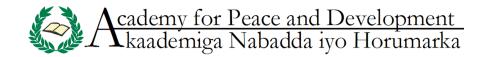


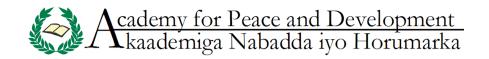
Forum for Civic Dialogue on **Somaliland Constitution**

Presented by Michael Walls 5 August 2007



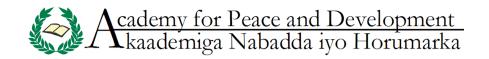
Constitutions

- Fundamental law, but not necessarily one document
 - <u>Codified</u>: based around a single document (most countries)
 - <u>Written</u>: 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 <u>protected</u> (entrenched) but <u>changeable</u>: a 'living' set of institutions
- Establishes the <u>system of government</u> and the <u>division of</u> <u>powers</u> between executive, legislature and judiciary



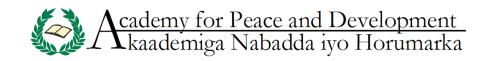
Somaliland Constitution

- A codified document PLUS the legislation that elaborates on that central document
 - Determines that the country will adopt a <u>presidential</u> system with a <u>bicameral parliament</u>
 - 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



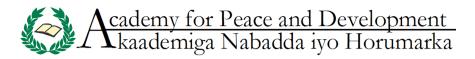
Constitutionalism vs Constitutional Review

- 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



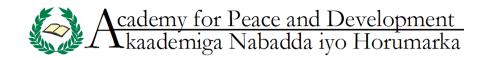
Thoughts on Constitutional Review

- 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.



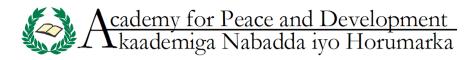
Separation of Powers

- 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



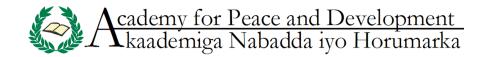
Parliamentary Elections

- 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?



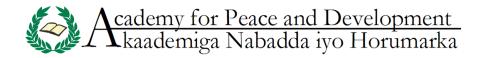
Electoral Systems and Terms of Office

- 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



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