

SOMALIA FEDERALISM: Achievements, Challenges and Opportunities

By

**Issa Mohamud Farah (Dhollowaa) is the Director
General of Puntland Petroleum Minerals Agency. Mr.
Farah is currently doing his LLM degree, writing his
thesis on the Oil and Gas Law, at the University of Maine
School of Law in Portland, Maine, USA.**

Mr. Farah can be reached at

(issa.farah@maine.edu or dhollowaa@gmail.com)

INTRODUCTION

Federalism, as ordained by the Charter, is a pre-condition for the renaissance of the long-awaited Third Republic of Somalia. A stable and lawful Somalia will restore our country's dignity as a respected member of the community of nations.

H E Abdirahman Mohamed Mohamud (Faroole)

President of Puntland Government of Somalia.

The above statement was part of a speech made by the President of Puntland, H E Abdirahman Mohamed Mohamud, at the Somali National Consultative Constitutional Conference, held in Garowe, Puntland on December 21-23, 2011. This statement reflects the current political climate in Somalia. Somalis, particularly Puntland people want the future of the Somali National Government to be one that is based on a federal political structure. This need for a federal political structure is not a new idea for Somalis. The debate over Somalia coming together within a federal political structure began mid last century in the lead up to Independence. It was defeated by the strong sense of nationalism that existed at the time. However, the flame of Somalia's federalism was lit and although dimmed by Somali nationalism, never died completely.

Half a century later a federal political system has slowly become a political reality as a result of the political failures of Somalia's first civilian government, followed by 21 years of brutal military dictatorship which collapsed in 1991 which then ushered in a protracted and terrible civil war, warlordism,

fragmentation of the first Somalia Republic, which in turn brought into power religious fundamentalists who are still committing terrorism within and outside the borders of Somalia.

It is the intention of this paper to discuss the establishment of this new federal political structure, what it has achieved, the challenges we still face to introduce this new system and the opportunities it provides to correct past mistakes, in order to build a strong and viable Somali federal state that can safeguard the rights, aspirations and interests of all Somalis.

A SHORT HISTORY

Somalia is located in the Horn of Africa, adjacent to the Arabian Peninsula. It is bounded by the Indian Ocean and the Gulf of Aden to the east, by Kenya to the southwest, by Ethiopia to the northwest, and by the republic of Djibouti to the north.¹ Strategically located where the mouth of the Red Sea enters the Indian Ocean, it has historically been seen as a very significant and strategic country in the area.²

¹ Lewis, I. M. **A MODERN HISTORY OF SOMALIA: Nation and State in the Horn of Africa**, London, Longman, 1980, pp. 1-4

² Throughout history travelers from both the Middle East, Far East Asia and Europe frequently passed the Somali coast. The ancient Egyptians spoke of Somalia as the land of Punt. Chinese merchants frequented the Somali coast in the tenth and fourteenth centuries. Similarly the medieval Arabs referred to Somalis as the Berbers, referring to the inhabitants of the city of Berbera, which is located on the Red Sea and is currently part of Somaliland.



Figure 1: Map of the 18 Somali Regions established during the Barre era.

Academics and Somali anthropologists claim that Somali society is essentially a homogenous people, as they predominantly speak one language, have the same culture and following the same religion; Islam.³ While this is the case, Somalis are also divided into tribes, such as the *Dir*, *Hawiya*, *Darood*, and *Digil/Mirrifle*, which are further divided into hundreds if not thousands of sub-clans. Although these four large tribes dominate the Somali peninsula, there are other small tribes such as the *Bantu*, *Tuni*, *Jiito* and *Bajun* in the south and the *Sab*.⁴ The *Bajun*, *Jiito* and *Baraawe* have their own indigenous language which is a mix of Somali, Swahili and Arabic sources, but most of them commonly speak the Somali language.

³ Laitin, D.D. and Samatar, S.S. **SOMALIA: Nation in Search of a State** p.21.

⁴ Sab tribas are Midgan, Tumul, and Yibir.

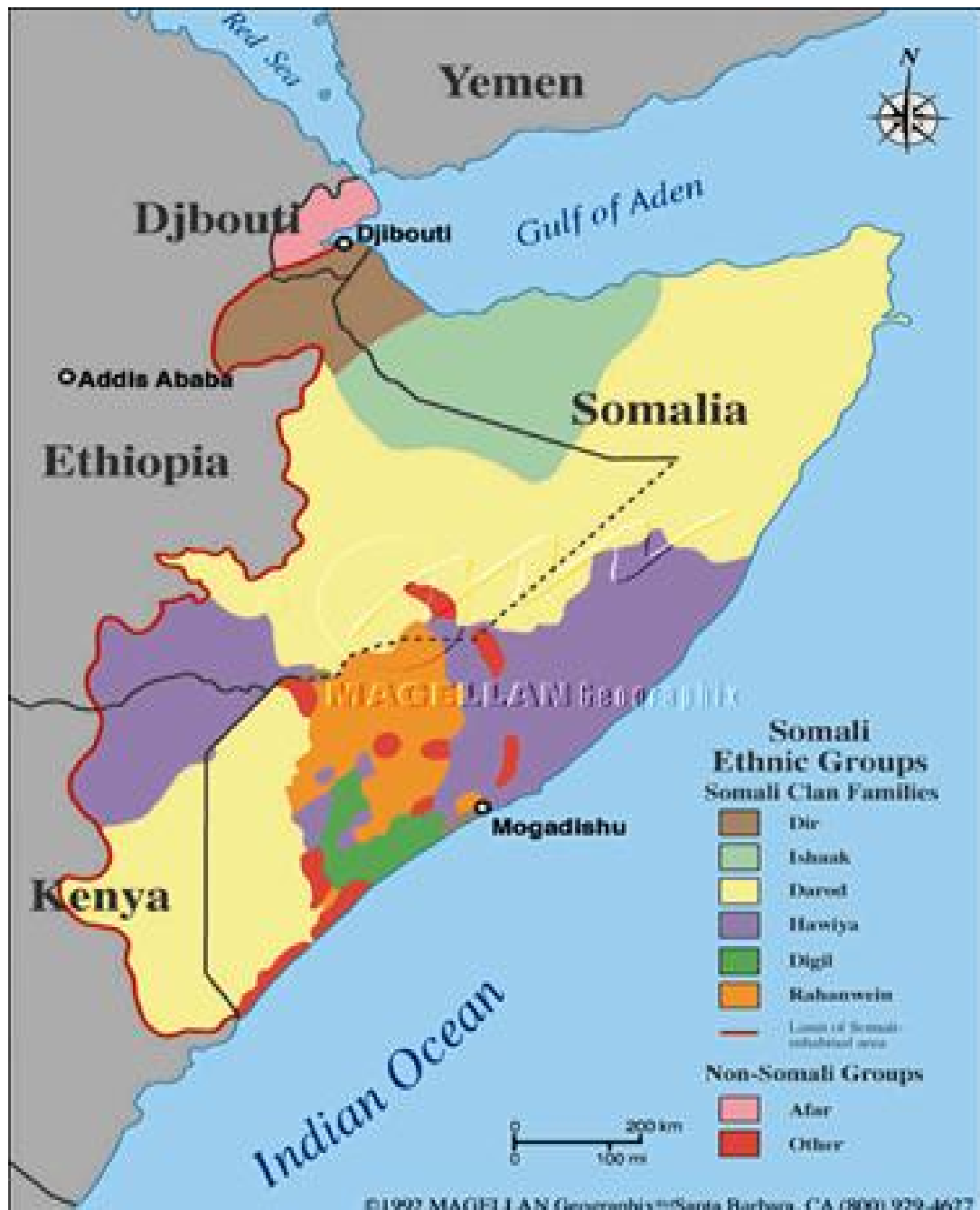


Figure 2: Somali ethnic groups map.

Sources:

<http://www.africanholocaust.net/articles/Somalia%20Money%20and%20Civil%20War.htm>

It has been suggested that in order to survive in Somalia, individuals must join with others in a complex and vast network of lineage groups⁵. Consequently, a

⁵ Castagno, A. A. 'Political Party System in the Somali Republic', in Coleman and Rosberg, C. Jr., (ed.), **Political Parties and National Integration in Tropical Africa**. University of California Press, Berkely, 1964, p. 512.

Somali person gives political allegiance first to their immediate family, then to their immediate lineage, then to the clan of their lineage, then to the clan-family that consists of several clans, including their own. Ultimately the nation can be viewed as consisting of a confederacy of clan-families.⁶ For example, I am from the Darood Tribe, Harti sub-clan, Majeerteen sub-clan, Maxamud Saleeban sub-clan, Cismaan Maxamud sub-clan, Bahdir-rooble sub-clan, Maxamud Yusuf sub-clan, Shirwac Maxamud sub-clan, paternally the son of Maxamud Farax Shirwac and maternally son of Ciise Maxamud. This is who I am and where Somali culture has boxed me in, and I can utilize any one of the above identities. For instance, among the Somalis, who are not from Darood clan, I am from Darood tribe. Within Darood I belong to Harti Sub-clan, and within Harti I belong to Majeerteen, and so forth.

Generally the Somali tribes inhabit a distinct geographical area within Somalia (refer figure 2). Within each geographical area there is also generally a dominant clan or sub-clan. Some tribes inhabit an area outside of their traditional geographical areas. For instance, the Daroods reside predominantly in the northeast of Somalia, which is currently called Puntland. The Darood could also be found in northeastern Kenya, the Gedo, Lower and central Jubba, regions in southern Somalia and in eastern Ethiopia, in the Somali State Government of the Federal Republic of Ethiopia. The Isaq, which is part of the Dir tribe predominantly, inhabit the Northwest of Somalia (former British Somaliland, present day Somaliland), the Somali State Government of the Federal Republic of Ethiopia, with some residing in southern Somalia, particularly

⁶ Laitin and Samatar. *Op, cit.*, p. 31

around the Marka area. The Hawiye predominantly inhabit central Somalia and around the Mogadishu area. The Digil and Mirrifle tribes inhabit Southern Somalia in the area between Mogadisho, Marka and Gedo based around the regional capital Baydhabo. The other smaller tribes, such as Jiito, Buntu, Tuni and Bajuni are spread from the Hiiran region in central Somalia to Kismayo in the south. The Sab are found in almost every part of Somalia.

Despite the tribal difference and segmentation Somalis share a customary tradition law or “*xeer*” that governs all aspects of their lives. It is not to say that Islamic law and tradition alone does not play an effective role here, but rather the customary law seems to operate alongside of it. In fact as Laitin and Samatar claim that the “*xeer*” are usually guided by Islamic legal arrangements.”⁷ *Xeer* is an informal contract designed to solve disputes between Somali clan members as well as tribes that reside together or share a particular geographical area.⁸ For instance *xeer* governs, regulates and determines “questions such as how much compensation should be paid for homicide, wounding, or insult.”⁹

A. Pre-colonial Somalia

Over the centuries various Middle Eastern rulers controlled the Somali peninsula and much of the East African coast. During the nineteenth century, much of Somalia’s Indian Ocean coast [what is now Puntland and down to Mogadishu]

⁷ David Laitin and Said Samatar, p. 42

⁸ Ioan M. Lewis, **BLOOD AND BONE: The call of kinship in Somali Society**, Lawrenceville, The Red Sea Press, 1994, pp. 21-22

⁹ David Laitin and Said Samatar, p. 42

was under the rule of the Omani Sultanate of Zanzibar, who ruled with a relatively 'light hand'. As long as the Somali cities paid yearly tribute to the Omani sultan, accepted the Omani flag and overlordship they could run their own affairs.¹⁰ Similarly the northern coast of Somalia [what is now Somaliland] was under the rule of the Ottoman Empire through the Shariif of Mukha [present-day Yemen]. The northeast of Somalia and much of its hinterland was under the authority of the Majeerteen King, Garaads, Islaans, Beeldaajes, Ugaases and Sultaans. The most prominent and influential of these was King Osman Mohamud of Majeerteen and the Sultan of Hobio from the Majeerteen tribe.¹¹

B. Colonial Period

Starting in the 18th Century Somalia became a magnet to the colonial powers due to its geographical location relative to the economic geo-political interests of the colonial powers. The prelude to the European colonization of Somalia was an ever-expanding European interest in the Horn of Africa based on its trade and military strategic importance. Therefore, from 1885 the Italians, French and British gradually encroached on and colonized areas of Somalia eventually dividing the Somali nation into five spheres: Italian Somaliland; British Somaliland; French Somaliland; Northern Frontier District (NFD); and Ogadenia, which the British gave to the King of Ethiopia to colonialize.

¹⁰ Ibid. pp. 17-18

¹¹ Helen Ch. Metz, (eds.) ***SOMALIA: a country study***. Washington, Library of Congress, 1993, p. 3.

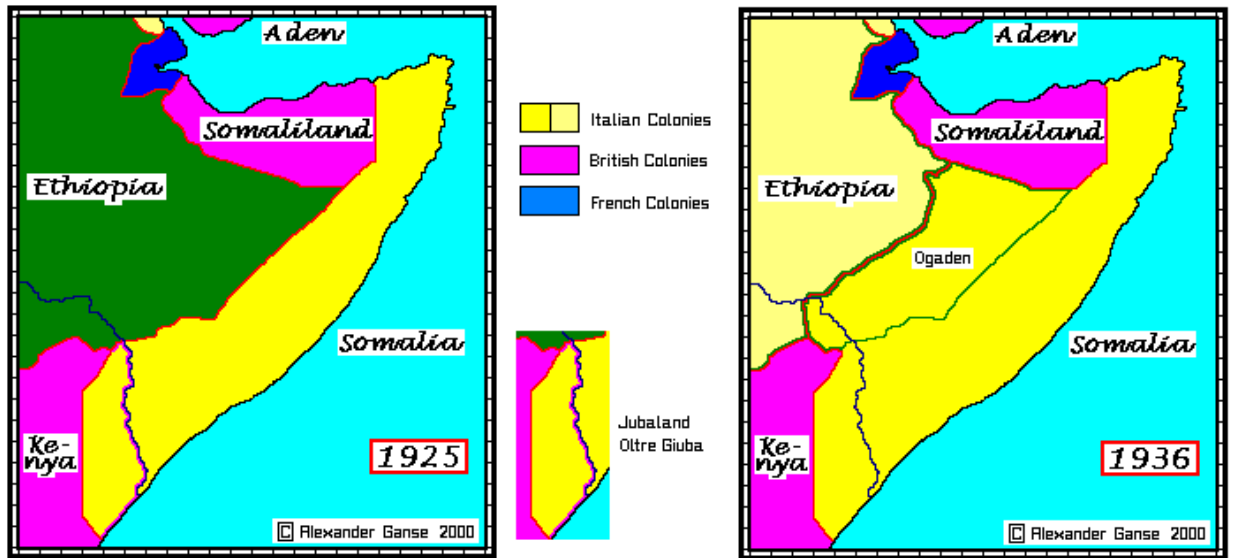


Figure 3: Somalia Colonial Map
 Source: <http://www.worldstatesmen.org/Somalia.html>

Colonial occupation lasted until 1960, but not before totally changing the political and social structure of the country. Occupying the country meant destroying the local authorities and imposing sometimes-brutal foreign laws. The local Sultanates were totally dismantled and British, Italian or French colonial authorities forcefully united Somali territories that were once ruled by traditional tribal chieftains. The Italians controlled the south until 1942, but when they lost the war, having sided with Germany, the British Military took over administration of the Italian colony until 1950. The British, as a result of agreements between the WW2 victors and the UN, returned Somalia to the Italians to administer until 1960 with the proviso they would prepare the former colony ready for independence.

C. Independence

In April 1960 in a surprise and sudden decision the British permitted its Somali territory to become independent within days of the Somali Italian colony independence.¹² Despite their political and economic disparity, the Somali political elite of both territories formed one nation. As a result on July 1 1960, these two Somali territories (Italian Somaliland and British Somaliland) become independent and subsequently created the first Somali Republic with:

“[T]wo different judicial systems; different currencies; different organization and conditions for service for army, the police and civil servants ... The governmental institutions, both at the central and local level, were differently organized and had different powers; the systems and rate of taxation and customs were different, and so were the educational system.”¹³

The young government inherited a judicial system that was unworkable and difficult to follow and discharge. A case in point was when discontented Somali military officers attempted a coup to overthrow the Government. When these officers failed and were subsequently brought to court the:

“Case was heard by a British judge, the Government was represented by an Italian prosecutor, and the accused were defended by an Indian lawyer who had been hired from Kenya. The law was the Indian Penal Code. Such was the state of affairs in the sovereign republic of Somalia in 1963; in the area of former British Somaliland the Courts used the Indian Penal Code, while in the area of former Italian Somaliland the Italian Penal Code was prevalent.”¹⁴

¹² Laitin and Samatar, *Ibid.* p. 67.

¹³ Paolo Contini. *The Somali Republic: An Experiment in legal integration*, London, Frank Cass, 1969, p. 11.

¹⁴ Mohamed Osman Omar, *THE ROAD TO ZERO: Somalia's Self-destruction*, New Delhi, HAAN Associates, 1992, p. 69

When the two territories joined together as an independent state, their legislatures convened a historical meeting to elect a President who would in turn elect his own Prime Minister who also selected his own cabinet. Balancing the clan system, the representatives elected a provisional President from the Hawiye tribe, the late Adan Cabdulle Cisman, who subsequently appointed a Prime Minister from the Darood tribe, Dr. Cabdirashid Cali Sharma'arke. According to Laitian and Samatar the President and the elected Prime Minister formed a Government that was based on Somali tribes; four Daroods; two Isaaqs; three Hawiyes; and three Digil and Mirfle (Rahanweyn).¹⁵ Since then, according to Laitian and Samatar, "clan balancing became a necessity because," as they put it, the "government jobs necessarily meant representation for any clan. Any clan left out of a government would express its alienation".¹⁶

Somali civilian governments ruled the country from 1960 to 1969, but performed very badly in discharging their tasks of development, progress and good governance. According to Laitian the Somali civilian governments were marred by internal and tribal problems that resulted in a lack of progress of the country.

"The 'modern' state was rife with corruption (*musuq maasuq*), and political leaders bought votes, used government cars as taxis, and hired relatives to sing their praises (*af-minshaarism*) in the public market-place and in the teashops. Political appointments were made constantly to enhance 'clan' power, and different ministries became satraps for different

¹⁵ David Laitin and Said Samatar, **SOMALIA: Nation in Search of a State**, p. 70

¹⁶David Laitin and Said Samatar. p. 70.

clans. What had started out as a putative nation was being torn apart at the seams through clan ‘tribalism’.¹⁷

Furthermore, during this period, the proliferation of the Somali political parties increased from less than 4 parties in 1960 to 64 parties in 1969 each representing the “64 or so important lineages and sub-lineages in the genealogical system”¹⁸ of the Somali Republic. Money also played a role as to who would become a member of parliament, “[P]arliamentary seats were usually available to the highest bidder.”¹⁹ In fact, it has been suggested that there were at least “1000 candidates contesting the last free election in 1969.”²⁰ “The last election in March 1969 was rife with candidates openly and unabashedly buying their parliamentary seat ... hospitals were selling their medicines to local pharmacies; and government-owned cars were being used as private taxis.”²¹ This was the state of Somalia before 1969 as the civilian governments increasingly became dysfunctional.

C Somali Military Government from 1969 to 1991

On 14 October 1969 the President of Somalia, Dr. Abdirashid Ali Sharmarke, was assassinated by his bodyguard, which resulted in a sudden change of government. On 21 October 1969, the Somali military forces together with the

¹⁷ David D Laitin, ‘The Political Economy of Military Rule in Somalia’, in *The Journal of Modern African Studies*, Vol. 14, No. 3 (Sep., 1976), p. 452

¹⁸ Ibid. p. 17.

¹⁹ David D. Laitin, ‘Revolutionary Change in Somalia’, in *MERIP Report*, No. 62 (Nov., 1977), p. 6

²⁰ Irving Kaplan, et al., *AREA HANDBOOK for SOMALI*, Washington, D.C., The American University, 1977, p. 142

²¹ David D Laitin, ‘The Political Economy of Military Rule in Somalia’, in *The Journal of Modern African Studies*, Vol. 14, No. 3 (Sep., 1976), p. 453

police force staged a bloodless *coup d'état*. The military commander, Major General Maxamed Siyaad Barred Barre (hereafter Barre), deposed the civilian government and assumed leadership. A new governing body, the Supreme Revolutionary Council, was established in Mogadisho, the capital of Somalia. Only the President and his Ministers could make government appointments at any level of the administration. The new regime detained the members of the former government, all political parties were banned, the National Assembly was abolished, and the constitution was repealed and dictatorship established in Somalia. The new government promised to eliminate all the ills associated with “tribalism, nepotism, corruption, and misrule”²², and renamed the country the Somali Democratic Republic.²³ On 24 October 1969 Barre gave a speech about why the armed forces, lead by him, took over the country. Barre explained that:

“Intervention by the Armed Forces was inevitable. It was no longer possible to ignore the evil things like corruption, bribery, nepotism, theft of public funds, injustice and disrespect to our religion and the laws of the country. The laws were thrust aside and people did whatever they wanted.”²⁴

Initially, the Barre government made considerable progress economically, politically and socially. Education was improved by adopting the Latin scripture as the official script for the Somali language and Somali as the official language of the Republic. In 1974 a major step was made to promote rural literacy. Somali

²² Collected Speeches of Major General Mohamed Siad Barre 1969-1970. *My Country and My People*, Mogadishu, Ministry of Information, 1971, p. 3.

²³ Metz. *op. cit.*, p. 39.

²⁴ Maxamed Siyaad barre, ***My Country and My People***, Vol. 1 (Mogadishu, 1970), p. this was

students were sent to the rural areas to teach nomads how to read and write the Somali language. “The motto of the campaign was ‘what you know, teach; what you do not know, learn.’”²⁵ Economically, from 1971-1973 development went into rural programs, improving the agriculture, fishery, forestry and animal husbandry industries.

Politically, the new government announced that Somalia would be a “scientifically Socialist” state, under the leadership of Barre and his team who would draft law after law without consulting with the people. Somalia became like any other African country of the period where law and authority would come from a single town, the capital, and single leader, the President of the country. An African observer, explained what Africa was like at the time:

“Most African states are unitary with political power vested in the central government. Laws and decisions concerning the public sector are enacted and enforced by the central government. Authority is delegated to junior government officials who implement policies within rigid guidelines. Provincial and district levels of government serve administrative roles but do not make laws, collect taxes, or make spending decisions. Strictly speaking, political power is centrally concentrated with heads of states holding the power over all public policies affecting the polity. In most African states, no constitutional limitations constrain the central authority in its exercise of power over public activities at all levels. The unitary states of Africa largely reflect the colonial legacy.”²⁶

The Cold War directly impacted Somalia, as it became the battleground between the super powers; this has left a lasting legacy. In July 1974 Somalia and the

²⁵ David D. Laitin and Said S. Samatar, ***SOMALIA: Nation in Search of State***, Westview Press, Colorado, 1987, p. 38

²⁶ Mwangi S. Kimenyi, Harmonizing Ethnic Claims in Africa: A proposal for Ethnic-Based Federalism, *Cato Journal*, Vol. 18, No. 1 (Spring/Summer 1998), p. 43.

Soviet Union signed a Treaty of Friendship and Cooperation. As a result, by 1977 the Soviet Union had given Somalia up to US\$450 million in military and economic aid, making the Somali militarily the strongest country of the black African states.²⁷ In return the Soviet Union would get, among other things, access to major naval ports for its warships, particularly the ports of Berbera on the Red Sea, and Mogadishu and Kismayo on the Indian Ocean. In Berbera, the Soviet Union built, entirely from nothing, telecommunication and missile support facilities, as well as a 15,000-foot runway capable of handling heavy Russian aircraft.

However, the relationship between the Soviet Union and Somalia started to deteriorate in July 1977, when the Somali Government ordered most of its regular army into Ethiopia to support of the Western Somali Liberation Front (WSLF) who was fighting for the liberation of the Somalis under the Ethiopian authority, also known as Ogadenia.²⁸ The battle over Ogadenia did not last long as the Somali army was defeated after the Soviet Union changed allegiance. This act “caught its rivals by surprise.”²⁹ Others like I.M Lewis saw it as “one of the most breathtaking acts of treachery in history”³⁰ against the Somalis by the Soviet Union as it not only abandoned Somalia, but switched sides overnight to Ethiopia, fully supporting it militarily and politically against Somalia.

²⁷ Arthur Gavshon. **CRISIS IN AFRICA: Battle Ground of East and West**. New York, The chaucer Press, 1981. p. 267

²⁸ Ibid. p. 296.

²⁹ Bereket Habte Selassie, **Conflict and Intervention in the Horn of Africa**, New York and London, Monthly Review Press, 1980, p. 130

³⁰ Abdisalam M. Issa-Salwe, **THE COLLAPSE OF THE SOMALI STATE: The Impact of the Colonial Legacy**, London, HAAN, 1996, p. 92

There is an argument suggesting that Saudi Arabia was responsible of Somalia's cutting of its relationship with the Soviet Union. According to Makinda, Barre visited Saudi Arabia in July 1977 and "he was told that an arms package of US\$460 million would be supplied by the US, paid for by Saudi Arabia, if Somalia broke completely with the Russians."³¹ As a result, on 13 November 1977 Somalia abrogated their Treaty of Friendship and Cooperation with the Soviet Union and ordered all the Soviet personnel in Somalia to leave the country within 17 days.³² In addition, the Somali government also ordered all the Cubans who were her allies to leave the country within one week. However, despite the Somalis fulfilling its side of the agreement, the American military hardware did not come as promised. Somalis paid the price of asking the Soviet Union to leave Somalia. As a result the combined forces of Cuba, East Germany, Soviet Union, and Yemen, united behind Ethiopia, defeated Somalia.

This defeat was the turning point for Barre's regime. In April 1978, disaffected military officers attempted a military coup against Barre. The coup failed and all the leaders, with the exception of their leader, Colonel Abdulahi Yusuf Ahmed (hereafter Yusuf) and his immediate military support staff, consisting of 17 military officers mainly from the Majerteen tribe, were caught and subsequently publicly executed in Mogadisho. Together with a group of Majerteen tribe military officers Yusuf escaped to Kenya and then to Ethiopia and founded the anti-Barre group, called 'Somali Salvation Democratic Front' (SSDF). In return,

³¹ Samuel M. Makinda, **Superpower Diplomacy in the Horn of Africa**, London and Sydney, Croom Helm, p. 125

³² Abdisalam M. Issa-Salwe, **THE COLLAPSE OF THE SOMALI STATE: The Impact of the Colonial Legacy**, London, HAAN, 1996, p. 92

Barre began to punish the civilian population in the Mudug and Nuugal regions that were close to the areas where SSDF were operating. Barre sent special units who mostly belonged to other southern tribes such as the Bantu to the Majerteen regions and established military bases in villages between Garowe and Galkayo in central Somalia, and in Qardho itself. These units were ordered to subjugate the locals. Between May and June in 1979, these military units allegedly murdered over 2,000 Majerteens. In addition 50,000 head of camel, 10,000 head of cattle and 100,000 sheep and goats that belonged to the Majerteen people were destroyed. Majerteen girls were taken as temporary wives for the troops.³³

A Majerteen poet summarises the conditions of the Majerteen people this way:

**“It may be the Lord’s ordain will that the Majeerteen should
be consumed like honey,
Like the wild berries in the plain of Doo’aan, the Majeerteen
have been universally and greedily devoured,
Every hungry man in the land desires to bite off a piece of
flesh from the prostrated body of the Majeerteens.”³⁴**

The next clan to be brutalized by Barre’s regime was the Isaaq. The Isaaq tribe, who mainly dominated northern Somalia or ex-British Somaliland, had formed an anti-Barre movement, the Somali National Movement (SNM) in London on 6 April 1981. This movement, like that the SSDF, harassed the Somali military forces with the help of their ally the neighboring Ethiopian government. A full-scale uprising started in 1988, and Barre’s forces responded harshly without mercy, killing members of the civilian population that were suspected of supporting the rebels. Allegedly an estimated 100,000 people died during the

³³ Said S. Samatar. *Somalia: A Nation in Turmoil*, 1991 p. 19.

³⁴ Ibid.

conflict.³⁵ The major towns inhabited by the Isaaq, such as Hargaisa, Berbera, Borame and Burao were significantly destroyed with indiscriminate bombardment by the army and Somali air force. Most of the people living in the major cities fled their homes and crossed the border into Ethiopia. As Frushone noted the Somalis were:

“Fleeing war, mass executions, and torture, approximately 400,000 residents of northwest of Somalia sought refugee in other countries. Approximately 350,000 fled to Ethiopia, while thousand of others fled to Europe and North America. Tens of thousand fled to Djibouti ... An estimated 1.5 Million additional people were displaced within northern Somalia.”³⁶

When Barre’s regime fell the SNM took over the control of the entire territory, and in May 1991 the SNM declared northern Somalia as an independent country calling it the Republic of Somaliland.³⁷ The people of what is now Somaliland suffered enormously under Barre’s regime. However, this was not specific to these tribes or their region. Barre and his regime dealt harshly with any group, whether they used clan ideology, or other nationalistic rhetoric, that challenged his authority. Somali history clearly presents evidence of what took place in Somalia. Nevertheless, what took place in Somaliland during Barre’s atrocities have caused the people of Somaliland to assert a strong and unyielding resolution to secede from the rest of Somalia by canceling the Act of Union that joined the two colonies together as one country in 1960.

³⁵ Joel Frushone, *SOMALILAND: WELCOME HOME TO NOTHING: Refugees repatriated to a Forgotten Somaliland*, Immigration and Refugee Services of America, 2001, p. 15

³⁶ Joel Frushone, *SOMALILAND: WELCOME HOME TO NOTHING: Refugees repatriated to a Forgotten Somaliland*, Immigration and Refugee Services of America, 2001, p. 15

³⁷ Terrence Lyons and Ahmed I. Samatar, *SOMALIA: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*, The Brookings Institution, Washington, D. C., 1995, p. 21

Like the other Somalia tribes of Majeerteen and Isaaq, the Hawiyes were also dissatisfied with the Barre regime. Therefore, Hawiyes formed a liberation movement – the United Somali Congress (USC). The USC like the other Somali tribes had an armed wing. This armed wing conducted guerilla-style warfare by harassing and violently engaging the Somali military force on their own terms. Therefore, the next tribe that Barre attacked was the Hawiye. Like the Majeerteens and Isaacs before them, Barre showed no mercy. Their towns were destroyed, and allegedly thousands of people were killed. For example, in January 1990 at the town of Buula-Burte over one hundred men were killed and their bodies were thrown into the river.³⁸

In early January 1991, when the world was busy with the removal of Saddam Hussein from Kuwait, Somalia descended into a brutal civil war. Barre by this time was economically very weak, his forces were no longer willing to kill or be killed, and the anti-Barre forces, particularly those of the USC, were getting close to the Somali capital Mogadishu. After realizing the troubled condition of his regime, Barre played his last card by appealing to his Darood clan by telling them the authority of Darood was under threat by the Hawiye clans. In addition, some Hawiye political leaders themselves called on their clan supporters to take part in fighting against Darood power represented by Barre's regime. In 1991, the war that was intended to remove a dictator, started to develop into a new and a completely different one. It became a war between the Darood and Hawiye tribes. The Hawiye's indiscriminately murdered civilians, looted their properties,

³⁸ Said S. Samatar, **SOMALI: A Nation in Turmoil**, Minority Rights Group, London, 1991

and removed the living from their homes in Mogadishu forcing them to cross over the Ethiopian and Kenyan borders. On February 26 1991, Hawiye militia, under the control of General Aidiid, unexpectedly attacked and captured Gaalkacayo, systematically murdering over 700 innocent community elders, businessmen and intellectuals from the Majeerteen tribe. In Kismayo, on December 8 through 19, 1992 Colonel Jees and Aidiid killed over 170 innocent community elders, intellectuals and prominent community members of the Darood Harti group. These two murderous acts constitute, under International Law, clan cleansing at its worst.

Many Harti clans returned to the northeastern area of Somalia, which later became the semiautonomous state of Puntland in 1998. These murders and despicable acts perpetrated by the Hawiye militia against unarmed Darood civilians in southern Somalia has to be the primary reason that many hardline Majeerteens want Puntland to declare itself an independent country.

After the Darood were systematically uprooted from Mogadishu in April 1991, the Hawiye sub-clans started fighting over the spoils, power being the most important of all. If the fight between Darood and the Hawiye was unforgiving, the power struggle between General Farah Aideed and Ali Mahdi Mohamed, both from the Hawiye tribe, was vicious, to say the least. Thousands of civilians and militiamen, who were united just a few weeks earlier, in the fighting against the Darood, turned on each other in the battle over Mogadishu. There are no accurate records that can confirm the true number of people who lost their lives

in the conflict, but it has been estimated that over half a million if not more died during this period.

In the deadly triangle bounded by Mogadisho, Kismayo and Baydhabo, a million people were estimated to have died due to the combination of drought and civil war. Baydhabo and its surroundings become the worst effected area. The drought, civil war and atrocities committed against these mostly unarmed communities by the warring parties in southern Somalia, triggered the International Community to act decisively. This conflict lasted until the USA intervention in Somalia in 1993, marked by the arrival of 36,000 Marines and allied forces under *Operation Restore Hope*.

E. The Fragmentation of the country

While the Somalis in the northern part seceded from the rest of Somalia, Somalis from the northeastern regions established, in August 1998, a self-ruling and autonomous state calling it Puntland. Because of this step Puntland become fundamentally the foundation and the central pillar of Somalia's federalism system. Mohamed Abshir Waldo, a prominent Somali politician, who contributed to the establishment of Puntland State of Somalia in 1998, explained Puntland's decision to opt for a federal political structure:

“The people of Puntland reached the decision to establish a pioneering Federal State after months of soul searching deliberations under compelling circumstances, including the collapse of the national government of Dictator Gen. Mohamed Siyad Barre in 1991 and the consequent disintegration of all public institutions. It was also the result of

over 7 years of internecine civil war; the displacement of millions of people forced to flee from their ancestral homes in the south; their properties and other possessions seized; the failure of 9 externally sponsored reconciliation meetings plus a dozen local peace initiatives; and the declared secession of a big chunk of the Somali Republic by North western Regions of Somalia (Somaliland)."

The reason why the people of northeastern Somalia opted for federalism was because it would give them the opportunity for self-government recognized within a negotiated federal constitution. So what is Federalism? How does the current constitution envisage this desired federal political structure?

FEDERALISM

K. C. Wheare, one of the prominent federalism theory scholars, defined federal government as "the method of dividing powers so that general and regional governments are each, within a sphere, co-ordinated and independent."³⁹ Daniel Elazar further explained this concept and claimed that the federal structure is a system of "*self-rule plus shared rule.*" He went on to say that federalism "involves some kind of contractual linkages of presumably permanent character that (1) provides for power sharing, (2) cuts around the issue of sovereignty, and (3) supplements but does not seek to replace or diminish prior organic ties where they exist."⁴⁰ What Elazar is saying here is that in the federal system there will

³⁹ K. C. Wheare, *Federal Government*, Oxford University Press, New York, 1953, p. 11

⁴⁰ Daniel J. Elazar, *Exploring Federalism*, The University of Alabama, Tuscaloosa, 1987, p. 12. See also Daniel J. Elazar, ed., *Constitutional Design and Power-Sharing in the Post-Modern Epoch* (Lanham, Md.: University Press of America, 1991), p. xii.

be two powers governing the nation-state, (a) powers specific to the central government, (b) powers that are specific to each member state.

Furthermore, according to Arend Lijphart, there are five principles that a federal political system has:

- 1 A written Constitution which specifies the division of power and guarantees to both the central and regional governments that their allotted powers cannot be taken away;**
- 2 A bicameral legislature in which one chamber represents the people at large and the other the component units of the federations;**
- 3 Over-representations of the smaller component units in the federal chamber of the bicameral legislature;**
- 4 The right of the component units to be involved in the process of amending the federal constitution but to change their own constitutions unilaterally; and**
- 5 Decentralized government, that is, the regional government's share of power in a federation is relatively large compared to that of regional governments in unitary states.⁴¹**

A written constitution that is negotiated and agreed by the states or polities that willingly join to form a federal government united by a National Federal Constitution, while retaining their own State Constitution, govern this arrangement. Examples of this are Australia and the United States where colonies became federal governments within negotiated and agreed constitutions. This means that a negotiated constitution by the polities joining together is very important as it allocates powers between the national and subnational states. As Professor Cheryl Saunders states "Federalism requires a

⁴¹ Arend Lilphart, *Non-Majoritarian Democracy: A Comparison of Federal and Consociational Themes*, *Publius*. The quote is in Daniel J. Elazar, *Exploring Federalism*, The University of Alabama, Tuscaloosa, 1987, p. 22.

division of powers between the levels of government. The need of autonomy at each level suggests that the powers must be allocated by the constitution itself.”⁴² Each government will have its own area of powers. Inherently, however, there will be concurrent laws that the national and state governments will collectively discharge. In addition, the federal constitution creates separation of powers within the federal government into legislature, executive and judiciary. Similarly, each state has its own legislature, executive and judiciary for the benefit of the citizen.

While the constitution is the backbone of the federal system, it alone is not sufficient to create a strong federal system. Cheryl Saunders, in her article, “*Constitutional Arrangements of Federal Systems*” stated “[C]onstitutions alone do not make or break federations.....[rather] institutions, principles, and procedures for which constitutions provide are significant influences on federations.”⁴³ She went to say that “[F]ederalism is not established by institutions and rules alone, but depends also on attitudes toward the process of government, whether derived from political culture or from force of circumstance.”⁴⁴ In other words, if the current federalism system in Somalia is to work, the Somalis should adhere to the constitution itself. Moreover, there has to be a willingness among the Somali political leaders to build a better Somalia that can accommodate the interests of all citizens of the country.

⁴² Cheryl Saunders, “Constitutional Arrangements of Federal Systems,” in *Publius*, Vol. 25, No. 2 (Spring, 1995), pp. 16

⁴³ Cheryl Saunders, “Constitutional Arrangements of Federal Systems,” in *Publius*, Vol. 25, No. 2 (Spring, 1995), pp. 61

⁴⁴ *Ibid.* p. 62

Somalia's Federalism has come about in a different way to that of Australia and The United States. As mentioned above, these two countries, before they formed one unified whole, were independent and sovereign colonies that decided to form a federated union. For instance, the Australian federal system "brought together six existing colonies with systems of government and constitutions of their own."⁴⁵ This meant, that there was negotiations and discussion between the States about the powers the States wanted to retain and those powers they wanted to allocate to the national government.

Somalia is starting the process with one State that has no interest in being part of a Federation (Somaliland), one State that wishes to be part of a Federation but on the basis that it has the right to govern it's own people while allocating some powers to a Federal Government (Puntland), one area that is a State in name only, lacks any form of Government and has only just commenced establishing State processes (Galmudug), Mogadishu which is under the control of African Union troops coming together under the banner of AMISOM and the rest of the country outside of Mogadishu is divided between two Islamic groups who are still fighting to establish supremacy and who are variously occupied by Ethiopian troops in the southwestern area of Somalia and Kenyan troops in the southern areas along their border.

ACHIEVEMENTS

On the basis of the recent history of Somalia outlined above it is a milestone achievement to draft the Somali Federal Constitution from zero. The United

⁴⁵ Cheryl Saunders, *Federalism: The Australian Experience*, HSRC Publisher, Pretoria, 1997, p. 11

Nations, the consecutive Transitional Federal Government leaders, Puntland Government and all other stakeholders must be commended for making the process possible. The Puntland Government and its people, more than any other body in Somalia, have contributed time, energy and its meager resources to achieve this outcome. Without a doubt, the current President of Puntland, HE Abdirahman Mohamud Mahamed “Faroole” has significantly contributed to the federalism process, holding three constitutional consultative conferences in Garowe, the Capital city of Puntland and Galka’ayo and personally taking a lead when it has appeared the process will fail. In addition, the Puntland Government played a decisive role calling for the last two conferences in Addis Ababa and Nairobi that finalized the roadmap. The aims of these conferences were to move forward the negotiations to achieve a viable federal constitution followed by federal institutions that would guide Somalia and the Somalis into the 21st century. At Garowe II, the President of Puntland made a significant speech intended to inform both the Somalis as well as the International Community about Puntland’s desire for Federal Government and the type of federalism that Puntland was seeking:

“The type of federalism we would like to see for Somalia is a system where power and resources is divided between the states and the federal level. Gone are the days when power and resources was unfairly concentrated in a single city-state. Expectedly, when Somalia’s central government collapsed in 1991, the nation-state collapsed with the fall of Mogadishu - a city-state under successive administrations since independence. This historic disaster should never be repeated and the Somali federation should provide space for political stability and economic development at the local and state levels, to ensure sustainable stability even if the center is threatened or falls. This is how government is managed - at the local level where people play the most important role and can solve and manage

their own affairs.”⁴⁶

As an initial step the *Transitional Federal Charter for the Somalia Republic* was passed in February 2004. As a result a new government called the Transitional Federal Government (TFG) was elected in October 2004. Article 11(1) of the Charter required that “the Somali Republic shall have a decentralized system of administration based on federalism.” Sub-sections 6 and 8 of this article asked the TFG to establish a new Ministry of Federal and Constitutional Affairs as well as an Independent Federal Constitutional Commission (IFCC). It took these two bodies nearly eight years to establish a fully-fledged federal constitution for Somalia.

On 1 August 2012 a National Somali Constituent Assembly overwhelmingly approved the Somali Federal Republic’s constitution, titled Provisional Constitution.⁴⁷ Subsequently the Parliament elected a new President on 10 September 2012. Despite perceived problems and shortfalls, the Somali Constitution enshrines federal principles that satisfy the Somali political leaders, Puntland Government, Somali community elders, Somali Civil Societies as well as the International Organizations who have invested time, energy and resources in drafting or providing commentary on the process that commenced in 2004.

⁴⁶ Puntland President Speech at the 2nd Somalia National Constitutional Conference (Garowe II) 15-17 February 2012. Garowe, Puntland State, Somalia.

⁴⁷ UN News Center, *UN Officials Welcome ‘Historic’ Approval of New Constitution for Somalia*, Available at <http://www.un.org/apps/news/story.asp?NewsID=42603#.UN3NAKW9es0> , accessed 23 Dec, 2012,

The current Constitution consists of 15 chapters that have 143 articles. In addition, it has 4 schedules that cover (a) the Somali Flag; (b) the Somali Emblem; (c) the proposed amendments to the constitution in the first term of the federal parliament (four years from September 2012); and (d) priority laws to be enacted in the first term of the Federal Parliament.

The Somali Federal Constitution fundamentally has decentralized characteristics. Article 48 creates two levels of government, the National Federal Government level and Federal Member State level, which is comprised of the Federal Member State governments, and local governments. As noted above, currently there is only one effective federal member state in Somalia, the Puntland Government of Somalia.

The Federal Constitution provided for the separation of power, an element that is very important for democracy and good governance. Madison, one of the founding fathers of the USA wrote extensively at the time on the separation of power, which he saw as fundamental to avoiding tyranny. In his Federalism Paper No. 47 he stated that “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.”⁴⁸ To avoid this, the Somali Federal Constitution separates the Federal power into Executive, Legislative and Judiciary.

According to Article 55, the Federal Parliament is bicameral consisting of two

⁴⁸ Madison, *Federalism Paper*, No. 47

houses: the House of the People (Article 55(1)(A)); and the Upper House (Article 55(1)(B)). The legislative power of the Federal Government is vested in the Federal Parliament—Article 55(2). Conversely the Constitution of the Federal Member States will establish the legislative and executive bodies of their Governments as well as the local governments—Article 120. Thus the legislative power of the states will be vested in the Federal Member States’ parliaments. Currently Puntland parliament has only one house consisting of 66 members selected by the clan elders from the 6 regions that comprise Puntland State.

The House of the People will comprise 275 representatives elected by the people in each member state. The Upper House of the Federal Parliament represents the interests of the Federal Member States they represent, thus each region will have 3 members making the total Upper House members 54 (18 regions of 3 each).

Article 54 allocates to the Federal Government the Foreign Affairs, National Defense, Citizenship and Immigration and the Monetary Policy powers. These four powers are the only powers that are allocated to the Federal Government. Other powers that could be allocated to the Federal Government will be negotiated and agreed upon by the Federal Government and the Federal Member States after all of them are created.

While Foreign Affairs is within the Federal Government’s jurisdiction the Federal Government must consult with the Federal Member States on issues concerning foreign aid, trade, treaties or major issues relating to international agreements—see Article 53(1). Furthermore, section 2 also states that if negotiations

particularly affect the Federal Member States' interests, then representatives from the Federal Member States will supplement the delegation from the Federal Government.

Under Article 49, the House of the People determines the number and the demarcations of the Federal Members States. The article does not give the Federal Government or the House of the People the authority to create the states or their borders. Rather the Federal Parliament is required to enact a law that will establish a national and independent Boundary and Federation Commission that will help the establishments of the new States (Articles 49(2)). Before the commission determines the boundaries for future states it will travel and study the country, meet the citizens and regional representatives and then report back to the House of the People. Section 5 of Articles 49 states that the new "Federal Member States boundaries shall be based on the boundaries of the administrative regions (18 regions existed in 1991) as they existed before 1991" and according to (Article 49(6)) "two or more regions may merge to form a Federal Member State."

The Federal Constitution recognizes the constitutions of the two currently existing Federal Member States of Puntland and Galmudug. Article 142 (1) states that "until such time that all the Federal Member States of Somalia are established and the adopted Federal Member State Constitutions are harmonized with the Somali Federal Constitution, the Federal Member States existing prior to the provisional adoptions of this Provisional Constitution by a National Constituent Assembly shall retain and exercise powers endowed by their own

State Constitutions.” In addition, the Federal Constitution states that the existing Federal Member States must be consulted with by the Federal Government with respect to the “federal system, and security arrangement”—See Article 142 (2). This subsection is not clear as to what the ‘consultation’ with the Federal Member States intends. Is it just consultation with the Federal Government responsible for enacting laws as it sees fit or does consultation with the Federal member states imply that the Federal Government needs formal acceptance by the Federal Member States.

There are postponed powers in the constitution. The Public Finance laws have been postponed until all the Federal Member States are established—see article 122. This is a very important issue from the States perspective. For example, it is very difficult for Puntland to share funds it raises through tax with the Federal Government when there are no mechanisms on revenue sharing between the Federal Government and the Federal Member States. Therefore, it was important to wait until all the Federal Member States are established. Conversely, this is detrimental to the Federal Government if there is no tax revenue for its daily operations. Government without revenue will not be able to perform its sworn task and as is currently the case the Government is reliant on overseas aid to fund Government operations which has the potential to develop unhealthy dependence on outside players that may unduly influence the future of Somalia. I note the constitution says nothing about trade within Somalia and between the states.

In addition to the above, the one area where there is real potential for revenue, the exploitation of natural resources, has been postponed to an unspecified time due to the controversy it has already raised between Puntland and the TFG. Article 45 states that “the allocation of the 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 this Constitution.” The problem with this article is that there is no time frame. It appears to be saying that the negotiation and agreement will take place when all Federal Member States are established. Puntland has made it clear that it wishes to have control of the natural resources within its territorial borders. During my involvement in the drafting and commenting on the draft Constitution in Djibouti and Addis Ababa, on behalf of Puntland we asserted that we wanted to have the control of all the revenue from the natural resources, its administration, as well as the ownership in Puntland territory whether it is offshore or onshore. This would maintain the *status quo*, which allows Puntland to retain all revenue until such time as the relevant sections of the Federal and State constitutions are harmonised.

Puntland acknowledges that ultimately there will need to be an agreed process for revenue sharing, but it seeks to make this a bottom up process. In a country where agriculture is marginal, manufacturing is non-existent, and the service sector is limited the potential importance of revenue from petroleum and mineral resources is not to be underestimated. This one issue poses a significant challenge to the diplomacy skills of both levels of Government.

The judicial authority of the country is vested in the courts—see Article 105. Under Article 108, the national court structure consists of three levels: the Constitutional Court; the Federal Government Court; and the Federal Member State Court. The highest court at the federal level is the Federal High Court, while the highest court at state level is the Federal Member State High Court—see Article 108(a)(b)(c). The Constitution points out that the Federal Court may hear cases concerning Federal Government, and the Constitutional Court hears issues concerning constitution issues—Article 109(1)(2). The article further states “any court with judicial powers can decide on whether a matter brought before it is constitutional matter or not, if this will not contradict the exclusive power of the Constitutional Court” then the court may refer the case to the Constitutional Court.

CHALLENGES and OPPORTUNITIES

Clearly there are many challenges facing the establishment of a Federal political system and Government in Somalia, but there are also opportunities to take advantage of the current momentum whereby current political leaders can solve the outstanding issues within the constitution while continuing the peace and reconciliation processes. Finalization of the Federal Constitution and support for the establishment of the remaining Federal Member States are vitally important. These are not easy tasks but must be a priority so long as the constitution is respected and adhered to. Adhering to the Federal Constitution and working within its framework will help overcome the existing problems. However, it must

be understood that a federal political system is not the magic bullet that can solve all Somalia's problems. Rather, the Somalis are, period. Under this Federal political system Somalis are the architects of their future.

There is an opportunity to correct the past political mistakes and look into the future. So far much has been achieved. Having said that, there are great inconsistencies in the Federal Constitution. In addition to this, Somali political leaders are already not abiding the Constitution. A case in point is the illegality of the way the current President was elected on 10 September 2012.⁴⁹ The House of the People only elected the current President, instead of both houses of the Parliament as clearly stipulated by Article 89(1) of the Federal Constitution. The Article states that “[T]he House of the Federal Parliament shall elect the President of the Federal Republic of Somalia in a joint session, presided over by the Speaker of the House of the People of the Federal Parliament.” It further states in Section 2 of this article that “a minimum of two-thirds (2/3) of the members of *each House* of the Federal Parliament must be present when electing the President of the Federal Republic of Somalia.” Section 3 and 5 further state that the presidential “Candidatures must be proposed to the *joint session of the Houses* of the Federal Parliament” and that “every presidential candidate has to declare his candidacy to the Houses of the Parliament and shall present election programme to the Federal Parliament.” In addition, Article 71(d) states the Upper House “participates in the elections of the President of the Federal Republic in accordance of Article 89.”

⁴⁹ BBC News Africa, Somalia Election: Hassan Sheikh elected as President, Available at <http://www.bbc.co.uk/news/world-africa-19540325>, accessed December 21, 2012.

While this is what the Federal Constitution says, there is as yet no Upper House. Inquiring about when the Upper House will be established, people in the Federal Government informed me, to my surprise, that it would take a long time to establish the Upper House, as it is not the priority of the Federal Government. If that is true, which I have no reason to doubt, what about the existing State to take the lead in establishing the Upper House, since it represents the interest of the States, as stipulated by Article 71 of the Federal Constitution.

To bypass all these sections of the Constitution, and elect a new president, the Federal Parliament hastily amended Articles 89(1-4) of the Constitution (Election of the President of the Federal Republic of Somalia.). This is the first illegality that the Federal Parliament committed, as they don't have the authority to amend any section of the Federal Constitution without going through the proper process stipulated by Articles 133 and 134.

The constitution allows for amendments, and there are strict processes and procedures provided within the constitution for this process. For instance, there are two periods in which amendments can be made to the constitution: before the expiry of the first term of the Federal Parliament (Articles 133 and 134); and after the expiry of the first term of the Federal Parliament (Article 132). For this reason this paper is mostly interested in the period before the first term of government expires, because that is a very important period.

Traditionally, the term of a Parliament begins immediately after the members of the Parliament are sworn in to assume their responsibilities under the constitution. In this case, the Somali Federal Parliament first term began when the Members of Parliament were sworn in on 20 August 2012. From then on until the end of the term, in 2016, any amendment that is going to be made should strictly followed Articles 133 and 134 as stated by the Constitution, rather than the President or the Parliament.

Articles 133 and 134 state that before the current Constitution becomes permanent through public referendum, any amendment will be prepared by an Independent Provisional Constitution Review and Implementation Committee consisting of 5 persons. This committee, when established, will work under another committee called the Provisional Constitution Review and Implementation Oversight Committee. This Committee will consist of an equal number from the two Houses of the Federal Parliament as well as 1 member from each Federal Member State. These two committees prepare amendments and then put them before the Federal Parliament for approval by 2/3rds majority. After all that is done, the amendment will be put before the citizens of the country to accept or reject it in a public referendum. In the case of amending Article 89, none of the above processes took place. Sadly, neither the States nor the other stakeholders even protested about it. Without a doubt this will establish a precedent and the Federal Parliament may try to illegally amend other articles they might not like. Nevertheless, this is a clear example of how Somali political leaders are undermining their own constitution, and in consequence their future. There is an opportunity to reflect on the mistakes of

the past and rectify them by adhering to the Federal Constitution, immediately establishing the Upper House and help and positively contribute the establishment of the remaining Federal Member State.

It is disturbing news, recently reported by Somali websites, of the President's intention to amend the Somali Federal Constitution. It was reported that the President told members of Parliament, "the government and the parliament must work together to change the provisional constitution, as Somalia needs time to implement federalism." The President went on to say that; "no system can be imposed on Somalia by the international community or military forces or a small group of people in secret meetings. No system can be imposed without the people 's support." If his intention is to make amendments within the procedural framework established by the constitution, then the processes are working, as they should. If the President continues down a path of constitutional amendments that are simply voted on by the MPs, then the government is heading the wrong direction in fulfilling its obligations within the Constitution.

Another problem with the Constitution concerns whether the constitution is secular or religious based. The Federal Constitution states that the constitution is based on the foundation of the Holy Quran and the Sunna (the teachings of Prophet Mohamed)—see Article 3(1). Further, Article 4(1) states, "*after the Shari'ah*, the Constitution of the Federal Republic of Somalia is the supreme law of the country. The question here is whether the intention is to have a secular State or Religious State? To me this is clear-cut; Islamic law is higher than the Constitution. The constitution therefore, must adhere to Islamic law, whether it

is criminal, contract, family and business law or any other laws. I understand that the Constitution was drafted this way to satisfy the religious groups, such as Al-Shabab. But, there is an opportunity to redraft and amend this article so it will read in a way that could satisfy all concerned groups.

There are also opportunities to discuss issues concerning the *powers* that could be allocated to the Federal Government by the Federal Member States and those powers that the Federal Member States want to retain. Currently there appears to be a misunderstanding about the sovereign authority of the Federal Member States to keep some powers and delegate others to Federal Government. This is a fundamental issue that needs to be understood by the stakeholders because Somalis want a bottom up process, rather than top down process. They do not want a form of government imposed from above by a remote authority; they want a process whereby their local concerns become regional concerns, which in turn become state concerns and ultimately federal concerns. Any process that tries to establish a sovereign state of Somalia starting in Mogadishu is bound to fail. Somalis are reluctant to return to a situation whereby all powers are vested in a remote and seemingly uninterested authority, they want their say in which powers they retain at a more local level and which powers they are happy for the Federal government to exercise on their behalf. It is vitally important that the existing States should collectively, or even separately, engage with the Federal Government on this matter, because the sooner this matter of establishing the remaining Federal Member States is resolved the quicker Federalism makes significant progress in Somalia.

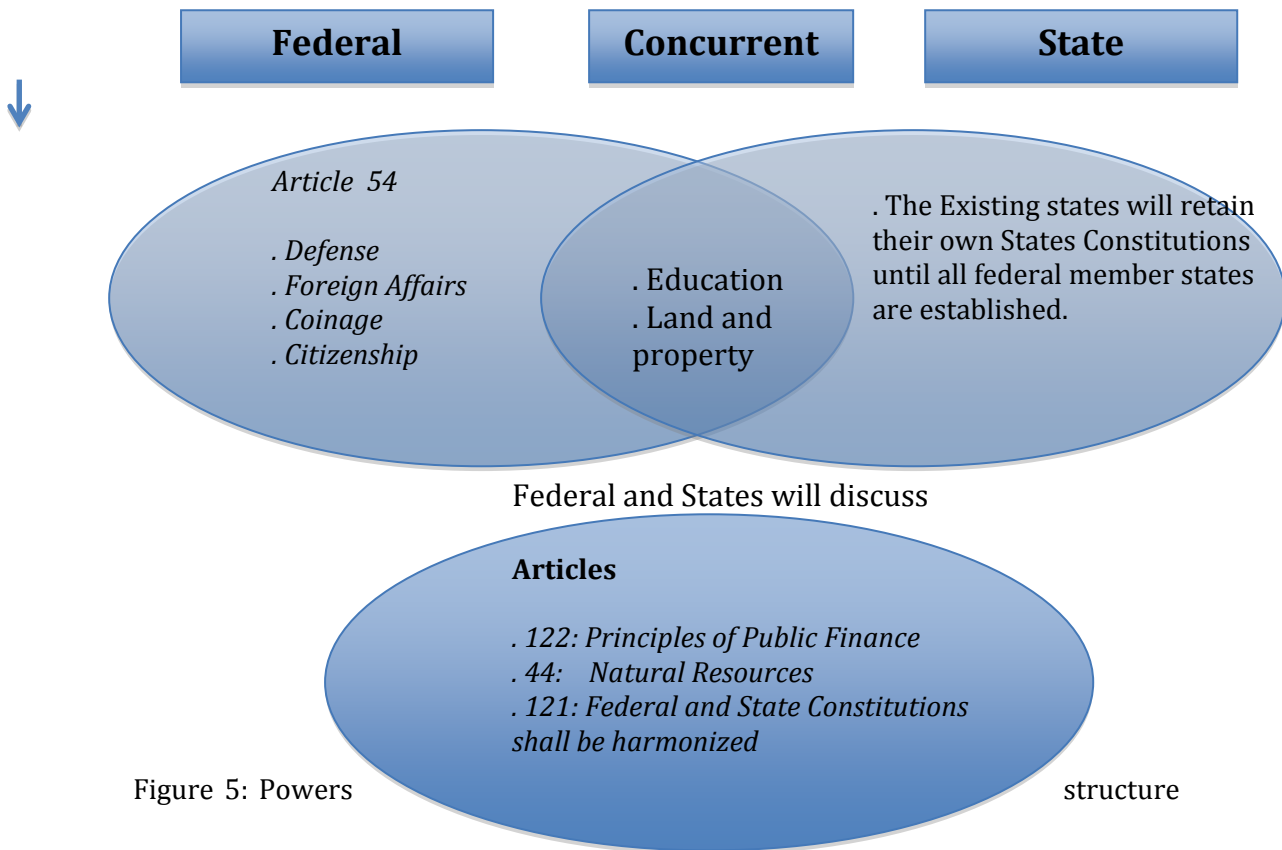


Figure 5: Powers

structure

Sadly, it appears from the Federal Government's activities, none of these issues will be resolved unless the Federal Executive and the Parliament work overtime, open dialogue with the existing States, and support all the efforts to establish the remaining would-be Federal Member States. Without a strong commitment from the Federal Government, the Federalism will not flourish in Somalia. Therefore, for Federalism to work in Somalia both the Federal Government and State Governments should inform the people of the importance of the system; how it works and the benefits it brings. It is not enough for States or the Federal Government to claim they have a federal system without actually adhering to the system. Nor it is enough for one level of government to adhere in only areas of the Constitution that suits it. In fact the State of Puntland, which has invested much more in this process needs not only to educate its people about the federal

political system, but also behave like one, by delegating effective and sufficient powers to the districts.

Another very important issue that the current government has an opportunity to try solving is the issues concerning the secession claims of the northwestern regions, now calling itself Somaliland. As mentioned above, the Somaliland people seceded from the rest of Somalia in 1991. Their government held a referendum in 2001 asking its people whether or not to secede. Allegedly most people voted to secede.⁵⁰ As David Kenning stated “in Somaliland the absence of a central government in Mogadishu has led to the creation of decentralized, regional governments supported by traditional leaders and civil society groups that are helping to rebuild their country from the ground up.”⁵¹ Now, there is a very strong and substantial peace and political progress that is taking place in Somaliland, having political parties, two houses of parliament, and holding two one-man one-vote elections as well as local government elections. All these have been achieved within the last twenty years, and the people and their successive governments should be commended on these progress. One of the greatest challenges for Federalism is how to bring Somaliland back to Somalia when a large part of Somalia, excluding Puntland, is still mired in violent confrontation, which Somaliland and Puntland have successfully sought to distance themselves from.

⁵⁰ Ian S. Spears, Reflections on Somaliland & Africa's Territorial Order, *Review of African Political Economy*, Vol. 30, No. 95, (Mar., 2003), p. 89

⁵¹ Kenning, D., “Somalia and Somaliland: The two edged sword of International intervention”, *Federal Governance*, vol. 8 no. 2, (2011), p. 67.

Therefore, the Federal Government should come up with an effective way to deal with Somaliland. Both the International Community and the regional government can also play a significant role in convincing Somaliland to join the rest of Somalia in a federal political system that can give self-rule within its own territory. After all they are Somalis who have the same religion, culture and tradition, language and color in an indivisible territory. Finding a way that could ultimately convince Somalilanders to join the rest of Somalia, as a Federal Member State, will need effective dialogue, flexibility and recognition of achievements.

Federalism is not universally accepted as a political and governmental arrangement among the Somalis. There are sectors from the Somali community who are hesitant, if not against, the federal political system. These people, although they are a minority, have a legitimate right to be heard and it is the federalists themselves who must convince them about the nature and benefits of federalism. The current governments, whether it is the existing Federal Member States or the Federal Government, have a role to play in this. The founding fathers of the United States of America understood that part of adopting a federal system required education of the masses as to why they should be persuaded to support the Constitutional referendum, this resulted in numerous essays being published in New York city newspapers between October 1787 and May 1788, subsequently brought together as *The Federalist Papers*.

The most significant critic of the Federalism political system is former Prime Minister of Somalia, Mr Abdirisaaq Haji Hussien. Although the former PM rejects

the federalism political system, he rather desires what he refers to, as a “decentralized unitary system” which he believes would better work in Somalia. He strongly believes that “although a federal system has been good and workable in countries like Switzerland, U.S.A. Canada, and Germany, to name just a few, it is less likely to be so in the Somali Republic’s case.” He continues to say “a major reason is the huge gap in social, economic, political and civic standards between the peoples of the abovementioned countries and the people of the Somali Republic.”⁵² Mr. Hussein claims also that the reason Somalis and regional states want federalism for Somalia is based on two reasons; “a reaction to the military authoritarianism and the ensuing civil disorder,” and the Kenyan and Ethiopian’s “national/security interest.”

Conversely, the majority of Somalis support this new federal political dispensation. Dr. Yusuf O Al-Azhari, a veteran civil Somali servant who once held an ambassador position in the last Somali civilian government, suggests that although military dictatorship followed by civil upheaval could be one of the reasons for adopting federalism, there are more reasons. Al-Azhari states that the problems that have resulted in a desire for federalism was “[C]entralized National Government, which restricted any sharing of power and resources to the regions in an equitable manner”. He went on to say that, the Somalis now want “a Federal power sharing system with a clear definition of the distribution of power and resources between States and the National Central Government, to

⁵² Abdirizak Haji Hussien, The Future Constitutional Structure of the Somali Republic: Federal or Decentralized Unitary State? Available at, http://www.hiiraan.com/op2/2011/apr/the_future_constitutional_structure_of_the_somali_republic_federal_or_decentralized_unitary_state.aspx Accessed Dec. 21, 2012. Abdirizak Haji Hussein was the Prime Minister of the Somali Republic, 1964-1967.

achieve the enhancement of welfare goals for its citizens, while maintaining collective sovereign unity.” He further states that the;

“[F]ederal system is simply, a democratic equitable policy procedure which allows sharing through cooperation and involves the division of power between a central government entity and local State governments. Division of political power between center and states, of a federal democratic nation, bequeath most vital authorities related to National security, stability, major foreign policy and minting of financial notes to the Central Government, with states sharing subsidiary responsibility.”⁵³

Mohamed Abshir Waldo, also agrees with Al-Azhari and claims that federalism is good for Somalis since it gives each zone their own rights to govern themselves. He claims federalism will help the Somalis in three different ways:

“(1) system of zonal self-governing [is] the best approach that Somali communities could, under the circumstances, heal and overcome the fear, hatred and distrust of the bloody civil war; 2) that it offered a middle solution between an autocratic, centralized system of governance and outright secession; and 3) that decentralization empowered district and regional communities and offered more balanced and more productive socio-economic development opportunities.”⁵⁴

These kinds of different view about the Somalis federalism, by Somalis themselves, are opportunities to hear and exchange views, but also challenges that the Somali Federal Government need to accommodate, listen and learn from it.

⁵³ Dr. Yusuf O. Al-Azhari, ‘

⁵⁴ Mohamed Abshir Waldo, ‘Federalism in Somalia: Birth of Puntland State and Lesson Learned’, Available at http://wardheernews.com/Articles_2010/October/Waldo/10_Federalism_in_Somalia_The_birth_of_Puntland_&_the_lessons_learned.html Accessed Dec. 20, 2012.

The religious groups, particularly Al-Shabaab, are basically against any form of secular government. To them it does not matter whether the Somali government is centralized, federal, a confederation or any other decentralized unitary form. They seek what they term “an Islamic government.” It appears, at least for the moment, that the form of government they seek is unlikely to materialize, as it is associated with continued violence, discrimination and transnational terrorism. They are, although they have been weakened, still a force to be reckoned with, particularly in south central Somalia and in Puntland’s Golis Mountains. Therefore, they should be dealt with forcefully. However, dealing with those members of Al-Shabaab who are willing to renounce violence should be countenanced. Opening dialogue, even at a low level, will go much further, than to continue to be on a war footing, totally unable to defeat or significantly damage this dangerous ideology. In the meantime, the Federal Government, Galmudug and Puntland will continue engaging militarily as Al-Shabaab continues its operations of hit and run insurgency tactics.

CONCLUSION

This paper has discussed the current achievements, the existing challenges and opportunities of the federal political structure for Somalia. A great deal of work has been done in drafting the constitution, electing a new president and appointing a new government, but there is more work ahead for Somalia’s political leaders. It has to continue discussing the Federal Constitution, its deficiencies and opportunities to correct it. The success or failure of this current

government will be judged by how the Federal Government approaches and discharges the Federal Constitution, its support for establishing the remaining new Federal Member States, adequately and fairly dealing with Puntland and Somaliland, sharing revenue and ensuring international security support together with the existing States.

For Puntland and Somaliland, supporting, understanding and accommodating the Federal Government needs will help them more than the Federal Government. Developing better relations for all sides will do more good than bad for the progress of Somalia. Working together on security, economic development and social cohesion are the next very important steps for Somalia.