

**REVIEW OF THE SOMALI PROVISIONAL CONSTITUTION:
APPRAISAL OF CONTENTIOUS ARTICLES AND CONTESTED
ISSUES**

**SOMALIA SOUTH CENTRAL NON-STATE ACTORS
(SOSCENSA)**

Report

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This report discusses the contentious articles and other contested issues in the Somali Provisional Federal Constitution. It presents analysis and recommendations based on desk review research coupled with ideas and opinions gathered from participants of focus group meetings held in most Federal Member State Capitals.

1. Introduction

“If parties to a conflict cannot agree on an issue, either something is missing from the agenda or something irrelevant is in it” . Somali Proverb

After the collapse of the central government of Somalia in 1991, the country descended into a period of lawlessness and protracted civil war. In 2000, the first Transitional National Government was formed in neighbouring Djibouti, and the Transitional National Charter was adopted which adhered to the unitary character of the state. However, a significant transformation occurred in 2004 when a decision was made by participants of the Nairobi conference, without widespread consultation, to make a complete break with the past and introduce a federal system of government, which was new to Somalia and a clear indication of a substantial change to the status quo antebellum.¹

For countries emerging from a protracted conflict like Somalia, a constitution making and reviewing process offers prospects for building robust, legitimate governance structures, and for promoting consensus-based solutions to contentious issues. In Somalia, the drafting and reviewing process happened under the aegis of the United Nations.² The political and security situation of the country did not permit a popular referendum, so the current Provisional Federal Constitution (PFC) was approved by a National Constituent Assembly (NCA) in 2012, comprising more than eight hundred Somalis from all regions and all walks of life.³

The Somali Provisional Constitution consists of 15 chapters and 143 articles covering all the important issues that a modern constitution is supposed to cover. For example, chapters five and twelve elaborate on the

¹Elmi, A.A, The Limits of the UN-Controlled Constitution-Making Process in Somalia, Horn of Africa, 31 (2013)

²http://www.so.undp.org/content/somalia/en/home/operations/projects/poverty_reduction/parliament-support-project1.html;

<http://www.so.undp.org/content/somalia/en/home/presscenter/pressreleases/2018/05/15/historic-3-day-convention-on-somali-constitution-concludes-in-mogadishu.html>

³<https://reliefweb.int/report/somalia/somalia%E2%80%99s-national-constituent-assembly-adopt-new-provisional-constitution>

principles of federalism, chapter two catalogues human rights, chapters six and nine deal with the separation of powers and chapter ten covers independent commissions.⁴

After the collapse of the central government in 1991, attempts have been made to create a constitution in the absence of societal consensus. For example, the adoption of a federal system of government was not a consensus-based decision. Several function leaders met in Nairobi, Kenya and made that fundamental decision.⁵ It is safe to state that the Somali people remain divided on the use of a federal system.⁶ It seems that the political leaders at that time adhered to a realist approach in political theory which sees constitutions as “reflections of the balance of power at their time of drafting and thus does not consider them to have any particular role as agents of change or in transitions”.⁷

It is evident that “under conditions of deep internal disagreement, enacting a formal constitution is a high stakes game that can undermine political stability and derail democratisation”.⁸ For instance, in Afghanistan, the debate over the drafting of the constitution unleashed deep-seated divisions within the drafting team concerning foundational norms and values that should reinforce the state.⁹ The current review of the Somali constitution should take this into consideration to create a

4 For more information about analysis and divisions of the PFC, see Antonios Kouroutakis, “The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives”, *Cambridge Journal of International and Comparative Law*, (4) 2014

5 Samatar, Abdi I., Samatar, Ahmed I, *Somali Reconciliation: Editorial Note*, *Bildhaan: An International Journal of Somali Studies*, 3(2008), available at: <http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1017&context=bildhaan>

6 Galvanek, J.B, *Grass-Roots Dialogue in Hirshabelle State: Recommendations for Locally Informed Federalism in Somalia*, Project Report, Berghof Foundation, May 2017. For information about the risks and opportunities of the federal system in Somalia, see Mosley, J., *Somalia’s Federal Future: Layered Agendas, Risks and Opportunities*, Research Paper, Chatham House, September 2015

7 Samuels, K., *Post-Conflict Peace-Building and Constitution-Making*, *Chicago Journal of International Law*, 6 (2006), p.667

8 Lerner, H., *Making Constitutions in Deeply Divided Societies* (Cambridge: Cambridge University Press, 2011), p.1

9 Barnett R. Rubin, *Crafting a Constitution in Afghanistan*, *Journal of Democracy*, 15 (2014)

document which reflects the shared norms and values of the Somali people.

According to the Oxford Dictionary, a constitution can be defined as “a body of fundamental principles or established precedents according to which a state or other organisation is acknowledged to be governed.”¹⁰ Before delving into the primary purpose of this report and analysing contentious provisions and other controversial issues in the Provisional Federal Constitution, it may be prudent to understand what a constitution does and why it is needed. A constitution may be written or unwritten, although most constitutions today are written as a formal tangible document provides a more significant layer of protection that can be referred to when necessary. In essence, a constitution establishes the fundamental law of a nation and protects the fundamental rights of its citizens. Every nation can benefit from a well-drafted constitution, as it typically lays down very critical guidelines on how the government functions, the method of decision making and establishes the nature of a nation’s political system. A significant factor to be noted is that a constitution stands to ensure that powers are equally divided and that one group does not dominate or use its power to oppress another. It has famously been said that a constitution is there to ‘save us from ourselves’. This quote is more relevant in the Somali context as the country tries to emerge from protracted conflict and a situation of state collapse. The process to complete the current Somali provisional constitution has been on-going for over six years. However, there is a renewed optimism that the on-going review process will lead to the finalisation of the constitution-making exercise in Somalia. Nonetheless, it is paramount to make the process transparent, inclusive and interactive.

It is self-evident that civil society groups have a vital role to play in making the constitution a Somali-owned endeavour. In February 2018, the Somalia South Central Non-State Actors (SOSCENSA) commissioned three legal expert consultants and an assistant researcher, to undertake, among

¹⁰ <https://en.oxforddictionaries.com/definition/constitution>

other things, a thorough and critical reading of the PFC, its contentious articles, and analyse other controversial issues in the constitution in order to make recommendations regarding viable options for Somalia. It was also charged with conducting a review of the contentious articles of the Provisional Federal Constitution (PFC) and with making an analytical comparison of the Somali constitution with constitutions of Federal Member States, and the propose the best way to harmonise them.

Consequently, SOSSENSA in consultation with the three-member legal expert team identified the contentious articles and other contested issues in the constitution. For the purposes of this report, we refer to a contentious article as any provision in the provisional constitution that needs a political decision or is complicated enough to warrant further consultation before a technical review can commence.¹¹ The contested issues selected for review include the power relations between the President and the Prime Minister; options for the legislature regarding whether to maintain the current bicameral parliament or to opt for a unicameral system; judiciary options for Somalia, whether to adopt a unitary, integrated or dual judicial model; allocation of powers concerning the Federal Government and Federal Member States; separation of powers, regarding whether to allow members of the parliament to become members of the Council of Ministers while maintaining their membership of the House of the People; the status of Mogadishu; and finally the distribution of natural resources and the role of different levels of government in this.

After the introductory and methodology sections, the report will proceed in five parts. The first part briefly reviews the background of the constitutional review in Somalia and draws lessons from the endeavour. The second discusses the contentious issues in the constitution including judicial and legislature options for Somalia, and proposes a viable

¹¹ In Somalia, the contentious articles and contested issues are not foundational in nature, for more information about countries grappling with foundational issues that underpin the state, see Lerner H., Making Constitutions in Deeply Divided Societies (note 7 above)

alternative for Somalia. In this section, some contentious articles are analysed including provisions dealing with the status of the capital city, allocation of powers, natural resources sharing and separation of powers. The third section compares and contrasts the Provisional Federal Constitution with the Constitutions of Federal Member States and proposes the best way to make FMS constitutions compatible with the Provisional Federal Constitution. The conclusion section summarises the central themes and arguments put forward in the preceding parts and assesses what conclusions can be drawn from the analysis in the report as a whole. Finally, we make some recommendations based on the analysis of the contentious articles and the views and opinions of the focus group participants and civil society members.

2. Methodology

This section explains the methods employed to gather participants' experiences and ideas on the constitutional review process, particularly contentious articles. The experts mainly used a qualitative research method, particularly focus group application, to gather information about how the participants think and feel with regard to the on-going constitutional review programme and the contentious articles of the constitution in particular. Focus group discussions were held during March and May 2018.

A total of five focus group discussions were conducted in Mogadishu, Baidoa, Dhusamreb and Jowhar. Groups ranged in size from fifteen to twenty participants each and lasted from 90 to 180 minutes. Participants represented in focus groups included civil society members, including traditional elders, religious leaders, women and youth groups, and also academic and non-academic professionals.

There were certain limitations. First, we had only three months to carry out the desk review, conduct all focus group discussions and write the report. Second, the budget available was limited and there were

insufficient funds to engage more participants. Had more time and resources been available we would have been able to involve more members of the civil society in the country and the diaspora in different parts of the world.

3. The Somali Constitution-Making Process: Always Reinventing the Wheel

Somali politicians have an apparent tendency to reinvent the wheel when it comes to the constitution-making and review process. For instance, a decision was made by participants of the Djibouti Reconciliation Conference in 2000 to start from scratch and draft a new Transitional National charter. The new political dispensation adopted at the conference was a unitary system of government, and it was practicable to embrace the popularly approved constitution of 1961, albeit with minor amendments where necessary. Instead, a new constitution was written.

Similarly, during the Nairobi conferences from 2002-2004, without widespread consultation, participants decided to take a complete break from the past and introduce a federal system of governance which was new to Somalia. Again, Somali politicians decided to cast aside all previously written constitutions and started writing a new one, drafting a Transitional Federal Charter (TFC). Nonetheless, article 71, paragraph 2 of the TFC stipulated: “The 1960 Somalia Constitution and other national laws shall apply in respect of all matters not covered and not inconsistent with this Charter”.¹² Furthermore, article 68, paragraph 1(a) established an Independent Federal Constitutional Commission (IFCC) tasked to draft a new constitution, even though many other parties were later involved.¹³

¹² Transitional Federal Charter, adopted in Nairobi in February 2004, article 71, paragraph 2

¹³ Ibid, article 68(1a), see also, The Main Report of the Independent Federal Constitution Commission on Consultation Draft Constitution, July 2010, available at: http://www.tandemproject.com/pdf/final_main.pdf; Somali Government Establishes Committee of Experts on Draft Constitution, September 2011, available at: <https://reliefweb.int/report/somalia/somali-government-establishes-committee-experts-draft-constitution>. For the Timeline of the Somali Constitutional Process: 2004-2012, see https://unpos.unmissions.org/sites/default/files/old_dnn/Timeline%20of%20the

The current Provisional Constitution establishes two committees intended to review the constitution. Article 133 creates a “Provisional Constitution Review and Implementation Oversight Committee” (Oversight Committee) with the mandate to “oversee, direct and approve the work of the Review and Implementation Commission, and, generally, the implementation of the constitution”. The Oversight Committee comprises five members from each house of parliament and five members nominated by the individual Federal Member States.¹⁴ In the same vein, article 134 of the Provisional Constitution “establishes the Independent Constitutional Review and Implementation Commission (ICRIC) subject to the overall direction of the Oversight Committee in accordance with article 133.” Pursuant to article 134, paragraph 2 “the relevant Minister [in this case, the Minister of Constitutional Affairs] shall nominate to the Prime Minister five members of the Review of Implementation Commission whom the relevant Minister selects from shortlists prepared by the Council of Ministers. In addition, existing Federal Member States shall nominate one additional delegate to the Review and Implementation Commission, based on the same selection criteria.”¹⁵

The current constitutional review process is mired with false starts and controversies. For example, the much-publicised constitutional conference which was supposed to be held in October 2017 was boycotted by the Joint Oversight Committee and Independent Review Committee as well as Federal Member States (FMS), who alleged a lack of consultation.¹⁶

The ninth parliament reviewed several chapters of the constitution, but members of the review committee who had vast experience gained during

[%20Somali%20Constitutional%20Process.pdf](#)

¹⁴ Article 133, paragraph 2(a) of the Provisional Federal Constitution

¹⁵ Both the OC and ICRIC “were deprived of the basic resources needed to complete the review of the constitution.” For more information about this and other pitfalls of the current review of the constitution, see Somali Parliament should produce a Constitution by and for the People, Heritage Institute for Policy Studies, Mogadishu, 2017, available at: <http://www.heritageinstitute.org/wp-content/uploads/2017/02/Somalias-parliament-should-produce-a-constitution-by-and-for-the-people.pdf>

¹⁶https://www.hiiraan.com/news4/2017/Oct/144545/national_constitutional_conv_ention_boycotted_by_review_and_oversight_committees.aspx

the review process were not elected to the committee of the tenth parliament. Consequently, this amounted to an unnecessary institutional memory loss. The Oversight Committee of the ninth parliament completed the review of most of the chapters of the constitution and presented three options for the Somali people to choose from. To everyone's surprise, on 19th May 2018, the Joint Parliamentary Oversight Committee assigned "the Independent Commission (ICRIC) to review the first five chapters of the constitution."¹⁷ The salient question is, why is it necessary to carry out a review of the first five chapters again when the Oversight Committee of the ninth Parliament completed the review and presented a remarkable report containing different options? Undoubtedly, this is a complete waste of time and resources and the people involved should be held to account. Besides, starting a new review when a completed one is ready will delay any plans to complete the review of the constitution and will also adversely affect the prospect of holding a one person, one vote election in the near future.

The new constitution review processes have to consider that the people of the nation must be part of the constitution review process, not merely run it in line with democratic procedures. This is the best way to guarantee the success of its implementation. However, we have also to realise that a constitution is only useful so far as it is implemented as Thomas Hobbes famously stated: "conventions without swords are just words".

4. Fundamental Questions relating to the Governance Structure of Somalia

4.1 Power Relations between the President and the Prime Minister

The current Provisional Federal Constitution provides a parliamentary system of government, but the powers of the President and the Prime Minister are not sufficiently delineated.¹⁸ The lack of clarity and the

¹⁷ The Joint Parliamentary Oversight Committee announced this news on Twitter

¹⁸ As Somalia's President and PM Battle, the Constitution Gives Way Again to Realpolitik, October 2014, available at:

<https://somalianewsroom.com/2014/10/26/as-somalias-president-and-pm-battle->

prevailing Somali political culture have created unending political infighting where the conflict between the President and the Prime Minister has made many previous governments somewhat dysfunctional.¹⁹

Taking the foregoing into consideration, the Oversight Committee proposed three options as far as the workings of the executive branch of the government is concerned. The first option recommends the abolition of the position of Prime Minister. In this option, the President who is elected by the parliament will act as both head of state and of the government. He or she will have the prerogative powers to appoint and dismiss the Council of Ministers individually or collectively. According to the review committee, the advantage of this option is to create one executive head with clear leadership and responsibility. The Oversight Committee also makes it clear that this is their preferred option. However, there are advantages and disadvantages associated with this option. Some people could argue that Somalia is not ready for power to be concentrated in the hands of one executive branch for fear of misuse of power reminiscent of past practices or one clan taking over. The apparent advantage of this option is that it avoids possible political infighting that has been prevalent in Somalia since the first transitional government was established in Somalia in 2000 after the collapse of the central government in 1991. This option also gives the President an unfettered opportunity to carry out his strategic plans and implement his policies without fear of conflict with another executive branch of the government. However, the independence of the legislative and the judiciary becomes much more critical to offer checks and balances.

[the-constitution-gives-way-again-to-realpolitik/](#)

19 Somalia: Resignation of Ali Mohamed Gedi, US State Department Press Statement, 29 October 2007, available at: <https://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94302.htm>; Somali President Ahmed to Replace Prime Minister Sharmarke, BBC, 17 May 2010, available at: <http://www.bbc.com/news/10120168>; see also <https://reliefweb.int/report/somalia/political-infighting-threatens-somalias-government>; <https://www.aljazeera.com/news/africa/2013/12/somalia-appoints-new-prime-minister-2013121215113721674.html>;

Under option two, the constitution review committee advises a parliamentary system of government where the Prime Minister heads the Council of Ministers and the President will only exercise ceremonial duties as a head of state. They also put forward that both houses of parliament have powers to elect the President. However, under this model, only the House of the People would elect the Prime Minister, and he/she will be solely accountable to the House of the People. In this regard, the President will not have the power to nominate the Prime Minister. The review committee also states that a more workable division of powers will be put in place. However, given the political culture of the Somali people that has been developing since 1969, the President, even with only ceremonial powers, will be perceived as powerful and may act accordingly. This, in turn, can create infighting, disputes and political impasse.²⁰ Be that as it may, even if a clear division of powers exist, the behaviour and the political culture of the population will have an enormous adverse effect on the working of the system. In fact, it would be unrealistic to claim that the recurring political stalemate has only come as a result of a lack of constitutional clarity. It partly stems from the fact that the constitution has been rendered somewhat dysfunctional by consecutive Somali governments.

Under option three, the committees suggest a fully-fledged presidential system where the President and his running mate, the Vice President, will be directly elected by the Somali people. The President will have full powers to appoint and dismiss the Council of Ministers as he is the head of state and government at the same time. Given that the President is directly elected, the Council of Ministers are not accountable to the House of the People but only to the President.²¹ Apart from the manner in which the President is elected and the impeachment procedure, this option has many similarities with the first option where the President has the same

²⁰ Provisional Constitution Review and Implementation Oversight Committee, Report on Suggestions for the Constitutional Review by the Provisional Constitution Review and Implementation Oversight Committee (OC), Option 2, Chapter 7 and 8, July, 2016, Mogadishu, Somalia

²¹ Ibid, option 3, Chapters 7 and 8

powers. For unexplained reasons, the Oversight Committee and ICRC perceive this model as the least practical and realistic one. As previously stated, this option has a strong similarity with option one and all the advantages and disadvantages associated with that option apply to this model as well.

The participants of the focus group discussion meetings expressed diverse opinions about the power relations between the President and the Prime Minister. Some people articulated a fear of accumulating all executive powers into one institution and did not want to risk a dictatorial regime emerging again. However, many others realised that the lack of clarity and separation of powers of the President and the Prime Minister might continue to paralyse the workings of the government and wanted this to be resolved in a way that does not jeopardise democracy. However, the majority of participants of the focus group discussion meetings in different cities expressed support for a parliamentary system of government where the President is either popularly elected or elected by parliament and will have powers to appoint and dismiss the Prime Minister as per the 1960 Constitution. In this option, the Prime Minister is accountable both to the President and the parliament as per article 82, paragraph 1 of the 1960 Constitution.

4.2 Options for the Legislature

Under option one, the Oversight Committee puts forward a unicameral parliament to replace the current bicameral arrangement. They suggest the abolition of the Upper House.²² The principal objective of the Upper House is to represent the Federal Member States; however, members of the House of the People represent all Somali people and regions as well. The challenge is that the representatives of the Upper House are part and parcel of the review committee and can frustrate any attempt to abolish it.

²² Provisional Constitution Review and Implementation Oversight Committee, Report on Suggestions for the Constitutional Review by the Provisional Constitution Review and Implementation Oversight Committee (OC), Option 1, Chapter 15, July, 2016, Mogadishu, Somalia

Under option two, the Oversight Committee proposes preserving the bicameral arrangement currently in place in line with the Provisional Federal Constitution. However, according to this option, the Upper House will be transformed into a Council of Elders in the next election cycle. Under this arrangement, the House of the People will have powers to override the decisions of the Council of Elders to avoid disputes and legislative impasse between the two houses. The Council of Elders will represent the FMS, and the regional legislative bodies will elect its members. Nonetheless, both the Oversight Committee and ICRIC perceive this option as problematic but practical given the prevailing political situation in the country.²³ The authors of this report agree with the Oversight Committee and find this option practical for the following reasons. First, the current arrangement allows the Upper House some legislative powers that can slow down legislative processes and can sometimes create disputes and conflict between the two houses. Second, the Somali political system is not used and conducive to a bicameral parliament. However, we submit that the powers of the House of Elders should be limited. The House of Elders will have powers to take part in the election of the President and any future impeachment processes. Apart from that, its primary task will be to advise parliament and the government on political, social inter-state relations and other matters they deem necessary. However, their role would only be advisory and one of mediation. They will not have powers to take part in the drafting and approval of legislation but can give their advice on draft laws. In that way, the roles of the two houses will be separated, and any potential dispute of conflict curtailed.

Under option three, the Oversight Committee advises the establishment of a House of Regional States Delegates to maintain the bicameral parliament. This house represents the Federal Member States. However, the members of the House of the People are also elected from the regions and can be considered to be representing the regions.

²³ Ibid, Option 2, Chapter 15, July, 2016, Mogadishu, Somalia

4.3 Judiciary Options for Somalia

The present-day judicial system of Somalia has passed through several time periods including pre-colonial times, the colonial epoch, and the post-independence period. Following the independence and unification of Italian Somaliland and the British Protectorate, efforts were made to integrate the two legal systems inherited from the colonial era. The law of the judicial organisation of Somalia of 1962 created a synchronised legal system integrating two complete sets of legal systems. A common law system was used in the former British protectorate while a civil law system was in force in former Italian Somaliland. Both territories used the same customary and Sharia law. Efforts were made to construct a unified law out of diverse legal systems and to adopt a unified judicial system for all Somalia, and a civil law system was adopted.²⁴ After the military coup d'état in 1969, the popularly approved constitution was suspended, and the legislative body was disbanded. However, by and large, the military government maintained the court structure of the country and adhered to the existing judicial system, albeit without constitutional guarantees and the independence of the judiciary.

The current Provisional Federal Constitution provides for a federal structure of governance including the judiciary. Article 108 of the Provisional Federal Constitution mandates a national court structure comprising three levels, namely the constitutional court, the federal level courts and the Federal Member State courts. This provision also provides that the highest court at the Federal level shall be the Federal High Court, while the Federal Member States will have their high courts. Article 109 (3) stipulates "The federal parliament shall enact a law providing detailed laws for the interaction between the Federal Government level courts and the federal member state courts."²⁵ That law is not promulgated yet, and there is no clarity as to the competencies of these courts at different

²⁴ For detailed information about the efforts to integrate legal systems in Somalia, see Paolo Contini, *The Somali Republic: An Experiment in Legal Integration*, (London: F. Cass & Company, 1969)

²⁵ Provisional Federal Constitution adopted on 1st August 2012, article 109, paragraph 3

levels. Article 109A provides the establishment of a judicial service commission which will be independent and is designed to manage the judiciary with the prerogative power to appoint and discipline judges at the federal level. The commission will also have the responsibility to decide on the remuneration and pensions of the judiciary and any other matters pertaining to the judiciary. Article 109B and article 109C deal with the formation of the constitutional court and its competences.²⁶ The current provisional constitution stipulates a dual judicial system where courts of the Federal Member States will administer state laws while the federal courts will deal with federal laws.

In July 2016, the Provisional Constitution Review and Implementation Committee and the Oversight Committee concluded the review of parts of the constitution. With respect to judicial options for Somalia, the committees put forward three options. The first option that the Oversight Committee suggests is a unified court system administered by the Federal Government. Under this option, the Judicial Service Commission at the Federal level will be responsible for the finance and the overall administration of the judiciary of the country. In addition, federally administered courts will be tasked to administer both federal and state laws. Similarly, under this option, the court structure would consist of a constitutional court, a supreme court as the highest court of appeal for non-constitutional cases; courts of appeals (in FMS capitals); and first instance Regional and District Courts.²⁷ According to OC and ICRIC, the principal reason behind the suggestion of this option is to preserve the traditional courts systems of Somalia instead of creating new structures. This system is in use in other parts of the world. For example, Belgium which is a federal state with two Federal Member States populated by

²⁶ Ibid, articles 109A, 109B and 109C

²⁷ Provisional Constitution Review and Implementation Oversight Committee, Report on Suggestions for the Constitutional Review by the Provisional Constitution Review and Implementation Oversight Committee (OC), Option 1, July, 2016, Mogadishu, Somalia

different ethnic and language groups have a unified judiciary system and it works very well. This model is the preferred option for the Oversight Committee and ICRIC

This model is also the preferred option for the authors of this report because there are distinct advantages associated with the unified system. First, it is very straightforward to set up and avoids any disputes regarding jurisdictional matters, and people can quickly identify which court to go. Second, it maintains a uniformity that means there can be no disputes between courts. Third, this model has been in use in Somalia since independence and law practitioners know how it works. Fourth, it allows the limited resources and pool of judges in Somalia to be used efficiently and also allows the sharing of administration and resources. A unified judicial system also avoids state courts controlled by dominant group interests or clans. The law that must be used is promulgated by a single legislative body and is easy to implement. The Supreme Court will have branches in state capitals. Nonetheless, for the unified judiciary option to be viable for Somalia given the current political climate, the following should be considered. The article in the constitution providing for Judicial Service Commission should be amended and one legal expert from each member state should be added to the commission. This will safeguard the interests of the Federal Member States and this, in turn, would assuage the fears of FMS that the Federal Government will not have their interests at heart.

The second option is to establish an integrated court system with Federal Government and the Federal Member States administrating both federal and state laws concurrently. However, under this option, the Federal Government will be responsible for the administration of the Supreme Court and the constitutional court while the Federal Member States will be responsible for the administration of courts of appeal, district and regional courts. In this respect, there will be a shared responsibility. This option offers several advantages. First, there will be no disputes or conflicts regarding the jurisdiction of courts because both levels of courts will

administer state as well as federal laws. Second, people will have recourse to a court outside their state, and this will assuage any fears that one group may dominate the judicial system of the Federal Member State.

The third option is a dual system whereby state courts decide cases about state laws and federal courts decide cases about federal laws, and the only time they cross paths would be at the federal Supreme Court that handles cases from both federal appeals courts and state supreme courts. One of the advantages that this dual system purportedly has is that state courts have jurisdiction and handle state laws while federal courts have competences and administer federal laws. The other advantage of this dual system is that if Federal Member States administer and manage state courts that administer state laws, and the Federal Government has control overall, they can safeguard the court systems to satisfy local needs. However, there is a myriad of disadvantages associated with this dual judicial system. First, it would be more expensive, more judges and resources would be needed. Second, in a country like Somalia where the state laws and federal laws are not separated, lines are not adequately delineated and this may create parallel systems and complicate the delivery of justice to ordinary people who have no interest in the kind of court that adjudicates their cases but only want just and impartial courts. This can create conflict and disputes regarding which court has jurisdiction and may bring about extra costs and delays. Third, access to federal courts may be difficult for most people because these tend to be located in state capitals. Finally, if Federal Member States are solely responsible for the selection of judges, it may be problematic to get impartial judges in specific instances.

The participants of the focus group discussion meetings expressed their opinions and ideas on the viability of the different options. Some believed that it would not be practical to return to a centralised judiciary because of fear of misuse of the court system to advance the interests of small groups or a particular clan. However, the majority of the participants suggested that it is crucial to maintain the uniformity of the Somali court

system and at the same time involve the Federal Member States in its administration.²⁸

5. Contentious Articles in the Constitution: Pitfalls and Challenges

5.1 Allocation of Powers

In general, the Federal Governments have prerogative powers pertaining to defence, foreign affairs, immigration, currency, national communication with respect to air, roads and telecommunications. The Federal Government also has powers to set the overall national policy, but Federal Member States have powers over local infrastructure like roads, public health and hygiene, and primary education. Some powers are shared like police, higher education and specialised hospitals. Ideally, the powers of different levels of government will follow from the constitution and the other laws of the land, and there would be no fundamental disputes and conflicts pertaining to these.

The framers of the constitution reflect this ideal in article 51 which sets forth the collaborative relationships between the various levels of government in the Federal Republic of Somalia in general. Paragraph 2 of this provision states that: “Every government shall respect and protect the limits of its powers and the powers of other governments...” In the same vein, paragraph 4 provides: “All levels of government must comply with the National Constitution, without any government assuming more powers than the constitution allocates.” Nonetheless, in the other parts of the constitution, the allocations of powers are not properly delineated, and at times appear to overlap and confuse. For instance, article 54 gives the Federal Government prerogative powers related to foreign affairs, national defence; citizenship and immigration; and monetary policy. At the same time, article 53, paragraph 1 calls for the Federal Government to “consult the Federal Member States on negotiations relating to foreign aid, trade, treaties, or other major issues related to international agreements.” By

²⁸ Participants of focus group meeting in Mogadishu, March 2018

the same token, paragraph 2 of the same article goes further: “Where negotiations particularly affect Federal Member State interests, the negotiating delegation of the Federal Government shall be supplemented by representatives of the Federal Member State Governments”.²⁹ It seems that there is an erroneous assumption undergirding this provision. It assumes that the Federal Government which represents all Somali regions and people does not represent the Federal Member States and there is a need therefore to ensure their own representatives. However, it is clear that the responsibility and competence of the Federal Government and those of Federal Member States are not clearly separated and continuously lead to disputes and political impasse.³⁰

According to some focus group discussion participants, if as stipulated by the first paragraph of the article, an issue concerning the Federal Government and a Federal Member State takes place, and talks fail to produce any result, what will happen? There will be a stalemate and any Federal Government plans to enter into an agreement with other states will be hampered. For that reason, the majority of focus group participants believed that the Federal Government should be solely responsible for all negotiations vis-à-vis foreign governments or international organisations. In that respect, many participants of the focus group discussions mentioned the example of the Federal Member States breaking off relations with the government and also the decision of leaders of Federal Member States to support the UAE and Saudi Arabia alliance against Qatar, going against the Federal Government’s position of neutrality.³¹ It

29 Provisional Federal Constitution, article 53, paragraph 2

30 Somalia’s Puntland Breaks Off Relations with Central Government, Reuters, 5 August 2013, available at: <https://www.reuters.com/article/us-somalia-politics-puntland-idUSBRE9740UZ20130805>; Somalia: Federal States Set to Announce New Council, GaroweOnline, 11 October 2017, available at: <https://www.garoweonline.com/en/news/somalia/somalia-federal-states-set-to-announce-new-council>

31 Qatar Crisis Washes up on Somalia’s Shores, April 2018, available at: <https://www.thenational.ae/world/africa/qatar-crisis-washes-up-on-somalia-shores-1.722890>; UAE Role is Crucial, Says Somali Leader, April 2018, <https://www.thenational.ae/world/africa/uae-role-is-crucial-says-somali-regional-leader-1.725207>; How the Gulf Crisis Echoes in Somalia, May 2018, available at: <https://www.trtworld.com/magazine/how-the-gulf-crisis-echoes-in-somalia-17181>

seems that the division of powers is not clear to both leaders of the Federal Government and the Federal Member States.³²

In the on-going constitutional review, we submit that these powers need to be separated and allocated as transparently as possible to various levels of government in order to avoid any potential conflict or disputes as to who has what power. It may be advisable to revisit the Transitional Federal Charter of 2004 where the division of powers between the two levels of government left less room for conflict and dispute, and an exhaustive list of powers were allocated to each level of government, namely the Federal Government, and Federal Member States. For instance, in schedule I of the Charter, the powers of the Transitional Federal Government throughout Somalia were listed comprehensively as foreign affairs, defence and security, finance and central bank, establishment of state structures, posts and telecommunications, immigration and naturalization, ports administration, planning and economic development, natural resources, acceptance and licensing of private companies specifically at national level, collecting import/export and indirect taxes. In addition, in schedule II, the powers of Federal Member States in their own territories were catalogued as education, health, regional roads, environment protection, regional police, housing, water and electricity development, agricultural development and water management, livestock and rangeland development, development of small businesses and state business co-operations, settlement of population, development of state constitutions like their state flags and state emblems, appointing their state election committees and implementing state elections, collecting direct taxes, promoting sports, arts, literature and folklore, business licenses, town planning and construction permits, public sanitation, recreation centres and child gardens, and general public health.

32 Kristi Samuels, *An Opportunity for Peacebuilding Dialogue? Somalia's Constitution-Making Process*, *Chicago Journal of International Law*, 6 (2006)

To avoid future conflict and constitutional crises regarding the allocation of powers with respect to the Federal Government and the Federal Member States, the power of each executive level can be listed in two different articles. In that regard, we suggest that article 53 covers the competences of the Federal Government while article 54 provides for the powers of the Federal Member States using the schedules of the 2004 Transitional Federal Charter as examples.

The other important point that was repeatedly raised in all focus group discussions was the need to change the official names of the federal states of Somalia, their leaders and titles for executive positions. For example, instead of using the title 'Federal Member States' for governments, 'Regional Administrations' could be used. The word President should be reserved for the Somali President, and a regional administration leader should be called 'Governor' or 'Chairman' of a regional administration. Executive Members of the regional administrations should not be called Councils of Ministers but Secretaries, like the secretary of education or commerce. No regional administration should name someone 'Foreign Minister' or 'Minister of International Cooperation' due to the fact that foreign affairs are the exclusive competence of the Federal Government.

5.2 Natural Resource Sharing

With regard to natural resource sharing and distribution, the National Federal Charter of 2004 gave the central government powers to administer natural resources. Article 13(1) of the Charter provided "The Transitional Federal Government shall on the coming into force of this charter pass legislation ensuring equitable appropriation and allocation of resources in the country". However, the current Provisional Federal Constitution makes the management of natural resources a shared responsibility and creates uncertainty and latent conflict between the Federal Government and Federal Member States. In view of that, article 44 stipulates: "The allocation of natural resources of the Federal Republic of Somalia shall be negotiated by, and agreed upon, by the Federal

Government and the Federal Member States in accordance with the constitution.”³³ There are several issues with this provision. First, it obliges negotiation between Federal Government and the Federal Member States. However, it does not mention any possible remedies in the event of disagreement and leaves much room for dispute and conflict. Second, it says that negotiation and any possible agreement will be in accordance with the constitution, while the particular article that is supposed to elaborate on the matter leaves it unaddressed.

Shared responsibility can function well if all the stakeholders act collaboratively and in good faith. For example, the Federal Government and leaders of Federal Member States reached an interim agreement regarding sharing natural resources. This agreement concerned the fisheries industry. Article 3 of the agreement stipulated the establishment of a national body known as the Somali Fisheries Authority (SFA) to be tasked with the management and safeguarding of Somali fisheries in general. The federal fisheries minister will chair the authority while his Federal Member State counterparts will be members of that authority.³⁴

There were few participants of the focus group discussion meetings who believed that “the region where the resources are located should keep eighty percent and give the rest twenty percent as alms to other regions.”³⁵ Others suggested that The Federal Government should be responsible for the allocation of resources to the Federal States otherwise, if regional states are allowed to be part of the resource allocation, they will not easily abandon that power in the future.³⁶ However, representatives from federal states can be part of the federal committee tasked with the distribution and allocation of natural resources.

³³ Provisional Federal Constitution, article 44

³⁴ Somali Federal Government and Regional States Reach Interim Agreement on Resource Sharing, Goobjoog News, 11 February 2018, available at: <http://goobjoog.com/english/federal-government-and-regional-states-reach-interim-agreement-on-resource-sharing/>

³⁵ Participant at focus group meeting in Baidoa, April 2018

³⁶ Participants of focus group meeting in Dhusamareb, April 2018

Nevertheless, most participants at the focus group discussion meetings in different parts of the country wanted natural resources to be managed and distributed by the Federal Government in a fair, just and transparent manner. They also agreed that the state where the natural resources are found should get a small extra percentage (ranging from 10 to 20 percent) to offset any environmental damage and also to give the people of the state a real stake in the resources in their area. It was also strongly suggested by some participants of the focus group meetings that a law should be enacted governing the resources and revenue sharing between the Federal Government and the Federal Member States.

5.3 Separation of Powers: Allowing MPs to become Ministers

Currently, the provisional constitution allows members of parliament to be appointed as members of the cabinet. In that respect, Article 97, paragraph 3 provides: “Those eligible for membership of the Council of Ministers may be, but not limited to, members of the House of the People of the Federal Parliament”. Nonetheless, as evidence suggests, allowing MPs to become ministers repeatedly frustrates and undermines the separation of powers between the legislative, executive and the independent judiciary as stipulated by article 3, paragraph 4 which was designed “to ensure accountability, efficiency and responsiveness to the interests of the people.”³⁷ Currently, 65% of the Council of Ministers are members of parliament, and that undoubtedly undermines the role of these members in holding the government to account.

The majority of the focus group discussion participants were of the opinion that for the separation of powers it is better not to allow members of the parliament to be part of the Council of Ministers. In countries where political parties are in force, it might be essential to let members of parliament be part of the government for several reasons. In such

³⁷ Article 4, paragraph 4 of the Provisional Federal Constitution. For information about how members of parliament who are also ministers can complicate the power balance between the parliament and the executive, see <https://waajid.wordpress.com/2007/12/03/war-deg-deg-ah-wasiiro-caawa-iska-casilay-xukuumadda-raiisul-wasaare-nuur-cadde/>

situations, the ruling party forms the government and has responsibility to support the legislative and policy agenda of the government. However, in Somalia where there are no functioning political parties and members of the parliament are selected through clan formula, it might be better to separate the parliament and the government.

5.4 Status of Mogadishu

One of the most contentious articles of the constitution is article 9 which mandates the parliament to determine the status of the capital city. In that respect, article 9 of Provisional Federal Constitution provides: “The capital city of the Federal Republic of Somalia is Mogadishu. The status of the capital city of Somalia shall be determined in the constitutional review process, and the two Houses of the Federal Parliament shall enact a special law with regards to this issue”.³⁸

The participants of the focus group discussion meetings expressed diverse opinions with respect to this matter. In this regard, some participants were of the opinion that “the Benadir region and Mogadishu city have to get their rights and share political power with the Federal Member States on an equal footing. This means Benadir Regions should be another Federal Member State and the constitution should be amended to make that possible.”³⁹ Others expressed the opinion that Mogadishu is the capital of Somalia and should have representatives in both houses of parliament commensurate with the size of its population. One participant stated that: “Mogadishu should remain the capital city of Somalia in its entirety. If the people of Mogadishu will not accept that, the capital city must be moved to another city willing to come under the Federal Government and serve as the capital of Somalia.”⁴⁰ Others believed that Mogadishu should remain the capital city of Somalia. People from all parts of Somalia have properties in the city and live there. However, the residents of Mogadishu should have the democratic means to choose district assemblies and elect

³⁸ Somali Provisional Federal Constitution, article 9

³⁹ Participant at focus group meeting in Jowhar, April 2018

⁴⁰ Participant of focus group meeting in Baidoa, April 2018

their own leaders, these should not be appointed by the Federal Government. The people of Mogadishu also need to have their rights, including representation in the executive and legislative bodies of the government. Other participants expressed the opinion that “Somalia is now divided into regional states which are based in clan power-sharing. If Mogadishu remains the capital city, the power-sharing arrangement will be disturbed”.⁴¹

Nonetheless, the majority of participants in different cities were of the opinion that Mogadishu should remain the undivided capital of Somalia and should not be part of any Federal State. However, the people in Mogadishu should elect their own leaders and be represented both at district and regional levels. Mogadishu is seen as a symbol of unity because it is the only city where people from all over Somalia have properties and reside. There was also consensus among focus group discussion participants that a law should be enacted dealing with the administration of the capital city.

6. Comparing the Provisional Federal Constitution with the Constitutions of Federal Member States

As Article 4, paragraph 1 of the Provisional Constitution sets forth: “After the Shari’ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all sections of government.” This means that national level as well as federal state member level legislation in Somalia should comply with the Federal Constitution. However, as article 121 of the constitution demands, it is necessary that “the constitution of the Federal Republic and those of the Federal Member States shall be harmonised”. In this section, we will compare and contrast the Federal Constitution with constitutions of the FMS with the view of proposing the best way to harmonise them.

41 Ibid

However, before we embark on comparing the provisional constitution of the Federal Government of Somalia (FGS) with constitutions of Federal Member States, it is important to briefly discuss the previous constitutions of the country, their system of governance and public institutions. It is also essential to highlight the circumstances in which the FGS constitution and the various member state constitutions are drafted. The reason why it is crucial to discuss the context is that it sheds light on why some regional constitutions are more compatible with the PFC than others. Furthermore, it is imperative to refer to the guidelines and comment on the contentious articles among the constitutions, summarise the results of the existing misunderstandings and their degree in different states, and finally present suggestions on resolving these challenges.

6.1 The Circumstances in which FGS and State Constitutions are formed

After the establishment of Transitional Federal Government in 2004, the political situation of the country continued to be volatile and uncertain. For instance, there was a tense environment regarding the relationship between function leaders who were predominantly part of the reconciliation conference and the Transitional Federal Government. Later the emergence of the Islamic Courts Union (ICU), that had a tremendous disagreement with the leaders of the Federal Government, complicated the political landscape of the country. As a result, the situation threatened the existence of the Federal Government and its constitutional institutions. Undoubtedly, there was also great suspicion and lack of political agreement among Somali leaders from different regions and sub-clans.

The constitutions of the Federal Member States and that of FGS were not formed at the same time nor under same conditions. The first state which became a member of Federal Government was Puntland State founded in 1998 and its official constitution approved in June 2001. It is clear that the priorities of Puntland state were not based on those of the federal system of Somalia. As a result, this has subsequently led to the incompatibility of

Puntland's constitution with the Somali Federal Constitutions (both the previous Transitional Federal Charter and the current provisional constitution). Even though the constitution of Puntland State fully acknowledges that Puntland is part of Somalia, committed to the unity of the country, and works to find a federal system in Somalia, some articles and guidelines of the constitutions of the FMS are contrary to the constitution of FGS.⁴²

All other Federal Member State constitutions are based on the FGS constitution adopted in August 2012. In that respect, their constitutions are more closely associated with the FGS constitution than the Puntland constitution. However, they contradict the federal constitution in some areas due to the political conditions prevailing during the formation of these states, and the role central government played in facilitating and assisting the new administration in the aspects of regional constitution-making and state formation processes. For example, Jubaland state was formed in a volatile, tense political environment in which there were political misunderstandings between the regional administration and central government authorities, and this caused differences between Jubaland and FGS regarding political and constitutional dimensions which affected the constitution formation.⁴³

6.2 Brief comments on the controversial points of the Constitutions of FGS and FMS

In this section we are going to present comments/remarks on the four FMS constitutions, namely Puntland, Jubaland, Galmudug and Hirshabelle. We have attempted to obtain a copy of the interim South West Constitution but to no avail. Even some state officials, legislators and members of civil society groups were unable to provide us with a copy.

⁴² Transitional Constitution of Puntland Regional Government, article 2, available at: <http://www.refworld.org/pdfid/4bc589e92.pdf>

⁴³ <https://reliefweb.int/report/somalia/briefing-somalia-federalism-and-jubaland>, For more information about Jubaland State Formation Process, see Jubaland In Jeopardy: The Uneasy Path to State-Building in Somalia, International Crisis Group, Nairobi, May 2017, available at: <https://www.crisisgroup.org/africa/horn-africa/somalia/jubaland-jeopardy-uneasy-path-state-building-somalia>

6.2.1 Puntland Constitution

The Puntland constitution was enacted in June 2001 before the 2004 Transitional Federal Charter was drafted. Therefore, the Puntland constitution was based neither on the Transitional Federal Charter nor the current Provisional Federal Constitution which was endorsed on 1st August 2012. As a result, a lot of apparent conflicts with the FGS provisional constitution and that of the Puntland state inevitably exist. Although the Puntland constitution indicates that Puntland state is part of the Federal Government of Somalia, protects the unity of the country and aims at the establishment of the federal framework, the constitution appears to be drafted for a sovereign independent state.

For example, article 5 of the Puntland constitution is about Puntland citizenship, how to gain and lose it. Paragraph 1 of this provision states: "The citizens of Puntland State are attested from the districts that they live in". In the same vein, paragraph 2 provides: "The citizen shall not lose citizenship even if they achieve other citizenship".⁴⁴ It is important to note that this article unequivocally violates article 54 of the PFC which gives the Federal Government the exclusive prerogative over all issues related to citizenship and immigration. Similarly, article 11 of the Puntland constitution and its seven sub-sections talk about the issue of foreign relations which is again a violation of article 54 of the FGS constitution. Another three articles of the Puntland constitution concern political asylum and the extradition of criminals, also violating article 54 of the FGS constitution which gives FGS exclusive authority over foreign issues which are beyond the powers of Federal Member States. Likewise, article 47, paragraph 8 of the Puntland Constitution gives Puntland State representatives the authority to accept/legislate, reject or amend any international agreement concluded by the executive branch of the government of Puntland. In the same article, paragraph 18 grants the national parliament the authority to decide the currency printing issue. Article 54, paragraph 4 of the Puntland constitution gives Puntland

⁴⁴ Puntland constitution, article 5

President the power to sign international agreements, and the 2009 review of the Puntland constitution made no tangible changes. All these articles in the Puntland constitution not only explicitly contravene the provisional constitution of the FGS, but also with that of Puntland itself as article 10, paragraph 2 clearly states: “the Puntland state will surrender issues like defence, immigration, foreign affairs, posts and currency issues” to the Federal Government.⁴⁵ Nonetheless, the Puntland constitution correctly states the issues concerning the fundamental rights of citizens and democratic participation guarantees per the provisional FGS constitution.

6.2.2 Jubaland Constitution

The Jubaland constitution was drafted in August 2015 after severe disagreements between the Federal Government and the nascent regional administration. In general, according to its conformity with the FGS constitution, the articles of this constitution are relatively more compatible with the PFC compared to that of Puntland. However, there are still some elements of this constitution that contradict the FGS constitution resulting from the suspicions and disagreements between the two sides at the time of drafting and state formation. For instance, article 31, paragraph 3 discusses the power and responsibilities of the Jubaland parliament and states that the assembly should engage international agreement in which Jubaland is a signatory.⁴⁶

Nonetheless, this constitution confirms that Jubaland state is part of the FGS as shown in article 3 of the Jubaland constitution which discusses explicitly the kind of relationship that exists between the FGS and Jubaland state. In paragraph 1 it states: “Jubaland state is definitely part of the Federal Government of Somalia”. By the same token, paragraph 2 of the same provision provides: “The relation between FGS and Jubaland state is guided by chapter 5 of the FGS constitution”.⁴⁷

⁴⁵ Ibid, article 10, paragraph 2

⁴⁶ Jubaland Interim Constitution, adopted August 2015, article 31, paragraph 3

⁴⁷ Ibid, article 3, paragraphs 1 and 2

6.2.3 Galmudug Constitution

Galmudug is the penultimate state formed in Somalia in 2015. Subsequently, its constitution was adopted in July 2015 in a stable environment without any apparent disagreements between the Galmudug state and the FGS. Therefore, there are no articles in this constitution that directly contradict the FGS constitution. To be sure, article one of Galmudug constitution confirms that Galmudug is absolutely part of the FGS. Similarly, article 6, paragraph 3 clearly states that the Galmudug constitution strictly applies and abides by the FGS constitution.

Regarding the relationship with FGS, article 70 of Galmudug constitution states that Galmudug and FGS shall coordinate and discuss resources and power sharing in accordance with FGS constitution. On the other hand, article 3, paragraphs 1 and 2 of the Galmudug constitution accept and grant the supreme court of the Federal Government of Somalia the authority to override the judgments of FMS courts and to test the validity of its laws. This article stipulates: “only the Federal Supreme Court can receive and decide on legal appeals.” In terms of territory, Galmudug the state constitution shall review and assess Galmudug territory in accordance with FGS as indicated in article 2 of the Galmudug constitution.

6.2.4 Hirshabelle Constitution

As the final federal state established, the Hirshabelle Constitution was adopted in October 2016. In this regard all the provisions of the constitution are in conformity with the PFC, and no provision explicitly contradicts it because the framers of the Hirshabelle constitution wanted to make it compatible.

In its preamble it states that: “in accordance with directions of the articles of 48, 49, 120, and 121 of FGS constitution and the will of the Hirshabelle population, it has been agreed to establish Hirshabelle state based on Islamic Sharia and the FGS constitution”. Similarly, article 1, paragraph 3

of Hirshabelle constitution indicates that any provision or paragraph that contradicts the Islamic Sharia and FGS constitution is invalid.

7. Conclusion

In this report we have endeavoured to analyse the contentious articles and other contested issues in the Provisional Federal Constitution. We have also compared and contrasted the Federal Constitution with the constitutions of Federal Member States. The focus group discussions and the analysis of the legal experts demonstrate that important decisions need to be made to finalise the current provisional constitution. First, the current review process should draw on the menu of options presented by the Oversight Committee of the ninth parliament, and duplication of previously completed work should be avoided. Second, the decisions regarding the future governance structure of the country should not be taken lightly and should reflect the shared norms and values of Somali society. For example, most of the focus group discussion participants suggested a parliamentary system of government where the President has powers to appoint and dismiss the Prime Minister. This system suits Somali political culture and may reduce disputes between the executive branches. With respect to the judiciary, the majority of the focus group discussion participants supported the unified judicial system. This system maintains the uniformity of the Somali court system. Furthermore, the Somali legal practitioners use this unified judicial system.

Regarding contentious issues like the allocation of powers and natural resources sharing, the majority of the focus group discussion participants suggested that the Federal Government should have overall responsibility and a national body where representatives of FMS are represented should be established. This national body would be responsible for the management and distribution of all natural resources. By the same token, the majority of the participants believed that Mogadishu should be the undivided capital city of the country and its inhabitants should have a

constitutional right to political representation and should directly elect their leaders.

With respect to the constitutions of the Federal Member States, some of them show considerable contradictions with the provisional federal constitution. This is in part due to the different circumstances prevailing during the formation of the Federal Member States and during the drafting of their constitutions. Nonetheless, according to the PFC, all FMS constitutions should be compatible with the PFC. In that respect, efforts should be made to make regional constitutions consistent with the PFC.

8. Recommendations

For clarity, we decided to make general recommendations on the basis of this report instead of making separate recommendations for different institutions, levels of governments and stakeholders.

1. Efforts should be made by all concerned parties to identify bottlenecks and barriers to the progress of the constitutional review process as early as possible so that it is conceivable to address any challenges that may potentially derail the process, as has been the case since the current process started in early 2013.
2. There should be well-defined cooperation between all national institutions and committees tasked with the review of the constitution to avoid duplication and misunderstanding.
3. The Joint Parliamentary Oversight Committee and ICRIC should build on the review of the constitution carried out during the ninth parliament and only review articles not yet reviewed. Otherwise, it will waste time and resources conducting new reviews that disregard the invaluable work of the previous parliament.
4. All contentious provisions of the constitution need to be resolved politically before they can be technically reviewed. The political leaders both at national and Federal Member State levels should prioritise making political decisions to pave the way for the technical review of these articles by legally mandated commissions and committees.

5. Civil society groups should be made an essential part of the constitution review process to make the process is inclusive and transparent. In addition, there should be comprehensive consultations in all parts of the country regarding the review of the constitution.
6. There should be broad consultation with different stakeholders regarding the laws governing the capital city. Consultative procedures must be transparent and people from all walks of life in the Benadir region should be consulted in an accessible and transparent manner.
7. There should be a review of Federal Member State constitutions and these made compatible with the Provisional Federal Constitution of Somalia.
8. Work should be undertaken to better clarify the articles of the Federal Constitution related to the relations of the Federal Member States with the Federal Government, as it was in the transitional national charter of 2004.
9. This report is preliminary in nature owing to the time and resources constraints mentioned earlier. A more comprehensive study employing greater time and resources is needed to produce a broad report regarding the review of contentious articles in the constitution and the correct procedures to be followed. More participants need to be involved in focus group discussions including the large diaspora communities.

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10. Abbreviations

FGS	Federal Government of Somalia
FMS	Federal Member States

ICRIC	Independent Constitution Review and Implementation Commission
IFCC	Independent Federal Constitution Commission
SFP	Somali Federal Parliament
TFC	Transitional federal Charter
TNC	Transitional National Charter
NIEC	National Independent Electoral Commission
ISC	Inter-State Commission
BFC	Boundaries and Federal Commission
NSC	National Security Commission
OC	Provisional Constitution Review and Implementation Oversight Committee
PFC	Provisional Federal Constitution
SOSCENSA	Somali South Central Non-State Actors
SFA	Somali Fisheries Authority
UNSOM	United Nations Assistance Mission for Somalia
UN	United Nations