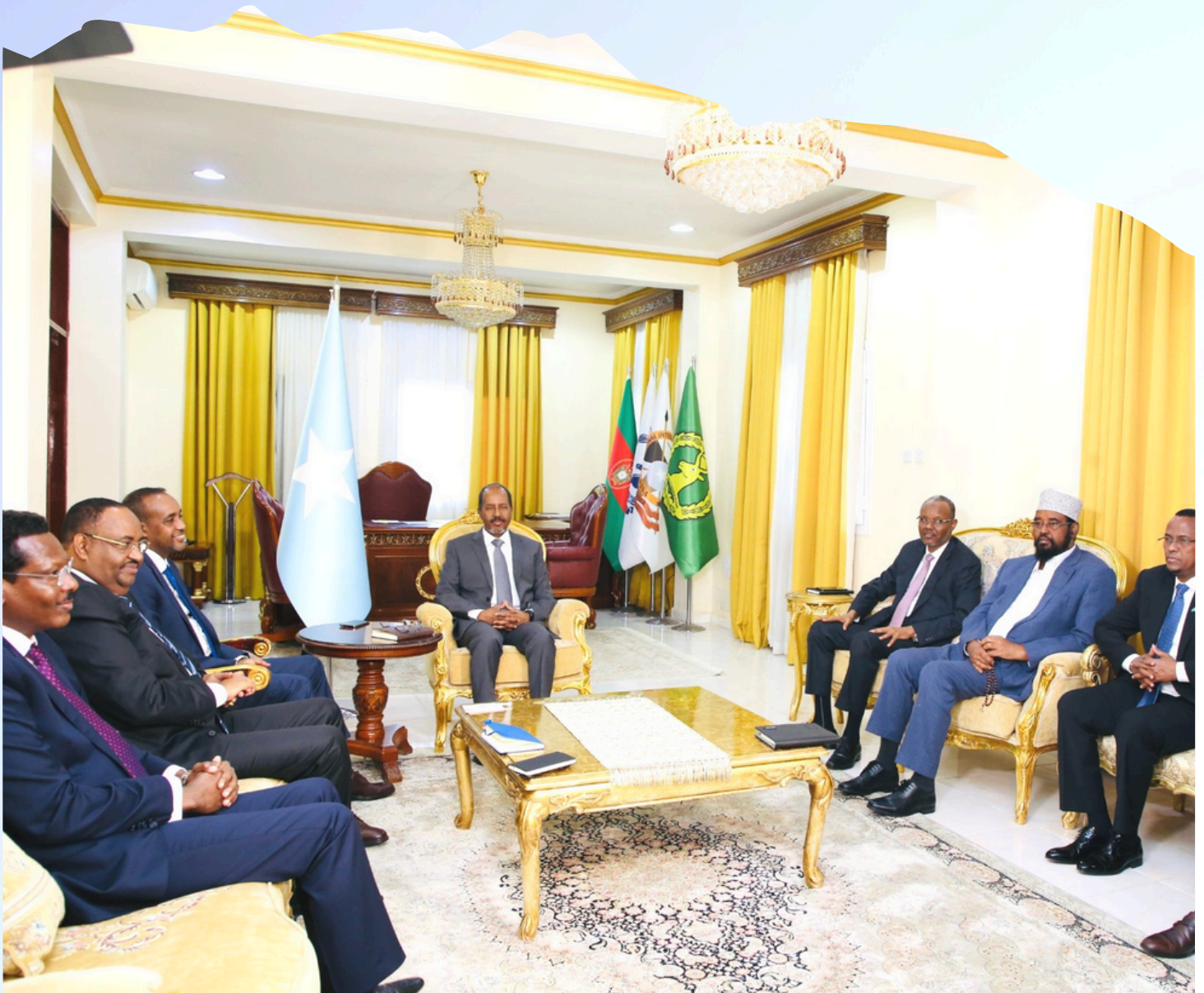


SOMALIA'S INTER- GOVERNMENTAL RELATIONS BETWEEN THE CONSTITUTIONAL THEORY AND POLITICAL PRACTICE

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Executive Summary

The concept of Somali federalism has been gradually gaining some traction in the last few years. The idea of “two levels of government” or “Federal and State governments” was not initially popular with many people in Somalia who were used to unitary system of government, political and governance hierarchy and unilateral top-down decision making since independence in 1960. Therefore, it was no surprise that the new political federal architecture presented many challenges to governing, coordination, decision-making and delivery of services.

Somalia Provisional Federal Constitution (PFC) provides that exercise of federalism should be guided by principles of confidence and support of people, spirit of national unity, dialogue and reconciliation and subsidiarity (Article 50). The founding principles of federalism in the light of the PFC informs that the federal model of Somalia should be based on vertical cooperation between the Federal Government of Somalia (FGS) and Federal Member States (FMS), rooted in broad-based collaboration, negotiation, and joint decision-making through formalized institutions and forums in the form of Intergovernmental Relations (IGR).

IGR is enshrined in the PFC (Chapter 5, Articles 50 to 54). The formalization of IGR in the PFC is unsurprisingly expected given the country's jurisprudence which is largely based on civil law tradition but also underscores the importance of IGR in the adoption of Federalism and post conflict Somalia context in which the PFC was drafted. However, the formalization of IGR in the PFC did not translate into the formation of effective IGR institutions, legal frameworks and accountability and transparency strategies.

In the last seven years, nascent IGR platforms without effective legal, institutional and administrative mechanisms mostly derived from political opportunism and donor demands for cooperation and resource sharing (aid money) have emerged, leading to numerous ad-hoc conferences and agreements between FGS and FMS. The most prominent forum is the National Consultative Council (NCC) which has been acting as the highest executive IGR platform in Somalia and succeeded to convene and reach agreements on a number of exigent and contentious issues. But the forum has never been formalized in a primary legislation as instructed in the PFC (Article 51(5)) nor was it institutionalized to effectuate its work. Not only has it been deficient of legal standing but most of the agreements hammered at the NCC have been treated as legally non-binding “political deals” and were never submitted to legislative scrutiny and approval at the Federal parliament.

This policy review and analysis sought to examine Somalia IGR arrangements in the light of the provisions of the PFC, relevant legislations and inter-governmental agreements reached between FGS and FMS with comparative considerations. The challenges to IGR in Somalia could have been borne as the result of post conflict state building conundrums, and the limited resources and capacities of Somalia institutions but the following barriers have been highlighted as the main causes of the lack of effective institutionalized IGR in Somalia.

- Lack of primary legislation to formalize IGR forums such as the National Consultative Council
- The absence of Inter-State Commission which was stipulated in the PFC (Article 111F) as a vital organ to facilitate intergovernmental coordination and cooperation and resolve any administrative, political or jurisdictional disputes among the Federal Government and the governments of the Federal Member States
- Lack of legislative approval and enforcement of intergovernmental agreements reached between the FGS and FMS

- Inadequate institutionalization of IGR which led to limited implementation, monitoring and evaluation of IGR agreements and work
- The absence of the constitutional court to adjudicate over the disputes between the levels of governments.
- The absence of a role for local governments in IGR arrangements
- Ambiguities and inconsistencies between the PFC and FMS constitutions
- Political polarization: The conflict between the “centralization of power” in the guise of national identity politics and the demand for “shared resources, power and decision making” driven by the emerging State identity politics.

This policy review and analysis calls FGS and FMS to consider the following recommendations:

1. The Federal parliament need to formalize and entrench the legal basis for IGR arrangements and the establishment of IGR institutions through primary legislations
2. The Federal parliament need to develop guidelines and independent institutional arrangements for Inter-State Commission as the main framework to coordinate IGR work
3. The Federal parliament need to review and reform the National Consultative Council (NCC) and improve its governance (legitimacy, authority, accountability and transparency)
4. FGS and FMS need to reach final agreement on the remaining issues for the finalization of the constitutional review process for the Provisional Federal Constitution.
5. FGS and FMS need to find solutions for the disagreements over the role of Federal Member States in subnational paradiplomacy by defining the different patterns and domains of foreign affairs and international relations in the federal constitution, particularly issues relating to the:
 - National level interactions and diplomatic relations with foreign governments
 - Membership, diplomatic relations and interactions with regional and international bodies
 - International cooperation in both diplomatic and paradiplomatic levels
 - International agreements on trade and investment
6. There is a need to expand the role of the Upper House of the Federal Parliament and recognize it as the representative of the Federal Member States.
7. It is critical to promote and strengthen the role of the judiciary as an independent, impartial, and competent organ with its own independent judicial fund to serve as guardian of the federal constitution and arbiter of intergovernmental disputes.
8. FGS and FMS need to take a pragmatic apolitical approach to national security reforms and establish a restructured National Security Commission which is composed of members appointed by the FGS and FMS whose tasks are outlined in the Provisional Federal Constitution (Article 111H).
9. The role of municipalities in IGR arrangements is very important in order to ensure the devolution of power and resources to the lowest constituencies based on the principle of subsidiarity as commanded by the PSF.

Introduction

"Competition is the Law of Jungle, whereas Cooperation is Law of Civilization"
Peter Kropotkin

According to Grave (1974), "Inter-governmental relations (IGR) is synonymous with federalism". The concept and practice of the interaction between levels of government is a defining feature of federalism regardless of differences in history, geography, constitutional framework, legal culture, distribution of competences or resources, and federal design because it helps shape the exercise of powers and assigns functions between the federal government and the states, which results in a complicated web of interactions between various actors (Grave, 1974, pp.42). IGR is, therefore, inevitable and an underlying philosophy for the conduct of government and the relations between the different levels of authority: national, provincial, regional, and local in federal system of government. Nonetheless, IGR does not embody a collaborative multitiered governance system unique to federal states but also occurs in unitary states with decentralized or devolved structures such as United Kingdom and transnational institutions such as the European Union. In the case of transnational polities, IGR is referred to as multi-level governance (Peter and Pierre, 2001).

IGR was originally conceptualized within US federal political frames and defined as "an important body of activities or interactions occurring between [or among] governmental units of all types and levels within the US federal system" (Anderson, 1960). Over the years, the discourse on the concept has been broadened to consider other federal nations and political entities with dual or more polities. Phillimore (2013) defined IGR as "the processes and institutions through which governments within a political system interact.

All countries, whether unitary or federal have IGR of some sort, provided they have more than one level of government". IGR interactions are often vertical, involving the central government, states and local administrations, but it is sometimes horizontal between the states only with the focus on cooperation for the common interest (Anderson, 2008).

Although IGR is an integral part of every federal system, there is no uniformity in its implementation in terms of institutional and legal arrangements, processes and practices because IGR is affected by a wide range of factors, including the nature of the constitution and the form of the government, the party system, the size of the federation, the ethnic, cultural or religious homogeneity, the internal boundaries and the differentials in economic resourcefulness of the federating units as well as the "principles pursued in competitive and cooperative interjurisdictional patterns" (Wright, 1975; Rekha, 2010; Poirier, et al., 2015).

In dualist federal systems, legislative power is allocated across levels of government based on a given subject matter. The national and constituent levels each have a full set of institutions, and both the center and each state enact and administer their own legislative programs. Those federations include Argentina, Australia, Brazil, Canada, Spain, and the United States. By contrast, in 'integrated' federal systems, states execute both their own laws and many of those enacted by the central authority. To this extent, in Austria, Germany, South Africa and Switzerland, power is divided by reference to both subject matter and function (Poirier, et al., 2015).

The heterogeneous collaborative and legislative configurations of IGR in federal systems have some implications. In an integrated federation, states are likely to contribute to creation of central legislation that they ultimately administer. This process is usually referred to as “intra-governmental” or “intra-state federalism”. This is particularly obvious in countries like Germany and South Africa, where the second chamber of the national legislature is made up of state representatives, whose approval is necessary for legislation with federal implications. Conversely, while the people of the states are typically represented in the second chamber of the federal legislature in dualist systems, direct state participation in the federal law-making is not guaranteed. As a result, the influence exerted by states on federal policies is less institutionalized (Ibid).

Despite the relationship between the type of federal system, the prevailing institutional, legal and political climate and the pattern of collaboration, IGR largely enables the components of the federal state to exercise their respective actions in areas of exclusive competences and articulate their contributions and interactions in areas of concurrent or shared competences (Poirier, 2018). In an environment of political cooperation where IGR is institutionalized, different levels of government work together to set-up processes and bodies for sharing information and developing more harmonious policies through consultation and joint decision making. Thus, IGR strengthens the participation and influence of the constituent units, promotes diversity and hold in check the centralization and unilateral decision-making tendencies of the center.

Clark (1938) described IGR of the United States as “a means of coordinating the use of federal and state resources, of eliminating duplications in activity, of cutting down expenses, of accomplishing work which could not otherwise be carried out”. In this regard, IGR serves as an instrument that brings the levels of government together and facilitates negotiations on matters that involve disagreement since communication and conversation create a space for acknowledging differences and reaching mutual understanding and agreement. In addition, effective and efficient intergovernmental relations lay the groundwork for, among other things, policy coordination and sharing of resources, experience and expertise across the levels of governments and among states (Johns, et al., 2007). An example drawn from the United States shows how a joint initiative of two states to develop common schooling standards was extended to others through the use of the federal spending power (Poirier, et al., 2015).

Some of the drawbacks of IGR lies in its propensity to create complex and extensive political, legal and institutional interdependence which can spawn competing demands, duplication, disagreements and political tension between the center and the constituent units. These problems have been observed in different federal states and are manifested in the complex bargaining over power and resource sharing, competency and policymaking incongruences, and legal challenges over remits and jurisdictions (Shapiro, 1994; Benz, 1989; Phillimore, 2013).

In Somalia, federalism was first introduced in 2004 at an epochal moment in the restoration of the Somalia statehood through the adoption of the Transitional Federal Charter. Although the debate of federalism as a governance option for Somalia dates back to 1950s, the years leading to Somalia independence, the current experimentation of federalism in its Somali version has its genesis in the continuous search for lasting peace and reconciliation in the country. It was an attempt to, on the one hand, surmount the state failure, political differences and fragmentation caused by the internecine conflict and, on the other hand, recognize the diverse geography, history, and socio-economic circumstances of Somali people.

Ilmi (2015) listed four fundamental factors as drivers of federalism in Somalia: a trust deficit, demands for political participation, access to basic services, and a fair distribution of resources. Somali federalism was constructed as an acceptable approach to rebuild trust among Somali society, as a way to end the prolonged chaos and statelessness and form an inclusive government to overcome "the clan fragmentation that followed the collapse of the state" while making a room for local autonomy, and as a compromise to counter the centralization in Mogadishu of previous Somali governments and secessionist tendency of "Somaliland"¹ authorities (Waldo, 2010; Mark and Menkhaus, et al. 2008).

Designating the country as a federal republic in its article one, the 2012 Provisional Federal Constitution (PFC) marked the official transition from the unitary system into the federal system. In this sense, the constitution does not mean federalism as a delegation of power from the center to the regions as is the case in devolved systems; rather, each level of government is imbued with its own powers by the constitution (Anderson, 2008). This means that Federal Member States (FMSs) do not derive their rights and existence from the center but from the constitution that creates them both, and the center cannot unilaterally change, abolish, or modify the covenant that creates the federal polity (Mulu, 2015).

The PFC defined the federal governance structure of the country (article 1) into two levels; the Federal Government (FGS) level as the national government based in Mogadishu and the Federal Member States (FMS) level, comprising the State, regional and local governments (article 48). Pursuant to article 3 (3) of the PFC, the Somali federalism is founded on the principle of power-sharing arrangement between federal institutions and those at the subnational level, such that neither level of government has absolute power.

¹"Somaliland" unilateral independence from the rest of Somalia in 1991. Somaliland communities are represented in the 4.5 representation formula in the Federal government.

The constitution further provides that exercise of federalism should be guided by principles of confidence and support of people, spirit of national unity, dialogue and reconciliation and subsidiarity (Article 50). The founding principles of federalism in the light of the PFC informs that the federal model of Somalia should be based on vertical cooperation between the federal government and states, rooted in broad-based collaboration, negotiation, and inclusive politics. However, after more than a decade since the adoption of the PFC, little progress has been recorded in the implementation of a functioning intergovernmental relations paradigm or cooperative federalism despite constitutional provisions formalizing IGR. Moreover, A nascent IGR platforms without institutional and management frameworks which are oriented to political opportunism and donor demands for resource sharing (aid money) have emerged, leading to numerous ad-hoc conferences and agreements between FGS and FMS.

But in general, the relations between FGS and FMS and the crucial work of institutionalizing IGR and developing effective legal and institutional processes and plans for its implementations have been overshadowed by incessant disputes and insidious struggle over power and resources. As a consequence, some critical peace and state building activities have been stalled including the finalization of the constitutional review process, allocation of revenues and expenditure responsibilities, harmonizing the federal and states constitutions, political and security sector reforms and establishing independent, competent judiciary system including the constitutional court.

In the last seven years, Somali Institute for Development Research and Analysis (SIDRA Institute) has been engaged in the discourse and research in Somali peace, federalism and democratization, publishing articles and contributing to reviews on the political, social and economic development, decision making and service delivery processes and practices of the FGS and FMS. This article presents the findings of a review and analysis on Somalia IGR arrangements in the light of the provisions of the PFC, relevant legislations and inter-governmental agreements reached between FGS and FMS with comparative considerations. It further explores the discrepancy between the constitutional theory of cooperative federalism and the practice of IGR in Somalia, focusing on the successes and failures associated with the implementation of IGR.

Methodology

This literature and policy review was conducted to identify and understand the elements and characteristics of IGR concept and the laws, policies and practices of federations with experience in dealing with this issue. A wide range of documentary sources, including the Provisional Federal Constitution, legislations and inter-governmental agreements in Somalia were reviewed to assess the awareness, presence and institutionalization of IGR in Somalia legal, political and policy-making processes. Normative and comparative analysis methods were used to explore and relate the interactions between the FGS and FMS to formal and informal IGR, mapping the actors involved and taking into account the historical, cultural, political and socioeconomic factors and contexts.

IGR Arrangements under Selected Federal Systems

The concept of IGR has evolved through time and varies from one political system to another across federal states. It occurs across a spectrum, ranging from the formal and legally institutionalized IGR processes and practices in the form of inter-ministerial committees, joint commissions, coordinating taskforces, etc. to the informal political interactions and issue-specific cooperations. In many federal countries, structures and mechanisms aimed at implementing IGR functions are partly provided by constitutions, legislations, or other formal agreements. In Germany, the Bundesrat acts as representatives of the federal states in the capacity of second chamber established by the constitution. It is composed of Land delegations each led by its Minister-President (Premier) and its powers include an absolute veto over all federal legislation affecting the Länder (States). This indicates that the Bundesrat and its many committees also act as a powerful intergovernmental institution for co-coordinating interactions between the Federal and Land governments and the Länder with each other, albeit often along political party line (Scharpf, 1988).

The constitution of South Africa of 1996 dedicated a whole chapter to the implementation of IGR functions based on "cooperative government" between the respective "spheres" of government. It further required legislation framework or an Act of Parliament to regularize and facilitate the conduct of IGR which was enacted in 2005 to provide detail of the IGR and establish president's coordinating council (PCC) as the main coordinating body at the national level, and another forum led by the heads of executive at the province level.

It also established another IGR coordination body at the district level comprising of the metro and district mayors. In Nigeria, the Council of States is one of the advisory executive bodies established in the constitutions of 1979, 1989 and 1999. Its duties include advising the President on matters relating to the conduct of national census, judiciary commission, independent electoral commission, prerogatives of mercy and award of national honour (Chukwuemeka & Aniche 2016). In India, the Inter-State Council is the formal IGR procedure; it was established in 1990 on the basis of Article 263 of the Indian Constitution (IDEA, 2018).

According to Poirier, et al. (2015), there are several reasons driving greater formalization of IGR frameworks. The first is the product of modernity. Unlike the older dualist federations like Australia, Canada, and the United States, the more recent federal countries with written constitutions opted for express formalization of IGR mechanism as the case in Nigeria, Spain and South Africa. Second, the increased mistrust between the different levels of government arising from the fear of central authoritarianism tend to resort to formalization as a tool for protection like the case in Brazil. Third, the formalization introduces predictability, compliance, and stability.

This is likely in federations where states are still fragile like the case in Spain. And fourth, there is a correlation between the dominant legal culture and formalized IGR. Federations with civil law traditions have greater tendency to the legalized IGR in the constitution or legislation because of the “legicentrist” nature of the civil law, while the countries with the common law heritage have a greater inclination towards the non-formalization of IGR based on the dominant presumption that IGR procedures are highly political and should somewhat be immune from what has traditionally been mostly judge-made law.

Notwithstanding those reasons and benefits of formal IGR institutions, there are federations, especially the older ones such as Spain, Canada, Australia and United States where IGR evolved as a political process far from the constitution and emerged through practice and need over time (Afesha, 2015). Pragmatism and opportunism rather than federal principles or legal positions tend to shape the structure and formation of informal IGR structures (Hollander and Patapan 2007). Canada has informal IGR arrangement which is neither stipulated in the Constitution nor established by legislative framework. The IGR is carried out by Canada’s provincial and territorial Premiers solemnly established the Council of the Federation (CoF). Under the framework of the Council of the Federation, the Premiers would meet more often and be supported by a permanent secretariat located in Ottawa. In the same vein, Australia, despite the absence of constitutional provisions or legislation dealing with IGR, has established a comprehensive set of IGR institutions and policy platforms.

The top IGR institution is the Council of Australian Governments (COAG), comprising all first ministers (the prime minister, premiers of all six states, the chief ministers of the two territories) and the head of the national association of local governments (Phillimore, 2010).

Constitutional Provisions for Inter-governmental Relations

As part of a package of social and political reconciliation in the initial stages of Somali state reconstitution, the Provisional Federal Constitution (PFC) was developed to provide a set of agreed principles and rules to guide peace and state building activities towards reaching final and felicitous settlement in many of the complex and contentious issues between the opposing groups through the adoption of a final national constitution. In this regard, there was no impetus nor urgency to clearly delineate powers between the Federal Government and the Federal Member States (FMS).² Rather such specific allocation of powers and responsibilities were left to be negotiated per article 54, except for those powers relating to Foreign Affairs, National Defense, Citizenship and Immigration, and Monetary Policy, which were framed in the remit of the Federal Governance (Article 54).

The constitution calls for inclusive and collaborative relationship based “in the spirit of inter-governmental cooperation the Federal Government shall consult the Federal Member States on negotiations relating to foreign aid, trade, treaties, or other major issues related to international agreements” (Article 53).

²It is important to note that the division of powers between the federal government and the states cannot be constitutionally delineated in such a way that eliminates all conflicts. Rather, as R. Davis notes, the “division of power is artificial, imperfect and a generalized skeletal thing. Political life cannot be perfectly or permanently compartmentalized. The words can rarely be more than approximate crude and temporary guides to the ongoing or permissible political activity in any federal system” (Rufus, 1978: P. 143).

There is a general guideline for cooperation to carry out concurrent powers by binding vertical "cooperative relationship" between the FGS and the FMS on several matters of concurrent functions, such as education, health, the development of agriculture, environmental protection, and the development of water resources (Article 52), and horizontal "collaborative relationship" between all levels of government (Article 51). In this sense, vertical and horizontal interactions are fundamental premises for effective IGR in such a way that FMS including the municipalities are no longer treated as recipients, but rather as platforms where they are recognized as partners in the process of IGR implementation. Again, as a general guideline for effective cooperative relationship, the subsidiarity principle is enshrined in the constitution, making the task of raising of revenues be assigned to the level of government "where it is likely to be most effectively exercised" (Article 50).

A stipulation in article 50(d) guarantees standardization and equal access by instructing that "every part of the Federal Republic of Somalia shall enjoy similar levels of services and a similar level of support from the government."

There is an ambiguity in how resources are to be shared and IGR functions are financed as the PFC makes no clear reference to a framework for intergovernmental fiscal transfers except providing a general rule in article 54 that "the allocation of powers and resources shall be negotiated and agreed upon by the Federal Government and the Federal Member States", and that the principles of public finance must be deliberated between the FGSs and FMSs (Article 122).

The constitution envisages the idea of negotiation as an inherent aspect of the IGR process and structure and mandates the federal parliament to develop institutions and guidelines that will govern the interaction of the various levels of the government, as well as resolution of disputes that might arise between the different government levels (Article 51).

Nonetheless, the constitution establishes two formal IGR platforms. First, a forum of the executive heads of the Federal Government and FMS to meet annually and discuss issues of national significance and shared interest and challenges (Article 51 (3)). Secondly, the inter-state commission to be responsible for ensuring vertical IGR coordination and cooperation, as well as the amicable resolution of intergovernmental disputes between the Federal Government and the FMS, or among the FMS (Article 111F).

As evident from the above provisions of the PFC, Somalia has adopted the express formalization of IGR mechanisms by constitutionalizing platforms responsible for the IGR in line with the more recent federal countries with express formalization of the IGR instruments in their constitutions such as Nigeria, Spain, and South Africa.

The formalization of IGR in the PFC is unsurprisingly expected given the country's jurisprudence is largely based on civil law tradition but also underscores the importance of IGR in post conflict Somalia context in which the PFC was drafted where the mistrust among the actors was very strong and there was profound apprehension of resurgence of the disastrous authoritarianism of the past if federalism and IGR were not emblazoned in the constitution.

That said, the formalization of IGR in the PFC did not translate into the formation of effective IGR institutions, legal frameworks and accountability and transparency strategies. For instance, some of the forums mentioned in the PFC have not yet been established while those that were formed have limited formalized functioning IGR processes and management structures. Similarly, the constitutional court which is the only legal avenue specified by the PFC to adjudicate on disputes between FGS and FMS has not yet been established.

Institutional Arrangements of Inter-governmental Relations

As the figure below illustrates, the multilayered IGR framework for Somalia is enshrined in the Provisional Federal Constitution and is composed of, but limited to, executive based and sectoral IGR arrangements, independent commissions as well as legislative and judiciary instruments to legislate, scrutinize and adjudicate IGR.

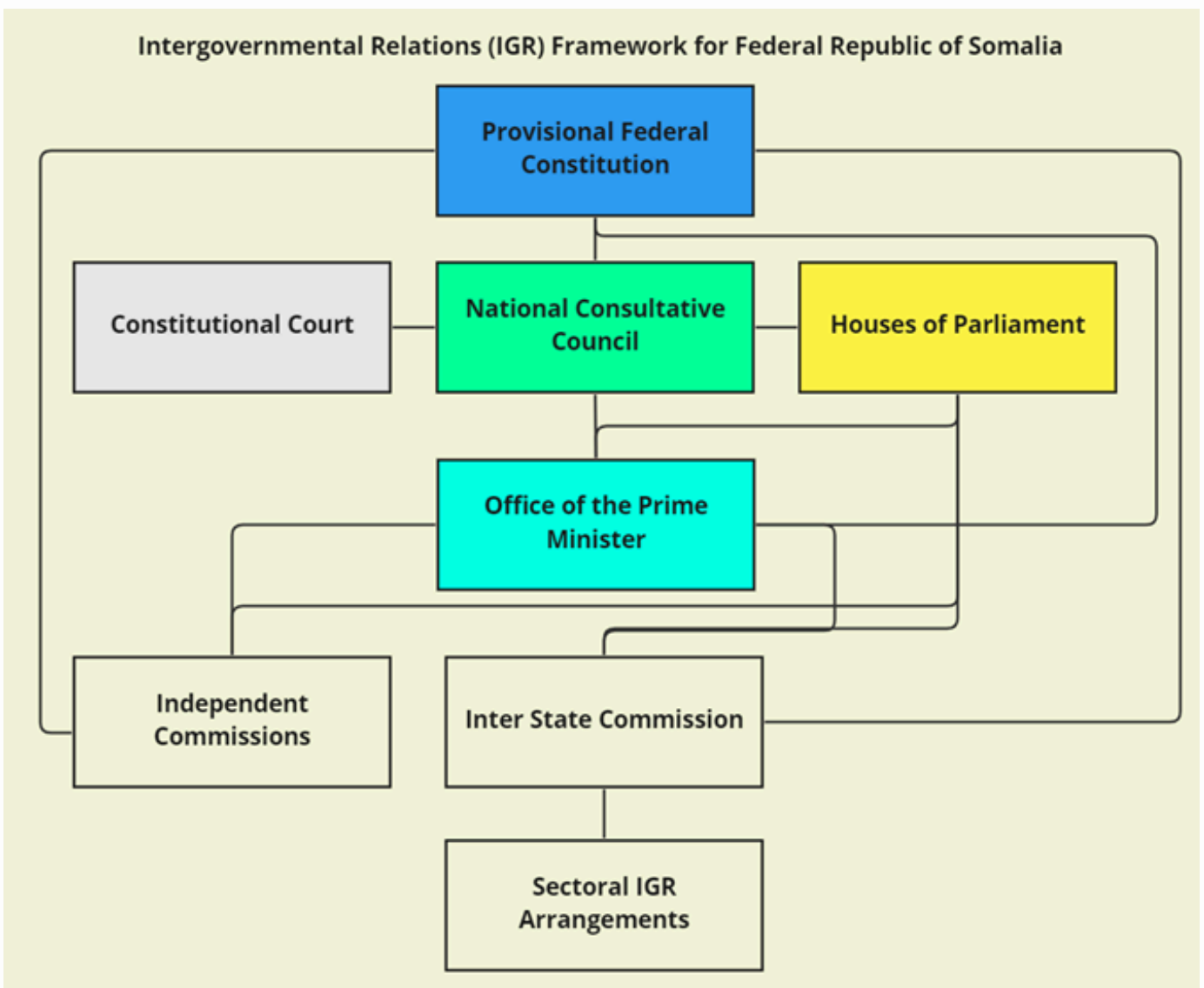


Figure 1: IGR Framework. SIDRA Institute, December 2022

Executive Based Institutional Arrangements of IGR

National Consultative Council (NCC)

The PFC set out provisions to establish Executive led IGR cooperation platform to enable heads of the FGS and FMS to meet annually, discuss and agree on the issues of national significance including national unity, security and peace, common market policies and socio-economic development (Article 51(3)). The National Consultative Council (NCC) Forum was thus launched for the first time in 2015, chaired by the president of the Federal Government and attended by the heads of the five FMS as well as the governor of Banadir Regional Administration. Although, the position and authority of the Council has not been formalized in a primary legislation, it has been acting as the highest executive IGR platform in Somalia and succeeded to convene and reach agreements on a number of exigent and contentious issues.

Agreements reached through the NCC IGR

1. Security: The 2017 London agreement on Somalia's national security architecture was the first progress made in assigning security functions between the Federal and FMS governments. The agreement aimed to "integrate the regional and federal forces into a coherent National Security Architecture."³ Nonetheless, conflicts over the distribution of political power casted a shadow over the implementation of the agreement amid concerns over the use of the forces for oppression by political leaders that has haunted the sector generally and the military forces in particular (Heritage, 2020).

2. Natural Resource Sharing: The 2018 Baidoa intergovernmental agreement on natural resource sharing (minerals and petroleum) between the Federal Government and FMS established National Resources Council as the highest council responsible for negotiating the resource issues. The Council is comprised of leaders of the executives at both FGS and FMS levels. The agreement provided a blueprint and formula for the distribution and sharing of revenues from mineral and petroleum resources in a balanced manner.⁴

3. Elections: The 2018 Baidoa intergovernmental conference on the Federal elections between the FGS and FMS reached an agreement on the modality and conduct of Federal elections. An Electoral Model based on the Closed List- Proportional Representation was agreed at the time, considering the need for inclusive representation of all clans in the multi-party system. The agreement has never been implemented and consequently a new agreement known as "the 17 September Agreement" was hammered out in 2020, establishing procedures for the indirect election of members of the two chambers of parliament as well as the staging of elections for the federal constitutional bodies of Somalia in 2022.

³ 2017 London Agreement: FGS and FMSs of Somalia reached a political agreement on a National Security Architecture.

⁴ According to the resource sharing agreement, the federal government would receive 60% of "shared revenues," while the remaining 40% will be given to the states to fund development programmes. Yet, it fails to specify about the breakdown of the particular (60:40). The agreement specifies that governments must use their "own revenue" to pay for their own expenses. The deal, ironically, also provides for a scheme of equalization transfers, but it doesn't clarify how it would be paid for or distributed.

4. Revenues: The 2019 interim agreement on the division of functions and assignment of revenues produced expenditures guidelines for FGS and FMS. The development of the guidelines was supported by the International Monetary Fund's Staff Monitored Program IV.

1. Fishing: The 2018 intergovernmental agreement governing the issuance of fishing licenses and sharing of revenues paved the way for fishing deals with foreign fishing vessels and a monitoring system by a team from the Federal Ministry of Fisheries and Marine Resources. The revenues from the issuance of such licenses were agreed to be shared among the Federal government and FMS based on a formula.

Challenges to the implementation of the NCC IGR agreements

The National Consultative Council did not effectuate most of its agreements due to the legal and institutional challenges below:

- **Lack of legislative approval and enforcement of intergovernmental agreements:** Even though the NCC is recognized in the Provisional Federal Constitution, their work produced non-binding intergovernmental agreements which were formulated as merely political deals. Consequently, disputes have persisted even on issues addressed in previous agreements. Such practice contradicts the founding principles of the PFC, particularly those principles relating to rule of law, separation of power and accountability as stipulated in article 3 (4) of the constitution. It also conflicts with Somalia's civil law tradition which recognize inter-governmental agreements as legally binding through legislative ratification.
- **Limited implementation, monitoring and evaluation mechanism:** Since the IGR is not institutionalized in Somali federalism, there are limited structures, systems, capacity and resources to monitor implementation, performance and compliance with the agreement provisions.

- **Mistrust and contestation** associated with the interests and intentions of the FGS and FMS political leaders which were the symptoms of the prevailing culture of complacency and impunity in which the FGS and the FMS operated outwith the confines of the constitution, particularly in violation of article 51 (2) which instructs “every government shall respect and protect the limits of its powers and the powers of other governments”. The FMS constantly accuse the FGS of attempting to use foreign aid as an incentive to centralize the governance system and promote loyal politicians as heads of the regional states (HIPS, 2020). The FGS, in turn, has been accusing the FMS of taking over some of its exclusive powers and acting as sovereignty entities.
- **Political polarization:** The conflict between the “centralization of power” in the guise of national identity politics and the demand for “shared resources, power and decision making” driven by the emerging State identity politics have permeated in the negotiations and subsequently scuttled the implementation of the agreements.
- **Undermining the role of local governments:** Both FGS and FMS leaders have overlooked the role of municipalities in the IGR negotiations and agreements, despite the fact that they are responsible for providing basic services as the third level of the federal system of government. While PFC does not mention the powers of municipalities, but their functions are made explicit in Law No. 616/2013 on administration of regions and districts and implicit in the subsidiarity principle in article 50 of the PFC. The undermining of local government roles in the IGR arrangements signals Somali politicians' centralization tendencies, despite their theoretical support for federalism.⁵ Somali federalism should foster decentralization as it is meant to be transfer of policy, legislative and executive powers from the FGS to the FMS and from the FMS to district/local governments, in order to foster self-rule and greater service delivery .
- **Inconsistence between the PFC and FMS constitutions:** Conflicting provisions in these constitutions continue to pose challenges to establishing an effective IGR mechanism. The PFC explicitly delegates exclusive powers in four areas to the Federal government and implicitly reserves the rest of powers as either State or concurrent powers. The constitutions of the FMS including those formed after the adoption of the PFC confer powers that directly conflict with some of the exclusive powers of the FGS. For example, the Constitution of Jubbaland grants the state president the mandate to “receive official visits of foreign delegations” (article 72(8)) while the Puntland constitution states in article 80 that the president of state has three broad powers relating foreign relations; (1) to negotiate and sign international agreements (2) to direct and develop international relations of Puntland (3) to receive official visits of foreign delegates and recognize such visitors as guests of Puntland State.

⁵ The practice of Somali politicians goes against the spirit of federalism whose original form, as well as in its normative definition is characterized by non-centralization according to Daniel Elazar (1987). He emphasizes how federal states differ from decentralized states structures as it is characterized by the diffusion of governmental powers among many centers, whose authority does not derive from the delegation of a central power, but is conferred by popular suffrage.

Sector by Sector IGR Arrangements

Apart from the statutory NCC platform, there are informal sectoral relations which has blossomed over the years and established structures and processes of cooperation between different Federal Ministries and their FMS counterparts. One of the key manifestations of sector- by - sector IGR institution is the Ministry of Interior and Federal Affairs, as the name connotes, which is tasked with coordinating federal affairs including IGR in liaison with its FMS level counterparts and Banadir regional administration, who, in turn, oversee regions and districts in order to achieve devolution of powers and services to the lowest constituencies. The Ministry's power of carrying out IGR functions relating to devolution of political and economic powers stems from its mandate and duties embodied in Law No. 616/2013 on administration of regions and districts.

There are increasing trends of sector-based IGR between the FGS and FMS. These forums bring together the FGS and FMS authorities in a specific policy area and promote communication and cooperation among units of the federal governance. Due to the dynamic nature of IGR, mechanisms and patterns of cooperation have emerged and evolved. Federal ministries and agencies have continued to invite their state level counterparts to attend meetings in Mogadishu as long as they are pertinent to their specific policy area of work. For example, the federal ministry may call for a meeting to discuss issues relating to the mandates of respective state level ministries to discuss implementation modalities of donor projects and other relevant issues.

In the finance sector, the Finance Ministers' Fiscal Forum (FMFF) and the Technical Intergovernmental Fiscal Federalism Committee (IGFFC) have been formed to facilitate communication, develop strategies, and reach agreements on critical fiscal federalism issues including revenue and resource sharing and tax harmonization (Somali Public Agenda, 2021). In the security sector, the New Policing Model for the development of the Somalia Federal Police was endorsed by the Federal Minister of Internal Security and the ministers responsible for policing of FMS in 2016. The model comprises of fifteen articles establishing the legal and institutional framework for Somali Police Forces that will consist of two levels; the Federal Police and the State Police services. Each level of command reports to the respective Federal and State-level Ministries of Internal Security and is responsible for recruitment and training of police personnel (ISSAT, n.d.).

In the education sector, an intergovernmental MoU signed between Federal Ministry of Education, Culture and Higher Education (MoECHE) and representatives of the education Ministries of the five FMS in 2019 in Mogadishu mandated the Federal Ministry to develop national education policies and standards in collaboration with the FMS, whereas FMS are required to finance education at the State level, establish and manage schools, and school personnel.

There is also an annual forum comprising Federal Ministry of Education and its State counterparts along with other key stakeholders of the education sector who convene for the Joint Review of the Education Sector (JRES) to assess the overall implementation of sector targets and verify achievements against established Education Sector Strategic Plan (SSP) indicators (MoECHE, 2020).

Despite the marked improvement in establishing those IGR mechanism, its long-term viability is in question because even where some of the IGR arrangements worked like the finance sector, it is donor imposed. For instance, the World Bank require FGS and FMS to have IGR mechanisms in place as prerequisite for releasing funds. Hence, the day the donor projects that impose specific IGR mechanisms phase out, the established inter-governmental cooperation may disappear with the project. Another case in point is that the sector-by-sector IGR mechanisms are under greater control of the Federal executive branch, with unclear overlapping roles and responsibilities, making it prone to confusion and the rise of conflicts among the major political actors, decision-makers, and stakeholders at both the Federal and Member State levels (Ali, 2017).

The Minister of Justice of the FGS and Five Justice Ministers of the FMS agreed and signed "Political Agreement on Justice and Correction Model of Somalia" on 24th January 2018 in Jowhar. The agreed model comprised of 13 articles with outline of the structure of judiciary and other key justice institutions at the federal state levels. The agreement was meant to facilitate justice sector management and to be a base for the ongoing constitutional review. However, the agreement was subsequently rejected by the FGS cabinet replacing it with a new justice and correction model.

Independent Commissions and Offices

Apart from the executive based institutions and other statutory agencies responsible for the implementation of IGR functions, the PFC establishes several independent commissions, such as the Interstate Commissions which has not yet been formed, the National Independent Electoral Commission (NIEC), the National Security Commission (not formed), the National Independent Boundaries Commission and the Office of the Auditor General. These independent institutions derive their intergovernmental character from the PFC as they are established by the will of the constitution to provide particular services to the FGS and FMS governments. They also derive autonomy from their constitutional status to perform their duties and enjoy a high degree of independence as they are only accountable to the legislative branch.

Although the establishment of these independent commissions were intended by the drafters of the PFC to work independently and perform functions far from the influence of the executive organs of the FGS and FMS, some of the commissions like the NIEC has allegedly become assimilated into the central structure of the FGS. The NIEC has been accused of pushing a highly contentious election law for legislative approval without consulting with FMS and other stakeholders (Facility for Talo and Leadership, 2020). The Independent Constitutional Review and Implementation Commission (ICRIC), which has resisted the interventions from FGS, accused the Federal Ministry of Constitutional Affairs (MoCA) of infringing the mandates of the commission following circulation of a draft master plan for the review of the PFC in 2017 (Somali Public Agenda, 2018).

Furthermore, it is not only the actions of these commissions but their composition, structure, relevance and legitimacy that have been questioned because independent commissions created remain either assimilated to the federal government or they remain dysfunctional.

There are several specialized offices or agencies established through the will of the federal parliament upon the proposal of the council of ministers. These include the Somali Bureau of Standards, National Migration Office, Somali National Bureau of Statistics, National Highway Authority and National Identity (ID) Authority. These offices are expected to take a federal shape as reflected in their mandate by the establishment acts. Despite the technical mandates of federal specialized offices and agencies, they are still borne to assimilate to the politics of the center and periphery in the absence of techniques to try to ensure that they maintain a degree of distance from both the FGS and FMS. Another dilemma is the overlapping roles between the federal level specialized agencies and the FMS institutions amid lack of clear delineation of mandates in the national laws. FMS, for example, has offices with the same mandate as the aforesaid federal specialized offices, resulting in conflicting and overlapping functions in those IGR functions to be regulated or governed by the specialized offices.

Legislative Arrangements and Engagements with the Intergovernmental Relations

Unlike the federations with the bicameral national parliaments whose constitutions assign the second chamber or the upper house to represent sub-national units or regional states and help effective implementation of IGR, the PFC does not expressly empower the parliament, especially the upper house to find solutions to disputes or misunderstandings that may arise between the FGS and FMS or to decide issues pertaining to the rights of FMS.

Nonetheless, the parliament has a stake in the implementation of IGR due to its inherent legislative power to approve executive proposals of establishment of statutory agencies,⁶ approve independent commissions, and enact legislations, including those that have a significant impact on how IGR functions are implemented. For instance, the House of People (Lower House) enacted Public Financial Management (PFM) Act 2019 and the Revenue Administration Law in 2018. Both laws are relevant to the federal fiscal management.⁷ Furthermore, the petroleum law was enacted by the parliament in 2020 amid opposition from Puntland State of Somalia on the ground that the provisions of the law were not in line with the contents agreed in Baidoa intergovernmental agreement on natural resource sharing (Garowe Online, 2020). The petroleum law is cornerstone for intergovernmental fiscal federalism, especially intergovernmental revenue sharing and fiscal transfers.

There are three areas where the legislative failure or minimal engagement in IGR implementation are the most obvious:

1. The parliamentary failure to develop IGR institutions and guidelines aimed at governing the interaction of the various levels of the government and resolution of disputes that may arise between the different government levels.
2. The parliamentary failure to challenge the undemocratic practice of the NCC and to subject vertical intergovernmental agreements to the legislative validation. The exception, of course, was the "17 September Agreement" on the conduct of indirect elections that was submitted to the legislative branch to give effect under the conditions to make no amendment in the original signed draft. Such absence of legislative approval of intergovernmental agreements has presented a legal dilemma as it made these agreements non-binding and merely political trade-offs.

3. The inability of the parliament to fix the prolonged delays and conflict over the finalization review of the PFC. This protracted process has had implications on the IGR arrangements, especially delineation of powers between levels of the government. The review process of the PFC was intended to be a joint task led by ICRIC which was mandated to propose and draft amendments to the Provisional Constitution, based on the outcome of widespread public consultations and the political negotiations among political entities and the parliamentary Oversight Committee (OC), which was tasked with supervising the review and drafting of amendments, and then submitting them to the Federal Parliament. The OC has been accused of becoming part of the politicization of the constitutional review process and thus creating political chasm and conflict of mandates between OC and ICRIC, leading the former to work separately (HIPS, 2017). The legislative organ represented by the OC also failed to stop alleged interference of Federal Ministry of Constitution (MoCA) in the work of ICRIC. In this sense, Public Agenda (2018) found "there have been numerous clashes and deadlocks between the Ministry of Constitutional Affairs and the constitution review commission over their respective mandates and roles in the review process, which has resulted in delays". The process of the constitutional review is complex and requires the political will of the NCC, which has never been actively engaged. Similarly, had the parliament have the capacity and commitment to actively participate in the PFC review process through OC, they would have pushed for the

finalization of the PFC review before the end of the set constitutional deadline of 2016 and have stopped or at least mitigated the meddling and politicization of the process by the political leaders.

Mechanisms for Resolution of Inter-governmental Disputes

A rigid constitutional delineation of competences between levels of government would have ushered in judicialization of politics, as disputes arising between the center and periphery would have been settled in the courts rather than through the parliament. Striking a careful balance between the judiciary's independence and neutrality on the one hand, and its responsiveness and inclusion on the other, is vital in all democratic countries but it is particularly necessary in federal nations (Bulmer, 2017). The federal constitutions should, therefore, provide judicial procedures and mechanisms to resolve disputes that "arise between the orders of government over the scope of their respective powers and responsibilities in line with this supreme law" (Schertzer, 2017: p. 114). In majority of federal countries with civil law tradition, the constitutional court has the jurisdiction to finally and authoritatively resolve inter-governmental disputes, whereas in federal countries with common law traditions, the supreme court has the jurisdiction of the final resolution of inter-governmental disputes. In Nigeria, judiciary is considered as the 'vanguard of federalism' as the States have initiated litigation against the dominant central government, even in the sensitive competence of fiscal federalism, with some success.

⁶ The federal parliament established through legislative acts several statutory agencies with IGR mandates. These include the Somalia Petroleum Agency, Somali National Highway Authority, Somali National Bureau for Statistics, Somali Bureau for Standards, National Disability Agency and National ID authority.

⁷ Although the two laws were enacted by the house of people and signed by the former president and subsequently promulgated in the official gazette, the upper chamber did not endorse the laws, and thereby some of the regional states rejected the legality of the laws as recently reaffirmed by Puntland State of Somalia.

Courts may be involved in resolving disagreements between governments in other contexts too, although their willingness to intervene varies. In India, disputes over the legality of a central takeover of a state administration during an emergency, as well as inter-state disputes about water resources, have been adjudicated by the Supreme Court. Federalism in Spain has generated various legal disputes over State aid and subsidies. ((Poirier, et al., 2015).

However, there are few federations which opted for non-judicial mechanisms. For example, in Switzerland, questions about whether the union level of government has exceeded its constitutional power can be resolved by referendum. In Ethiopia, such questions are left to be resolved by the lower chamber or the House of the Federation, which may be assisted by a Council of Constitutional Inquiry (IDEA 2019).

In Somalia, the PFC requires various levels of government authorities to first attempt to resolve their disputes through negotiation as may be implicitly deducted from article 50 of the constitution and article 111F which establishes an inter-state commission responsible, inter alia, for the amicable resolution of intergovernmental disputes between the Federal Government and the FMS, or among the FMS. In case of the failure of non-judicial procedures to settle the inter-governmental disputes, article 109C (d) of the PCF grants the constitutional court the power to "resolve any disputes between the Federal Government and the Federal Member State governments, or among the Federal Member State governments". The judges of the constitutional court are proposed by the cabinet and approved by the House of People with the participation of the Upper House pursuant to article 71 of the PFC amid ambiguity on how the Upper House is to involve in appointment of judges.

Notwithstanding the crucial role of the constitutional court to serve as an arbiter or safeguarding the framework within which intergovernmental relations are carried out, the Judicial Service Commission including the constitutional court has not been established and intergovernmental disputes remain unresolved in the current Somalia federal system. According to (HIPS, 2022) , The non-establishment of independent, competent and impartial constitutional court could be attributed to concerns of politicians about the effects of establishing such a court whose decisions would be binding and would validate parliamentary motions, rulings, and authorities of various levels of government . Therefore, if the constitutional court is established, the current practice of IGR, which has been characterized by executive control with minimal legislative engagement, might be balanced through the judicial review procedures.

Conclusion and Recommendations

Despite a decade of work to implement effective IGR in Somalia, the FGS and FMS have been unable to come to a final agreement on matters of developing regulatory and legal frameworks for IGR. In spite of the absence of such statutory framework for IGR arrangements, negotiations are continuing to occur at all levels of the government, creating informal IGR executive and sector by sector interactions which are blighted by non-binding agreements, poor commitment, high contestation, distrust, and lack of stable structures, legislative control and judicial review. However, the present informal IGR arrangements such as inter-ministerial groups are more flexible and open for innovation but due to the challenges highlighted above, they are faced with real predicament in terms of legitimacy, accountability and sustainability.

There is ample evidence that effective formalized intergovernmental relations could improve communication and cooperation and facilitate the early resolution of disputes between the levels of government. It could provide space for negotiations and opportunities to reach agreement on even the most controversial and contentious issues. In order to implement effective democratic intergovernmental relations, the FGS and FMS need to consider following recommendations of this policy analysis:

1. The ongoing constitutional review of the provisional constitution should speed up and carefully take note on the unresolved constitutional issues such as the fiscal federalism and resource sharing model and status of the capital by providing clear definition of powers between the three tiers of the federal government (federal, state and municipality).

2. The federal parliament should develop guidelines and independent institutional arrangements such as establishing the inter-state commission, enacting an inter-governmental law reform, and forming a harmonization commission tasked with developing model laws.

3. Find solutions for the disagreement over the role of FMS in paradiplomacy by defining the different patterns and domains of foreign affairs and international relations in the federal constitution, particularly issues relating to the;

- National level interactions and diplomatic relations with foreign governments
- Membership, diplomatic relations and interactions with regional and international bodies.
- International cooperation in both diplomatic and paradiplomatic levels
- International agreements on trade and investment.

4. Designate explicitly the Upper House of the Federal Parliament as the representative of the Federal Member States, allow the house to legislate in areas of FMS competences while giving them the powers and role to implement central legislation and rules with particular implication for IGR to determine the extent of FMS autonomy in implementation and also allow the House to resolve disagreements between the FGs and FMS.

5. The executive supremacy in the federal politics should be limited through establishing independent, impartial, and competent judicial organ with its own independent judicial fund to serve as guardian of the federal constitution and arbiter of intergovernmental disputes as well.

6. The already established IGR arrangements are quick gains that need to be further promoted, but it needs to have some rules of the game such as subjecting the IGR agreements for legislative ratification to avoid conflict and uncertainty or never-ending cycle of negotiations from one hand, and utilizing such IGR arrangements as basis for the finalization of the Provisional Federal Constitution review process, particularly agreements on delineating powers and resources between the different levels of government. IGR Agreements approved by legislation are more likely to be legally binding and enforceable through courts and are necessarily available on the public record, thus enhancing IGR accountability.

7. Reform the National Consultative Council (NCC), which is the highest IGR body, by entrenching the legal basis for its existence, authority, and legitimacy through primary legislation in both FGS and FMS parliaments; formulating Terms of Reference for the NCC derived from the primary parliamentary legislation to detail its composition, structure, powers and responsibilities, and consultative and decision-making processes; strengthening the democratic process of governance, checks and balances, accountability, and transparency for IGR by making the decisions and agreements of the NCC subject to scrutiny and approval by the FGS and FMS parliaments; and establishing a dedicated secretariat for the NCC.

8. Take a pragmatic apolitical approach to national security reforms and establish a restructured National Security Commission which is composed of members appointed by the FGS and FMS whose tasks are outlined in

the Provisional Federal Constitution (Article 111H) to review the current national security architecture including the type, level, command and control of the security forces and propose a programme of comprehensive institutional and structural reforms and draw up guidelines to depoliticize the security sector and strengthen the civil control and oversight over the armed forces.

9. Promote the role of municipalities in IGR arrangements to ensure devolution of power and resources to the lowest constituencies based on the principle of subsidiarity as commanded by the PSF. Powers of municipalities and their IGR relationships with the state and federal governments should be defined in the federal constitution to ensure decentralized federalism instead of centralized federalism.

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