



Academy for Peace and Development
Akaademiga Nabadda iyo Horumarka

Forum for Civic Dialogue on
Somaliland Constitution

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5 August 2007

Constitutions

- Fundamental law, but not necessarily one document
 - Codified: based around a single document (most countries)
 - Written: but no single document (eg United Kingdom, New Zealand, Israel)
 - In each case, a country's constitution is more than the document with the title
 - For a constitution to be effective, it must be protected (entrenched) but changeable: a 'living' set of institutions
- Establishes the system of government and the division of powers between executive, legislature and judiciary

Somaliland Constitution

- A codified document PLUS the legislation that elaborates on that central document
 - Determines that the country will adopt a presidential system with a bicameral parliament
 - Developed over a period of time with two versions and numerous adjustments
 - Adopted in 2001 with overwhelming public support, although some complain that the referendum was seen as a vote on independence rather than on the constitution per se

Constitutionalism vs Constitutional Review

- Institutionalising an understanding of the constitution is more important than changing it
 - All constitutions are flawed, but a strong culture of respect for the constitution will enable many flaws to be overcome
 - Legitimacy is paramount
 - Nevertheless, there are aspects of Somaliland's constitution which warrant review

Thoughts on Constitutional Review

- Any review should consider the degree to which current wording contributes to the fundamental principles outlined in the Preamble to the current document, and in Article 127:
 - Sharia law;
 - Decisions through consultation;
 - Division of power between executive, legislature and judiciary;
 - Decentralisation of administration;
 - Respect for private property rights;
 - Basic rights of individual life and freedom;
 - Peaceful coexistence with neighbouring states;
 - Unity of Somaliland; and
 - Multi-party system.

Separation of Powers

- Careful formulation of appropriate checks and balances between branches of government more important in presidential systems
- Independent judiciary with powers and responsibility to undertake constitutional review are vital
 - Both a point for review and a means of minimising the need for future review
 - Conditions relating to appointment and tenure of senior members of judiciary most urgent area for reform
- Responsibilities/balance between executive and two houses of parliament also needs review
 - Eg budget, parliamentary oversight of trade deals, treaties, ministerial activities, etc

Parliamentary Elections

- Election procedure for House of Representatives is backed by legislation and has been tested, but selection process for Guurti remains undecided
 - Article 58 establishes a six year term, but says only that members will be elected “and a parliamentary law shall organise their electoral system”
 - Direct or indirect election? Would ‘direct election’ (ie popular vote) be consistent with need for a constitution that is “based on people’s faith, heritage and aspirations” (Preamble)?
 - What part should clan play in government?

Electoral Systems and Terms of Office

- Political parties
 - Law No. 14/2000 governs political parties
 - No indication whether the law applies to all local elections or just those in 2002
 - If there is no mechanism for emergence of new parties, this clearly contravenes constitution Article 23:3. Some process allowing parties to emerge/disappear is essential for democracy to function
- National Electoral Commission
 - Law No. 20/2001 establishes the terms by which the NEC is established:
 - 7 members; nominations to President who appoints commissioners; approved by House of Representatives by absolute majority
 - Term is five years and is renewable
 - President can dismiss members provided House confirms dismissal by simple majority
- Article 88:2 limits President to no “more than two consecutive terms of office”
 - Does this mean ten years or less, or one term then one re-election?

Other Issues ...

- Transitional articles removed (eg Article 130)
- Gender, minority and age representation should be reviewed
 - Eg Article 59 states that Guurti member must be ‘old man’, while Article 82 states that President must have female spouse
- Decentralisation is stated as a fundamental constitutional principle: relationship between municipal/regional councils and central government needs elaboration
- Conditions in which it is permissible to suspend specific rights need clarification
 - eg various articles (42:3, 83:5) allow elections to be delayed for ‘security’ reasons, yet these are loosely defined

Acknowledgements

The assistance of the following individuals is gratefully acknowledged (though, of course, any errors are mine):

Mohammed Said Mohammed Gees, Academy for Peace and Development

Boobe Yussuf Duale, APD

Mohammed Hassan Ibrahim, APD

Ibrahim Hashi Jama, Somaliland Law