen as a political agreement that guarantees the representation of all the clan families in political decision-making, mainly in the parliament section, judiciary branch, and the executive division as well as in civil service, police, and the national army. As a legacy of transitional politics, the formula has governed public affairs so far, although not mentioned in the Provisional Constitution. Critics argue that the formula did not solve conflicts over representation but it helped deteriorate the performance of public institutions. For further discussions, see for example, Nasteha Ahmed, "Somalia's Struggle to Integrate Traditional and Modern Governance Systems: The 4.5 Formula and the 2012 Provisional Constitution", *Journal of Somali Studies*, 6, 2019, pp. 41-69. Also see, Brian J. Hesse, "Introduction: the myth of 'Somalia'", *Journal of Contemporary African Studies*, 28(3), 2010, pp.247-259.

<sup>29</sup> Source: Aljazeera News, 07.02.2017, <http://www.aljazeera.com/indepth/interactive/2017/02/explaining-somali-electionprocess170207102621524.html>, Accessed: 02.01.2018.

<sup>30</sup> Source: UNSOM, "Somalia's 2016 electoral Process", 15.09.2015, [https://unsom.unmissions.org/sites/default/files/somalia\\_2016\\_electoral\\_process.pdf](https://unsom.unmissions.org/sites/default/files/somalia_2016_electoral_process.pdf), Accessed: 22.10.2017.



<b>Galmudug</b>	36	Adado	1836	37	Samareeb 26 Seats and Galkacayo 11 Seats	3774
<b>South West</b>	69	Baidoa	3519	69	Baidoa 43 Seats and Baraawe 26 Seats	7038
<b>Jubaland</b>	43	Kismayo	2193	43	Kismayo 27 Seats and Garbaharay 16 Seats	4,386
<b>Hirshabelle</b>	37	Jowhar	1887	38	Jowhar 13 Seats and Beledweyne 25 Seats	3,876
<b>Banaadir</b>	7	Mogadishu	357	5	Mogadishu 5 Seats	510
<b>Total</b>	<b>275</b>		<b>14,025</b>	<b>275</b>		<b>28,050</b>

### **Institutional Design for Post-Unitary Federalism in Somalia**

Having briefly discussed the process of federalization in Somalia, we will now take a closer look into the institutional design that informed the whole process. In the theoretical study of federalism, institutionalists believed in the importance of federalism in the division and sharing of powers among the central government and member states.<sup>31</sup> Meanwhile, the intergovernmentalists see federalism as a public administration process.<sup>32</sup> For instance, Oates argues that federalism is about the division of public sector roles and finances among layers of government.<sup>33</sup> This paper emphasizes that federalism is not only formulated by laws and institutions but also by public attitudes and political culture. Moreover, Elazar argues that federalism not only focuses on fostering connection amongst institutions but also formulates the relationships between political actors and stakeholders in a political system.<sup>34</sup> Federalism also focuses in the institutionalization of particular relationships among the participants in political life. Subsequently, “federalism is a phenomenon that provides many options for the

<sup>31</sup> UNDP, *Public Administration Reform (PAR) Practice Note*, 2003, pp. 1-14. <https://www.undp.org/publications/public-administration-reform-practice-note-0>, Accessed: 12.11.2015

<sup>32</sup> Steven Roper, “Federalization and Constitution-making as an Instrument of Conflict Resolution”, *Demokratizatsiya*, 2004,12(4), 527-539.

<sup>33</sup> Oates Wallace, *Fiscal Federalism*, New York, Harcourt Brace Jovanovich, 1972.

<sup>34</sup> Daniel Judah Elazar, *Introduction to Federal systems of the world: A handbook of federal, confederal and autonomy arrangements*, 2nd ed., New York, Stockton Press, 1994.

organization of political authority and power; as long as the proper relations are created, a wide variety of political structures can be developed that are consistent with federal principles”.<sup>35</sup>

In the case of Somalia, we would like to remind that federalism is new and yet-to-be-built, while Federal Government (FGS) utilizes the federalization process in Somalia to initiate programs for establishing post-unitary federal system and reforming public organizations that have collapsed during the civil war. The Provisional Constitution is promoting separation of powers among state organs for enhancing checks and balances. Article 3 entitled *Founding Principles* refers to “power sharing” as one of the founding principles of the federal republic: “The Federal Republic of Somalia is founded upon the fundamental principles of power sharing in a federal system.” Power sharing is structured within the articles of the 5<sup>th</sup> Chapter of the Provisional Constitution entitled *Devolution Of The Powers Of State In The Federal Republic of Somalia*. Accordingly, post-unitary federal state of Somalia is built in on a new three-tiered framework: federal government, federal member states and local government administration. The structure of the State is framed in the Article 48, as follows:

“(1) In the Federal Republic of Somalia, the state is composed of two levels of government: The Federal Government Level; the Federal Member States Level, which is comprised of the Federal Member State government, and the local governments. (2) No single region can stand alone. Until such time as a region merges with other region(s) to form a new Federal Member State, a region shall be directly administered by the Federal Government for a maximum period of two years”.

The Provisional Constitution in Article 50 entitled *Principles of Federalism in the Federal Republic of Somalia* describes the relations between federal entities within the republic as “mutual cooperation ... in the spirit of national unity”. Different levels of government should equally enjoy democratic legitimacy, while powers, duties and resources being distributed fairly and in accordance with subsidiarity. Reconciliation is the governing principle for resolving federal disputes:

“The various levels of government, in all interactions between themselves and in the exercise of their legislative functions and other powers, shall observe the principles of federalism, which are: (a) Every level of government shall enjoy the confidence and support of the people; (b) Power is given to the level of government where it is likely to be most effectively exercised; (c) The existence and sustainability of a relationship of mutual cooperation and support between the governments of the Federal Member States, and between the governments of the Federal Member States and the Federal Government, in the spirit of national unity; (d) Every part of the Federal Republic of Somalia shall enjoy similar levels of services and a similar level of support from the Federal Government; (e) Fair distribution of resources; (f) The responsibility

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<sup>35</sup> Daniel Judah Elazar, “Cooperative federalism”, *Competition among the States and Local Governments: Efficiency and Equity in American federalism*, Washington D.C., Urban Institute, 1991, p. 12.

for the raising of revenue shall be given to the level of government where it is likely to be most effectively exercised; and (g) The resolution of disputes through dialogue and reconciliation.”

The cooperative vision of federalism is described in further detail in the following two articles (51, 52) concerning “collaborative relationships” between the federal government and member state governments, and “cooperative relationships” amongst federal member state governments, respectively.<sup>36</sup> In accordance, they are bound to respect the constitutional boundaries of their powers as well as the powers of their counterparts, to inform each other about their policies, and strive to develop joint projects. Article 51 requires an annual convention of chief executives to discuss issues such as strengthening national unity. The Article also requires the Federal Parliament to enact laws concerning the cooperation amongst federal entities as well as the ways of resolving disputes amongst them without resorting to courts. Article 52 requires executives of federal entities to meet regularly to discuss a number of topics such as health, education, etc. from a cooperative viewpoint; and empowers them to engage in mutual agreements.

One of the key aspects of the federal relations lies within the stipulations of the Article 53, where the federal government is required to consult with the federal member state governments on negotiations related to a number of topics including foreign aid, trade and treaties. The Article empowers the federal member states to be included in the delegations for those international negotiations that affect them directly:

“In the spirit of intergovernmental cooperation the Federal Government shall consult the Federal Member States on negotiations relating to foreign aid, trade, treaties, or other major issues related to international agreements ... [w]here negotiations particularly affect Federal Member State interests, the negotiating delegation of the Federal Government shall be supplemented by representatives of the Federal Member States governments”.

While the Provisional Constitution does not provide a detailed power-sharing map, it nevertheless lists a certain number of topics that fall exclusively under federal mandate, whereas allocation of those remaining powers shall be subject to negotiations and agreements. Article 53 entitled *Allocation of Powers* reads as:

“The allocation of powers and resources shall be negotiated and agreed upon by the Federal Government and the Federal Member States (pending the formation of Federal Member States), except in matters concerning: (A) Foreign Affairs; (B) National Defense; (C) Citizenship and

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<sup>36</sup> Note that the two terms “cooperation” and “collaboration” we see in the English text corresponds to one single term in original Somali: Iskaashiga.

Immigration; (D) Monetary Policy, which shall be within the powers and responsibilities of the federal government.”

Separation of powers at the federal level is embodied in the Chapters 6 to 9, while Chapter 10 introduces the Independent Commissions. The national legislature is bicameral with a lower chamber (House) representing the nation as a whole and an upper chamber (Senate) representing the federated member states. The executive branch is bicephalous, with a President and a Council of Ministers. Government system at this level basically follows the parliamentary model, consistent with the Somali constitutional legacy. Currently the key institutions of federal government consist of the Office of the President; the Office of the Prime minister; the Deputy prime minister, 27 Ministries with 27 Deputy Ministers; the 54-member Senate and the 275-member House. The judiciary, on the other hand, is independent and among the key judicial institutions are a nine- member judicial service commission that appoints members of the federal judiciary, the Supreme Court and judicial system with more than 140 judges including federal member states’ judges.

### **Incomplete federalization years after the deadline?**

The institutional design developed so far is mostly a typical example of federal power architecture, yet with gross incompleteness in all four basic conceptual elements of federalism, half a decade past the constitutionally set deadline. Institutions of shared rule like the parliament have somewhat been formed, though lacking equal vote that would serve as the basis of democratic shared rule. Institutions of member state level self-rule are incomplete with no further development in recent years toward new member state formation – an agenda long stuck by constitutional ambiguities and mutual mistrust among parties involved. The constitution making process similarly has been stuck at the provisional stage for almost a decade, rendering federalism here without a proper constitutional framework. Most importantly, the fourth conceptual element of federalism, the umpire, is lacking. Key institutions that would serve as the federal umpire, like the Constitutional Court and the Interstate Relations Commission have not been fully formed and functioning yet, and grievances between the federal government and the member states on issues such as resource-

sharing, power distributions and the political processes have challenged the country's federalization process.<sup>37</sup>

Again, we observe that the long process of post-unitary federalization has achieved some important but still limited success, so far. We also note that the restoration of public institutions at large in Somalia has proved to be a very difficult task motivated and/or challenged by the extraordinary circumstances like civil war, terrorist threat, clan-based power politics, international peace support, etc. As the federalization process in Somalia is a long elaborated yet still an unfinished project, the ordinary citizens and international partners are not satisfied with the outcomes of the process, due to the failure of political actors to fulfill their tasks in building post-unitary federalism and to effectively assume their leadership role for the common good. The lack of political goodwill that can promote federalism as an overarching common project have made citizens increasingly dissatisfied with federalism and inclined to view it as an instrument used by the international community to divide Somalia. Competing interpretations of constitutional or legal clauses have eventually created hurdles for the improvement of the federalization process. Imperatively, the previous structure of the state needs to be aligned with the emerging constitution, previous rules and regulations must be compatible with newly promulgated legal statutes, and the critical laws of federalization process need to be enacted.<sup>38</sup> Additionally, the current federal arrangement has created unclear roles and responsibilities that overlap with each other, making it complicated and prone to the rise of conflicts among the major political actors, decision-makers and stakeholders in both federal and member states levels.<sup>39</sup>

In a nutshell, to avoid political conflicts, tyranny and social disharmony in the federalization process in Somalia, this paper argues for the finalization of the constitutional reform process and the establishment of a constitutional court that can interpret constitutional ambiguities and present solid solutions to political uncertainties. The separation

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<sup>37</sup> Richard Simeon, "Constitutional design and change in federal systems: Issues and questions", *Publius: The Journal of Federalism*, 2009, 39 (2): 241-261.

<sup>38</sup> Galvanek Janez, *Grass-roots Dialogue in Hiirshabelle State: Recommendations for locally informed federalism in Somalia*, Berghof Foundation, 31.05.2017, [https://www.berghofoundation.org/fileadmin/redaktion/Publications/Other\\_Resources/SomaliaProjectReport.pdf](https://www.berghofoundation.org/fileadmin/redaktion/Publications/Other_Resources/SomaliaProjectReport.pdf), Accessed: 15.08.2021

<sup>39</sup> Hassan Ali, "The enigma of federalism in Somalia", *Hiiraan Online*, 27.08.2017, [https://www.hiiraan.com/op4/2017/apr/141481/the\\_enigma\\_of\\_federalism\\_in\\_somalia.aspx](https://www.hiiraan.com/op4/2017/apr/141481/the_enigma_of_federalism_in_somalia.aspx), Accessed: 02.09.2021.

of powers and traditional checks and balances is weak in Somalia. Hence, the Federal government and the international partners are required to focus on reconstructing and strengthening institutions that promote federalization process chief among them being the formation of Federal Constitutional Court in Somalia. Moreover, the political game is mainly taking place in the parliamentary sphere while courts have limited roles. Samuels argued on the necessity of developing an alternative effective mechanism of constitutional enforcement that promotes separation of powers and the principles of constitutionalism in the Somali political atmosphere.<sup>40</sup>

## **Conclusion**

The emerging federalism in Somalia is studied in this paper as an example of post-conflict federalization of formerly unitary states, also with reference to a comparative framework aimed at explaining federalism in the wider African context. In order to contribute to the comparative study of African federalism in particular, and federalism in general, this study examined the case of Somalia in terms of political legacy and basic elements of federalism, while also trying to identify the dynamics of and the challenges to the process of federalization in the case under study.

Here we would like to highlight that the twin promises of federalism discourse, i.e., *self-rule* and *shared rule* as the main strengths of a federalist vision in a post-conflict state-building setting. This study observes in the case of Somalia that the actual distribution of political power among numerous regional centers as well as the national capital within the last three decades of power politics rendered unitarism out of question – and decentralization would simply not suffice. In that sense, federalization was the only option left to address the issues of territorial integrity, national unity and political diversity while restructuring a collapsed state within the framework of international peace support. We would also note that, being an institutional novelty has been the main weakness of Somalia's federalism so far which continues to challenge each of the twin promises in terms of institutionalization. In line with the findings of the recent research on African federalism and on the role of political institutions

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<sup>40</sup> Kirsti Samuels, "Post-conflict peace-building and constitution-making", *Chicago Journal of International Law*, 2005, 6 (2), pp. 663-64.

in deeply divided polities, we conclude that regional divisions corresponding to political rivalries in the Somalian case are the main motivators of federalization, while at the same time, bringing setbacks to fulfill the federalist state-building project. Hence, fortifying self-rule can easily be prioritized over developing institutions and practice of shared rule.

Lagging years behind the constitutionally set deadlines for completing certain state building tasks results in a kind of prolonged unconstitutional status quo, which in turn undermines the very idea of constitutionalism.<sup>41</sup> This paper finally maintains that the constitution making process should be completed and the Constitutional Court that can interpret constitutional ambiguities and offer solid solutions for political uncertainties should be established without more delay. The need for reviving constitutionalism and improving the rule of law by strengthening the role of the judiciary in the case of Somalia cannot be overstated.

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<sup>41</sup> Federalism in Iraq is a more senior example of such a status quo.

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