

Somali's Parliament: From Unicameralism to a Bicameralism

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Abstract

This paper provides a comprehensive analysis of Somalia's bicameral parliamentary system, focusing on the historical context, composition, functions, and the effectiveness of the two houses of Parliament, namely the House of the People and the Senate, as per the Somali Provisional Constitution. The historical overview traces the evolution of the Somali Parliament from the colonial era to post-independence and the military rule. It further delves into the current state of affairs after 1991, examining the challenges faced in forming a bicameral legislature in a fragile state like Somalia.

The paper highlights the significance of bicameralism in ensuring representation and checks on government power. It explores the specific roles and responsibilities of each house, emphasizing the House of the People's primary role in the legislative process and oversight of the executive. While the Senate is designed to represent the interests of Federal Member States, its effectiveness in doing so is analyzed in light of the National Consultative Council's growing influence.

Additionally, the paper discusses the challenges faced by the Somali upper house in truly representing the Federal Member States and promoting intergovernmental cooperation. It sheds light on the complexities arising from power-sharing formulas based on clan representation and the implications of direct negotiations between the Federal Government and member states.

In conclusion, the paper provides a critical analysis of the current status of Somalia's bicameral parliament, highlighting the need for enhanced representation of Federal Member States and greater cooperation between the two houses to strengthen the country's democratic and federal structures. It offers insights into potential improvements and reforms to ensure a more effective bicameral system in Somalia's governance.

1. Introduction

Across history, nations have grappled with the challenge of crafting institutional frameworks that foster stable and prosperous societies under the rule of law. As citizens forge their governance structures through constitutional debates, Parliament stands as the institution that not only shapes the constitution but also secures its dominance within the state.

As such, inquiries into the parliament's composition, functions, and powers bear immense significance in the process of state formation. Among these inquiries, the debate over whether Parliament should be unicameral or bicameral emerges as one of the most contentious aspects of the legislative landscape.¹

¹ Kishwer Khan' Bicameralism in a Federation: An Historical Analysis of Role of Senate in Promoting Federalism in Pakistan' (2017) 22 Pakistan Perspectives 135- 158

A legislative and deliberative assembly, whose members are chosen by universal suffrage in free, fair, regular, and competitive elections, lies at the core of all modern forms of democracy. Yet, there are concerns about the ability of one elected assembly to aptly mirror the diversity within society. A second legislative body could provide a more nuanced and complete representation of society, with better representation for minorities, territorial groups, or communal groups. There are also concerns about the effects of concentrating power in a single elected assembly. In this regard, bicameralism is important to avoid hasty and harsh legislation, limit democracy, and secure deliberation. For these reasons, many countries have a second legislative chamber, which often has a distinct composition, functions, and powers that complement and balance the primary chamber.²

The Somali Provisional Constitution of 2012 established a bicameral legislature having the House of the People and the Senate, moving the country from a unicameral to a bicameral legislature for the first time in the history of Somalia. Legislative responsibilities are shared between the two houses of the Somali parliament. The constitution also grants each house specific powers and duties.

Bicameralism is considered to be an important feature of federalism, with the upper chamber representing the subnational units while the lower chamber represents the people, as it is in Somalia. The Somali Provisional Constitution has vested in the Senate the power to represent the Federal Member States and to be the custodian of Federalism Principles. (Article 71).

However, the architecture of the 2012 constitution failed to design a functioning bicameral legislature. The arrangement of the two chambers in Somalia led to a battle for supremacy between the two houses. Consequently, persistent disagreements over the functional mandates of either house often derail important and vital national issues. Somalis constantly debate over the usefulness of bicameralism as a type of legislature adopted by Somalia.

The bad news is the architecture of the 2012 constitution has not ensured the smooth functioning of a bicameral legislature in the country. The arrangement of the two chambers has resulted in a struggle for supremacy between them, leading to persistent disagreements and hindering progress on crucial national matters. The utility of bicameralism as a legislature model in Somalia remains a subject of ongoing debate. This paper aims to critically analyze the design and functioning of Somalia's new bicameral legislature.

This article aims to provide a comprehensive critical analysis of the architectural and design aspects of Somalia's recently established bicameral legislature. This analysis is conducted by reviewing pertinent normative laws, notably Somali constitutions, supplemented by reports, while also drawing comparisons with pertinent international experiences.

In this regard, the paper is structured into four sections following this introduction. Section two presents a brief history of the Somali parliament. Section three delves into the rationale and justification for bicameralism. Section four examines the composition and functions of the two houses of parliament in the Somali provisional constitution and assesses the capacity of the second chamber to represent the Federal Member States and ensure adequate representation of diverse communities in the national political process.

2 Elliot Bulmer 'Bicameralism' 2017 International Idea 7

Finally, section five offers conclusions and recommendations.

2. Somalia's Parliament in Historical Context

The Somali parliament played a significant role in establishing the modern Somali state, despite different political regimes and their political and social behavior. Somali Parliament history spans more than 70 years. In this section we will briefly examine the different stages of the Somali Parliament's history.

Protectorate Parliament from 1951-1959

The Somali legislature's history dates back to the colonial era when legislative councils were created in the former British and Italian Somaliland. In the South or "Somalia Italiana" from 1951 to 1955, annual councils were established in the country called "Consiglio Territoriale". The members of these councils, consisting of Somalis and foreigners representing foreign communities living in the country were nominated by the community groups that their members represented and approved by the Italian administrator. The role of these councils was to some extent to give advice on the new laws and regulations or ask for opinions and advice on the important steps of the Italian trusteeship.³

In 1956, a significant event took place with the first territorial election for a legislative assembly in Southern Somalia. Several Somali political parties competed for sixty seats, while ten seats were allocated for representatives from foreign communities residing in the country.

The deputies elected during this election served a three-year term. Despite the newfound freedoms and responsibilities, the legislative assembly's authority was initially limited, as its decisions had to be approved by the Italian administrator during the first year. Moreover, the assembly could not introduce legislation without prior approval from the administrator.⁴ In 1959, a second election was conducted, leading to an increase in the Council's members to 90, and all of them were Somalis. In the north (or Somaliland), the British Protectorate issued in 1955 a law named "The Somaliland (Constitution) Order in Council 1955", and its effect was delayed until 1957, which established the first Legislative Council of British Somaliland. In 1959, the same law referred to as "The Somaliland (Constitution) Order in Council" came into effect again and established a Legislative Council consisting of elected members and some appointed members. In 1960, an election based on the same law as "The Somaliland (Constitution) Order in Council" took place in ex-British Somaliland. Several Somali parties competed in the election and 33 members from three political parties were elected: SNL: 20 seats; USP: 12 seats; and NUF: 1 seat.⁵

Post Independence Parliament from 1960-1969

On July 1, 1960, the former British Somaliland and Italian Somaliland achieved independence and came together to form the Somali Republic. As a result of this unification, the legislative assemblies of both protectorates were merged, giving rise to a new parliament comprising 123 members. Among these, 90 members were representatives from the Legislative Assembly of Southern Somalia, while 33 members represented the northern regions of Somalia.⁶

3 History of the Somali Parliament/ Taariikhda Baarlamaanka Soomaaliya, available at <http://gsh.parliament.gov.so/index.php/baarlamaanka/taariikh> (Accessed 27 September 2022)

4 Abdi Ismail Samatar 'Africa's first democrats Somalia's Aden A. Osman and Abdirazak H. Hussen' (2016)178

5 History of the Somali Parliament available at <http://gsh.parliament.gov.so/index.php/baarlamaanka/taariikh>

6 History of the Somali Parliament at <http://gsh.parliament.gov.so/index.php/baarlamaanka/taariikh>.

During this period, the first Somali constitution was drafted in 1960 and subsequently ratified through a referendum in 1961.⁷ The constitution established a unitary parliamentary system, with the formation of a unicameral parliamentary body known as the National Assembly. This legislative system consisted of only one chamber, the National Assembly. (Somali Constitution 1960, Article 49) Under this constitution, Somalia held two competitive elections in 1964 and 1969, where representatives were elected directly by the people through universal suffrage. These elections followed the principles of being free, fair, direct, and secret, allowing the citizens to participate actively in the democratic process of electing their representatives.

Parliament during the military rule 1979-1991

On October 21, 1969, Major General Mohamed Siyad Barre, the Commander of the Somali Army, orchestrated a military coup d'état, toppling the civilian government after the assassination of President Abdirashid Ali Sharmarke. In the aftermath of the coup, the military regime suspended the 1961 constitution and dismantled its institutions. From October 1969 until the establishment of the Somali Socialist Revolutionary Party in 1976, the country was governed by the Supreme Revolutionary Council, which not only abolished the democratic constitution but also assumed both legislative and executive powers.⁸

During this period, two elections were conducted in 1979 and 1984 to elect members of Parliament. However, these elections lacked competition, and the candidates were handpicked by a special committee consisting of loyalists to the military regime, including activists and citizens deemed supportive of the regime's interests. As a result, these elections served more as a show of confidence for the selected members rather than genuine democratic processes.

Under the leadership of Siad Barre, the country fell under dictatorial rule until his eventual overthrow in 1991, which sparked a violent civil war waged by various clan-based forces. This upheaval marked a turning point in Somalia's political landscape and had significant repercussions for the nation's governance and stability.

Parliament after 1991

Since the outbreak of the Somali Civil War in 1991, various peace agreements that have served as charters or constitutions have been drafted outside of Somalia. In 2000, the Djibouti government hosted the Somali National Peace Conference in the town of Arta. The process resulted in the adoption of a Transitional National Charter in August 2000. The Charter established a decentralized unitary state based on regional autonomy. It also set up a Transitional National Assembly. The number of assembly members was 245. Abdalla Derow Isaq was elected Chairman of the TNA. He held office until the end of the forum, which lasted three years (2000–2003).⁹

7 Samatar 100.

8 History of the Somali Parliament at <http://gsh.parliament.gov.so/index.php/baarlamaanka/taariikh>

9 Ali Hirsi Ahmed *Constitution-Making in Somalia: A Critical Analysis, 1960–2013* (Published Master thesis, Nairobi University, 2014) 55.

In 2004, following further peace talks in Kenya and in an attempt to strengthen and consolidate the authority of the central state, which remained weak under the Transitional National Government, Somali stakeholders agreed on a new constitutional blueprint, the Transitional Federal Charter (TFC or "Charter"). The Charter established a federal system to replace the decentralized unitary system of the TNC but without bicameralism. Article 28 (2) of the Charter provided that 'The Transitional Federal Parliament of the Somali Republic shall have a single Chamber'. The Transitional Federal Parliament (TFP) composed of 275 representatives. The Charter established a five-year term of the Transitional Federal Parliament, which has since been extended twice. The Charter also calls for the formation of an independent Federal Constitution Commission (FCC). Article 71 (9) of the Charter requires that a draft federal constitution, based on the Charter, be completed within two and half years and adopted by popular referendum during the final year of the transitional period.

Due to increased violence and insecurity at that time, the Commission was not able to finish the constitution during this period. Consequently, six years after the establishment of the Commission, the Somali provisional constitution was adopted by the National Constitutional Assembly on August 1, 2012. The Provisional Constitution of 2012 established a federal system with a bicameral legislature having a lower house, viz., the House of the People, and the upper house, i.e., the Senate, moving the country from a unicameral to a bicameral legislature for the first time in the history of Somalia.

Somali politicians and elders agreed to form the House of People (9th parliament) when the provisional constitution was ratified in 2012 and the 8th parliament term ended, whereas the formation of the Upper House failed as a result of a dispute over seat distribution. The dispute was settled on 14 September 2016 with the agreement that Federal Member States would have equal representation rather than regional representation in the provisional constitution.¹⁰

3. Rationale and Justification of Bicameralism

Bicameralism is perhaps the most conspicuous method of varying modern legislatures. However, it is becoming more difficult than ideally assumed to design perfect, or nearly perfect, institutions that exemplify basic constitutional ideals, but it still offers hope. Consequently, the majority of modern constitution-making processes revolve around granting legislative authority to two separate chambers with distinct memberships. Whereas the upper chamber represents the regional interests of the country, the lower chamber represents the national population.¹¹

The basic rationale for having two houses of parliament stems from its primary function, which is to review legislation. In this respect, bicameralism is crucial to ensure calm, dispassionate deliberation and avoid hasty, harsh legislation and limit democracy. In this regard, Yonatan Fessha notes, the importance of bicameralism and the second chamber is recognised for their role in providing a second, thoughtful evaluation of proposed legislation that has already been discussed by the lower house. Legislation is believed to be better enacted with bicameralism.¹²

10 Dahir Mohamed Mahmoud 'Reforming the representation of Banadir in the Upper House may trigger a constitutional crisis' 2020 available at https://www.hiiraan.com/op4/2020/july/179004/reforming_the_representation_of_banadir_in_the_upper_house_may_trigger_a_constitutional_crisis.aspx (Accessed 29 September 2022)

11 Silas w Aluku' Bicameralism: a critique of the constitution of Kenya 2010' 2014 SSRN Electronic Journal 5.

12 Yonatan Tesfaye Fessha 'Bicameralism' 2015 Oxford University Press, 2

A further rationale for having two chambers is to ensure that the Parliament can properly perform its role of holding the government to account and checking or restraining the use of government power. If there is only one legislative chamber, the party that wins a majority in that chamber can have unlimited control of the legislative power. A second chamber- especially if it has a different composition to the first, is chosen on a different electoral cycle with broadly equal powers to the lower house provides a more effective check on government conduct.¹³

Bicameralism is an essential feature of federalism. Federal and decentralized systems almost always have bicameral legislatures where they use a bicameral system in order to ensure the representation of the interests of subnational interests (e.g., states, provinces, or regions) as well as the population of the country. Under "federal bicameralism," the lower house is deemed to represent citizens as individuals, while the upper house represents the regional interests of the country.¹⁴ For this purpose, the upper house of the bicameral legislature, known variously including the Senate, provides a feasible platform to the units for representation on the principle of equality.

The Congress of the United States of America is the oldest bicameral parliament in the world, having been established in part to represent component federal units in federal systems. Despite its role as the house of parliament representing the states that formed the federation, the Senate acts more like the House of Representatives, which represents the people rather than the states.¹⁵

In many other countries' constitutions, such as the ones of Germany, Kenya, Somalia, and South Africa, the second chamber explicitly serves as a forum for introducing constituent unit interests into national political processes.

In accordance with Article 50 of the German Basic Law, the Lander shall participate through the Bundesrat in the legislative and administrative process of the Federal Republic and in matters concerning the European Union. The Kenyan Constitution of 2010, Chapter 8, Article 96/1, mandates the Senate to represent counties and protect their interests. Also, the Somali Constitution has vested in the Senate the power to represent the Federal Member States and be the custodian of Federalism Principles. (Article 71). The South African Constitution explicitly mandates the National Council of Provinces to represent the provinces and to ensure that the interests of the provinces are taken into account in the national sphere of government. In order to accomplish this, the National Council of Provinces participates in the national legislative process and provides a national forum for public discussion on province-related issues.

Several countries have established mechanisms to ensure regional representation and protect the interests of their constituent states or regions in the legislative and administrative processes. For instance, in Germany, Article 50 of the Basic Law dictates that the Länder (states) shall participate through the Bundesrat in both the legislative and administrative affairs of the Federal Republic, as well as in matters concerning the European Union. Similarly, the Kenyan Constitution of 2010, Chapter 8, Article 96/1, assigns the Senate the responsibility of representing counties and safeguarding their interests.

13 The rationale for bicameralism' available at <https://www.parliament.nsw.gov.au/lc/roleandhistory/Pages/The-rationale-for-bicameralism.aspx> (Accessed 18 September 2022)

14 Michael Cutrone and Nolan McCarty 'Does Bicameralism Matter?' 2008 The Oxford Handbook of Political Economy 2.

15 Yonatan Tesfaye Fessha 'Bicameralism' 3

Likewise, in South Africa, the National Council of Provinces is explicitly mandated by the Constitution to represent the provinces and ensure that their interests are duly considered in the national sphere of government. The National Council of Provinces actively participates in the national legislative process and serves as a platform for public discussions on issues relevant to the provinces.

The Somali Constitution, enacted in 2012, bestows substantial powers upon the Senate, one of the chambers of the bicameral legislature, by entrusting it with critical responsibilities related to the representation of the Federal Member States and the safeguarding of Federalism Principles, as outlined in Article 71.

In all these cases, the establishment of specific representative bodies or chambers plays a crucial role in maintaining a balance between the central government and regional entities. These arrangements ensure that the concerns and interests of various regions are effectively taken into account in the formulation and implementation of national policies and legislation.

4. Composition and Functions of the Two Houses of Parliament in the Somali Provisional Constitution

Somalia became a bicameral country for the first time in its history in 2012 with the adoption of the Somali Provisional Constitution, which established a bicameral legislature with the House of the People and the Senate. This section aims to present the composition and functions of the two houses of parliament in the Somali provisional constitution as well as examine the capacity of the Somali second chamber to represent the Federal Member States and to adequately ensure representation of various communities in the national political process.

4.1; Composition of the Somali Bicameral Legislature

Chapter Six of the Somali Provisional Constitution establishes the Legislature. Article 55/1 of the Constitution states that "The Federal Parliament of the Federal Republic of Somalia consists of: (a) The House of the People` and (b) The Upper House". The House of the People of the Federal Parliament represents all the people of Somalia, while the Upper House of the Federal Parliament represents the Federal Member States. The constitution provides that the members of the two Houses of the Federal Parliament shall be elected every four years by direct, secret, and free ballot by the people. Article 64 states "(1) The citizens of the Federal Republic of Somalia shall elect members of the House of the People of the Federal Parliament in a direct, secret, and free ballot. (2) The House of the People of the Federal Parliament shall have two hundred and seventy-five (275) ordinary members.". While the Article 72 stipulates "The members of the Upper House of the Federal Parliament shall be elected through a direct, secret, and free ballot by the people of the Federal Member States, and their number shall be no more than fifty-four (54) members based on the eighteen (18) regions that existed in Somalia before 1991".

In Somalia, however, universal elections are not yet possible, so the 275 seats in the House of People are distributed according to the power-sharing formula of 4.5 that was adopted by the Somali National Peace Conference in 2000 in the town of Arta in Djibouti. This formula gives each of the four major clan groups (Hawiye, Darood, Digil/Mirifle, and Dir) an equal share in parliament; each gets 61 MPs, and half the quota is for minorities with 31 MPs. Somalis constantly debate this political power-sharing system and its injustices to minority groups.

The formula pushed minority clans into a 0.5 cast, which marginalizes them politically and socially. Lower house MPs are selected in indirect elections by delegates selected by clan elders and civil society members.

Distribution of House of the People (Lower House) seats among clans.

Hawiye	61
Daarood	61
Digil& Mirifle	61
Dir	61
Minorities (0.5)	31
Total	275

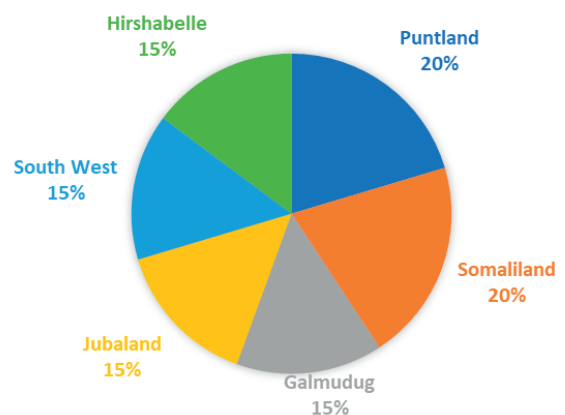
The upper house is composed of 54 senators from different Somali Federal Member States, namely Somaliland, Puntland, Jubaland, Southwest, Galmudug and Hirshabelle State of Somalia. The constitution allocated the upper seats based on the eighteen regions that existed in Somalia before the collapse of the central government in 1991, which means every region will have three representations in the upper house. But the Somali leaders and elders disputed over the formation of the upper house in 2012, which resulted in the postponement of the formation of the upper house in 2012. The dispute was resolved on 14 September 2016 with an agreement to allocate seats based on Federal Member States' equal representation rather than regional representation as specified in the provisional constitution.

The seats of the upper house members were distributed as follows: Puntland and Somaliland have been given more seats than the other administrations, with 11 members each. Four regional administrations, namely Hirshabelle, Galmudug, Southwest and Jubaland, were given eight members each. State presidents nominate at least two candidates for each of the 54 Upper House seats before state assemblies elect them. Each seat will be voted for by the State Assemblies, with special arrangements for Somaliland senators, where electoral colleges selected by clan elders elect the Somaliland representatives in the Somali upper house.¹⁶

Distribution of Senate seats among states

Somaliland	11	20%
Puntland	11	20%
Jubaland	8	15%
Southwest	8	15%
Galmudug	8	15%
Hirshabelle	8	15%
TOTAL	54	

Senators by constituency



Source: Upper House

¹⁶ This special arrangement for Somaliland exists because Somaliland declared unilateral independence from Somalia in 1991, but neither Somalia nor the international community recognize Somaliland as a sovereign state. Hence, the Somali government adopted a special arrangement for electing the Somaliland representatives in the Somali parliament.

In the aforementioned arrangement, Mogadishu (Banadir) did not receive a seat but lost its three seats conferred by the provisional constitution.¹⁷ This is because Mogadishu status is one of the key outstanding issues in Somalia's political settlement. The provisional constitution mandates the parliament to determine the status of the capital city. Article 9 of the constitution stipulates "The capital city of the Federal Republic of Somalia is Mogadishu. The status of the capital city of Somalia shall be determined in the constitutional review process, and the two houses of the Somali Federal Parliament shall enact a special law with regards to this issue". The constitutional review process committee examined three options for the capital status: Mogadishu as a district under the Federal Government; Mogadishu as part of a regional state; and Mogadishu as a regional state.¹⁸ The Somali parliament has yet to enact a law to determine capital status, and Mogadishu remains without representation in the second chamber.

Mogadishu (Banadir) representation in the upper house has been the subject of a campaign by members of both houses and other politicians since the beginning of the 10th Parliament. According to them, Mogadishu has the largest population in the country, so it should be given a larger share of the Senate. In 2021, former Somali President Farmajo signed a resolution adopted by the People's Assembly assigning Mogadishu 13 seats in the Senate. This expanded the Senate from 54 to 67 members.

A number of interrelated questions were raised about the resolution's constitutionality, quorum requirements, and the impact of implementing the resolution. Furthermore, it also raised a number of interrelated questions about its political objectives. In light of that, Puntland and Jubaland, as well as the Upper House, have objected to the resolution.¹⁹ Other meetings for the National Consultation Forum also suggested increasing the number of upper house members. However, the dilemma was how the members would be distributed, as everyone wanted the largest share to be given.

It is noteworthy in this context that in many countries, Upper House seats are distributed equally regardless of population. The lower house (House of the People) is where the population number is considered. Each member represents a specific percentage of the population. In contrast, the senator represents the interests of the entire region. As examples of equal distribution of upper house seats irrespective of population, the USA and Kenya can be cited. The American constitution provides that "The Senate of the United States shall be composed of two Senators from each State." (USA Constitution, Article I, Section 3, Clause 1). Kenya's constitution stipulates that the Senate consists of forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency". (Constitution of Kenya, Article 98).

17 Dahir Mohamed Mahmoud 'Reforming the representation of Banadir in the Upper House may trigger a constitutional crisis' 2020 available at https://www.hiiraan.com/op4/2020/july/179004/reforming_the_representation_of_banadir_in_the_upper_house_may_trigger_a_constitutional_crisis.aspx (Accessed 18 September 2022)

18 See Article 9 of the first Review Committee Draft (2016). See also the Committee's explanation of Article 9.

19 Dahir Mohamed Mahmoud 'Reforming the representation of Banadir in the Upper House may trigger a constitutional crisis' 2020 available at https://www.hiiraan.com/op4/2020/july/179004/reforming_the_representation_of_banadir_in_the_upper_house_may_trigger_a_constitutional_crisis.aspx (Accessed 18 September 2022)

This is what the Somali constitution entails, as discussed earlier. In this regard, the question of whether the upper house effectively represents the interests of the regions/states should be raised rather than just concentrating or competing for more House seats without focusing on the effectiveness of the chamber.

The constitution provides that the members of the Upper House of the Federal Parliament shall be representative of all communities of the Federal Republic of Somalia. (Article 72). This paves the way for achieving one of the main rationales of bicameralism, which assigns the second chamber to facilitate more balanced representation among competing groups by providing a political outlet to those outnumbered or underrepresented in the lower chamber.²⁰ Contrary to this, the composition of the Somali upper house clearly demonstrates the injustices of the Somali power-sharing system to the minority clans. Minorities were given only two upper house seats, while the four major clans received 52 seats.

The Constitution prescribes qualifications for Somali parliament members. The following are the requirements for becoming a member of the federal parliament: (a) be a Somali citizen, of sound mind, not younger than 25, and a registered voter; (b) not have been suspended from citizenship in the past five (5) years; and (c) have completed secondary school or equivalent education. The National Independent Electoral Commission must verify that a candidate meets the constitutional criteria before accepting their candidature. (Article 58).

4.2; Functions of the Two Houses of Parliament in the Somali Provisional Constitution

The effectiveness of a bicameral parliament depends not just on its appointment system, but also on the constitutional powers given to each house. As noted by Prof. Yonatan.

“In addition to the appointment system, the effectiveness of a bicameral parliament depends on the specific powers allocated to the two houses of parliament by the constitution. In most jurisdictions, the popularly elected lower house enjoys more power than the second chamber. In some countries, second chambers have co-equal powers with the lower houses, exhibiting some form of ‘egalitarian bicameralism’.”²¹

The Somali Provisional Constitution grants joint functions, powers, and responsibilities to the two houses of Parliament. It also accords each house specific powers and duties. Following are the powers shared by and specific to each house.

A. Legislative Process

Legislative responsibilities are shared between the two houses of the Somali parliament. Both Houses of the Federal Parliament can initiate draft legislation. In the event that the two Houses of the Federal Parliament disagree over draft legislation, either House may request the formation of a joint committee to resolve the disagreement and to propose harmonized draft legislation to both Houses in a spirit of intergovernmental cooperation as stipulated in the constitution. The constitution, however, grants the House of the People the power to over-rule the amendment or the rejection of the Upper House to the drafted laws that have been passed by the House of the People, but only if it is able to get the support of at least two-thirds (2/3) of its members.

²⁰ One Chamber or Two? Deciding Between a Unicameral and Bicameral Legislature, Legislative Research Series, Paper 3 National Democratic Institute for International Affairs 4.

²¹ Yonatan Tesfaye Fessha 'Bicameralism' 2015 Oxford University Press, 8.

Only the House of the People of the Federal Parliament may send draft legislation to the President of the Federal Republic for his signature and its publication in the Official Gazette. (Articles 81-83 of the Provisional Constitution).

The Constitution has vested in the Senate the power to represent the interests of Federal Member States and be the custodian of Federalism Principles. Article 61/3 states "Every member of the Upper House of the Federal Parliament has a special responsibility to represent the interests of the Federal Member State that the member represents, and to safeguard the federal system, whilst acting in the spirit of inter-governmental cooperation". However, the Provisional constitution didn't specify the role of the upper house to ensure the effective and meaningful participation of the Federal Member States in the national law-making process, and in reality there is no tight relationship between the Federal Member States' assemblies and the upper house members on matters that affect the states, as in the case of South Africa, where the upper house's (NCOP) role is stronger when it comes to bills affecting provinces.

Provincial governments have a significant role to play in the approval and rejection of bills that directly affect them in the NCOP. In addition, they also play a delaying function in the passing of bills that do not necessarily affect them. Members of the delegation do not enjoy individual autonomy and are expected to vote in bloc based on the instructions they receive from their respective provincial legislatures.

This means that when the delegates are voting on matters affecting provinces, they are not casting an independent vote but a single vote, acting on behalf of the provincial government, making the second chamber a forum for legislative IGR.²²

Taking inspiration from the Bundesrat of Germany, South Africa's NCOP design is modelled on the Bundesrat of South Africa. In Germany, the Bundesrat holds absolute veto power over federal legislation affecting Lander's legislative and administrative responsibilities. Consequently, the Bundesrat is a powerful house when it comes to legislation affecting Landers (provinces). The Bundesrat is in a better position to ensure that landers are included effectively and meaningfully in national lawmaking.²³

B. Amend and review the Constitution.

The Provisional constitution accords the two houses of the federal parliament the right to participate in the process of reviewing and amending the constitution. Currently, the Somali Provisional Constitution is subject to review and revision. The Provisional Constitution established the Parliamentary Oversight Committee (OC) to oversee, direct, and approve the work of the Review and Implementation Commission and, generally, the implementation of the Constitution. (Articles 133 and 134). As a result, the House of the People and the Senate have elected five members of the Oversight Committee to participate in the ongoing constitutional review process.

22 Yonatan Fessha 'Second chamber as a site of legislative intergovernmental relations: An African federation in comparative perspective' 2019 Regional & Federal Studies 8

23 Yonatan Tesfaye Fessha 'Bicameralism' 9

C. Other Functions

Although the primary role of the upper house is to participate in the legislative process and represent the Federal Member State's interests, there are also other functions, powers, and responsibilities shared between the two houses of parliament in the constitution. They participate in elections and the impeachment of the president, the establishment of the constitutional court, the process of declaring a state of emergency and the process of declaring war, and the nomination of independent commissions, including members of the Judicial Service Commission Chairman and Judges of the Constitutional Court, Members of the National Independent Electoral Commission, Members of the Boundaries and Federation Commission, and Members of the Arbitration Committee.

D. Oversight of the Executive

The House of the People plays a predominant role in exercising oversight over the executive. The upper house may summon the Prime Minister and members of the Council of Ministers to ask them questions related to their duties. However, the right to pass a vote of confidence on a government is the preserve of the House of the People. (Articles 69 and 77 of the Provisional Constitution).

4.3: The Status of the Somali Second Chamber to Represent the Federal Member States

The Somali Constitution has vested in the Senate the power to represent the Federal Member States and to be the custodian of Federalism Principles; initiate and amend laws; scrutinise bills; and carry out oversight functions to hold government and other officials accountable to them, with its members elected by Federal Member States assemblies.

In practice, the upper house has not been very successful in its ability to represent the Federal Member States. Since the formation of the second chamber in 2016, the Federal Member States have preferred to negotiate directly with the Federal Government about their interests, including laws that affect them, while ignoring the upper house's representation.

In 2018, Somalia's Federal Member States suspended all ties with the central government following a crucial four-day conference in Kismayo. State governments have accused the Federal Government of failing to fulfill its responsibilities in accordance with the country's federal structure.²⁴ Federal member states, notably Puntland and Jubaland, also had bilateral disputes with the Federal Government. The upper house attempted to resolve disputes or misunderstandings between FGS and FMS. The upper house's mediation efforts, however, were ignored by the Federal Government and federal member states and they instead preferred to negotiate directly without the upper house's involvement.

The national leaders formed the National Leadership Forum for executive leaders at FGS and FMS levels in Somalia as a de facto national platform, to promote cohesion and dialogue and resolve disputes between the FGS and FMS, which weakened the role of the upper house to represent the Federal Member State's interests and serve as a forum of legislative IGR.

24 <https://www.voanews.com/a/somali-regional-states-suspend-ties-with-federal-government-/4563231.html>

The National Leadership Forum (NLF) later renamed the National Consultative Council (NCC),²⁵ serves as Somalia's highest national platform for Inter-Governmental relations, where it succeeded to convene and reach agreements on a number of contentious and urgent issues between the Federal Government and Federal Member States. The NCC does not subject these agreements to legislative validation by parliament. For example, the NCC negotiated and agreed on many contentious political issues, such as the National Security Architecture in 2017 in Baidoa, the natural resource (minerals and oil) sharing agreement in Baidoa in June 2018. Deliberations on other contentious issues such as elections, judiciary model, and fiscal federalism are also scheduled for deliberations by the NCC.

All these agreements are required for the Provisional Constitution to be revised and finalized. Both houses of parliament have the right to participate in the process of drafting and amending it. Under the Provisional Constitution, Somalia's Federal Parliament is authorized to propose and adopt amendments to the Provisional Constitution in accordance with agreements negotiated between the FGS and FMS (Articles 133,134).

The Somali Parliament failed to challenge the NCC's undemocratic practices and to validate vertical intergovernmental agreements. Intergovernmental agreements without legislative approval have posed a legal dilemma as they are merely political trade-offs and are non-binding.²⁶

Therefore, Somalia's federal parliament's role has shrunk. It is especially evident in the Senate, whose constitutional role was to represent the interests of all Federal Member States. Senate has not been able to fulfill its role in a meaningful and systematic way.²⁷

In light of the foregoing, it is evident that Somalia's NCC has become a de facto national platform for all intergovernmental relations. In other words, intergovernmental relations remain the exclusive domain of the executive. Due to this political context, fulfilling the Upper House's institutional design promises is difficult, if not impossible.

5. Conclusion

The historical context of Somalia's parliament reflects the country's political and social evolution. From the colonial era to independence and the subsequent military rule, the parliament's structure and role have undergone significant changes. The establishment of a bicameral legislature in the Somali Provisional Constitution marks a significant step in the country's constitutional development.

Bicameralism, with the House of the People representing the national population and the Senate representing the interests of the Federal Member States, aims to provide a more balanced representation and ensure effective checks and balances in the legislative process. However, the current political realities and power dynamics have hindered the Senate's capacity to represent the federal member states effectively.

24 <https://www.voanews.com/a/somali-regional-states-suspend-ties-with-federal-government-/4563231.html>

25 According to article 51 of the Provisional constitution, the Executive leaders of FGS and FMS should regularly meet to ensure cooperative federal relations are established and improved. A law shall also be enacted by the Parliament to establish institutions and guidelines to facilitate interaction between the various levels of government. Despite this, the Somali Parliament has not yet enacted the primary legislation that will institutionalize the work of the NCC.

26 Salim Said Salim 'Somalia's inter- governmental relations between the constitutional theory and political practice'2022, Sidra Institute 17.

27 Heritage Institute 'Dysfunctional federalism: How political division, constitutional ambiguity, and a unitary mindset thwart equitable distribution of power in Somalia, 2020, 10.

The National Consultative Council (NCC) has emerged as a de facto platform for intergovernmental relations, sidelining the Senate in the negotiation and implementation of agreements between the Federal Government and Federal Member States. The lack of legislative approval for these agreements poses a challenge to the Senate's role in the constitutional process.

Recommendations:

To make sure Somalia's move is closer to realizing the full potential of its bicameral parliament and strengthen its democratic institutions for the benefit of its citizens and the country as a whole, the paper suggests following recommendations :

1. Strengthen the Role of the Senate: It is essential to empower the Senate and ensure its meaningful participation in intergovernmental relations. A more extensive role should be given to the upper house in representing the interests of Federal Member States and finding solutions to disputes or misunderstandings that arise between FGS and FMS, in addition to serving as a forum for the legislative IGR. The parliament should take steps to validate the agreements negotiated in the NCC through the legislative process, ensuring their binding nature and constitutional legitimacy. The parliament should also institutionalize the NCC's legal framework as an executive IGR in accordance with the Provisional Constitution.

2. Address Representation Imbalances: The present power-sharing formula, based on the 4.5 clan system, has resulted in an unjust distribution of seats in the senate. In order to ensure a more inclusive representation of all communities and regions, with particular attention to minority clans or "others," it is crucial to embark on reforms targeting this system.

3. Promote Electoral Reforms: Work towards conducting universal elections in Somalia to strengthen the legitimacy and accountability of the parliament. Moving away from indirect elections and allowing citizens to directly elect their representatives will enhance democratic participation.

4. Enhance Legislative Oversight: Both houses of parliament should assert their oversight role over the executive branch effectively. This includes holding the government accountable, scrutinizing bills, and ensuring that laws and policies reflect the interests of the people.

5. Constitutional Review Process: Complete the constitutional review process and adopt a comprehensive federal constitution that clearly defines the powers and responsibilities of each house, as well as their relationship with the executive and Federal Member States. The constitution must provide mechanisms that ensure Federal Member States participate effectively and meaningfully in the formulation of national laws, particularly bills that directly affect them, and create a direct link between the upper house members and federal member state governments.

6. Engage Civil Society: Involve civil society organizations in the legislative process and intergovernmental relations to ensure broader representation and inclusivity in decision-making.

7. Respect for the Rule of Law: Uphold the rule of law and constitutional principles in all aspects of governance to build a strong and stable democratic system in Somalia.

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