Making the Somaliland constitution and its role in democratization and peace

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Somaliland’s impressive peacebuilding record since 1991 has been accompanied by statebuilding. This has been achieved within the framework of a collection of basic laws articulated first in charters and later in an interim constitution, which was consolidated into a final constitution that was put to a plebiscite. This article explores the making of the constitution and how, to date, it has been used to maintain peace and uphold democracy in Somaliland.

Constitution making

The extensive peacebuilding initiatives that took place in Somaliland between 1991 and 1997 underpinned the constitution making process. While the latter was not as participatory as the former, it was crucial for the transformation from conflict to peace and in shaping the governance framework. The 1993 National Charter gave a pivotal role to clan elders, the charter and the constitution was endorsed in a public referendum held on 31 May 2001. The amendments were debated by a 24-member joint committee of both the House of Representatives and House of Elders chaired by the latter’s second Deputy Speaker. Almost all the changes made by the government were rejected. A final 130-article constitution was approved by both Houses on 30 April 2000 and was overwhelmingly endorsed in a public referendum held on 31 May 2001.

Maintaining the peace

The constitution making process in Somaliland from 1991 to 1997 was very much intertwined with peacemaking and statebuilding efforts. No public grassroots consultations were undertaken on the contents of the charter or the constitution prior to their adoption. However the peacemaking grand conferences were attended by all the various clans (beelaha) of Somaliland and provided the legitimacy required for the adoption of the charter and interim constitution.

After 2000 the indirectly elected Houses of Parliament took over this role. This long process, from 1993 to 2000, ensured that the customs, religion and the aspirations of the people were reflected in both the preamble and the provisions of the constitution.

Traditional practices are evident in the emphasis on cooperation, consultation and joint decision making and in the place given to the Guurti (the Elders). Islam is well reflected in many provisions, including the yet to be established Ulama Council. In these respects the 2001 constitution differs from the 1960 Somaliland Constitution and the Constitution of the Somali Republic, although some provisions of the latter were reproduced.

The 1993 National Charter gave a pivotal role to clan representatives. By co-opting traditional leaders selected by their own beelaha (clans or communities) into the parliamentary chamber of the House of Elders, the charter and the constitution effectively institutionalized some of the traditional leaders. The composition of the House is an important nod to the informal consociational power sharing arrangements between the Somaliland clans, which though not specified in the constitution are so important to all aspects of Somaliland life.

The consequences of this are still hotly debated, especially in light of what some see as the politicization of the elders. The Somaliland traditional leaders (Suldaan and Ugaas) do not sit in the House.
of Elders as a group but have their own ad hoc ‘Saladin Council’. However they did have some say in the original appointment of the membership of the House and continue to have an indirect role in the choice of House members who have taken up vacant seats.

Interestingly this process produced the first female member of the House, who was sworn into office on 20 January 2009. While there have been occasional calls for members of the House to be elected rather than appointed, these have so far been rejected.

There is no denying that the constitution has helped in the maintenance of peace by legitimizing the institutions of the state and the way in which changes can be made to them. Unlike the Afghan Loya Jirga, the Somaliland constitution did not institutionalize clan conferences. With the adoption of the constitution, the national political discourse was to be conducted under its provisions and the need for grand clan conferences (shir beeleed) was reduced. Subsequent calls for national conferences (shir qarameed) at difficult moments of constitutional crisis have been vigorously denounced by the government as amounting to a rejection of the constitution.

Since then, several disagreements between Somaliland’s political parties, the president and the elected House of Representatives have developed into serious political and constitutional disputes. A recent crisis about the delayed presidential election was settled on 1 October 2009 when the president and the leaders of the opposition parties signed a memorandum of understanding (MOU) about the delayed presidential election. This took the heat out of a political and constitutional dispute that has seriously strained Somaliland’s own dispute resolution mechanisms.

The MOU enabled aspects of the electoral dispute to be tackled by removing from consideration the constitutional conundrum of what should happen when a president’s term of office has expired. Although such negotiated compromises have been effective in maintaining Somaliland’s peace and order, they still leave underlying constitutional controversies unresolved.

**Democratization**

Two principles that underpin the Somaliland constitution are defined in its various provisions as “democratic principles and the multi-party system” and “peace and cooperation”. To what extent have these principles been upheld?

The president and the members of both Houses of Parliament were initially selected by an electoral college of elders at the grand peace conferences in 1993 and 1997.

The constitutional referendum in 2001 paved the way for the move to popular elections. Within two years of the constitution being publicly endorsed, a body of laws was passed to facilitate the formation of political parties, define citizenship, delineate the structure of local government, and lay down electoral procedures.

The first district council elections were held in December 2002, followed by the first presidential election in May 2003. The first election of the House of Representatives was held in September 2005. Although all three elections were held without a voters’ register, in the opinion of international observers they were, on the whole, ‘fair and free’.

The presidential election was scheduled to take place in May 2008, but has been postponed three times, most recently in September 2009, in part because of disputes over the voter registration process. Civil unrest over the latest postponement was averted by domestic and foreign pressure and a last minute agreement (the MOU referred to, above) between the three political parties to change the Electoral Commission, review the voter registration and agree a new election date. The president’s term of office was also temporarily extended.

The postponed local district elections are to be held after the presidential election. The artificial three party limit (stipulated in Article 9 of the Constitution) and the linked ban on independent candidates, is seen by many as being fundamentally contrary to the commitment to democracy and the multi-party system set out in Article 9 (1) of the Constitution. Many who support the constitutional limit to avoid proliferation of clan-based parties argue that the current three parties need not always be the three allowed under the constitution.

The numerous ‘term extension tussles’ have also affected the public’s view of both the constitution and the way it has been implemented by the president and the House of Elders. Term extensions are perhaps to be expected in an unrecognized country with limited resources to hold elections on time. But the frequency of the extensions and the fact that decisions on them have been taken solely by the House of Elders and the president, to the exclusion of the House of Representatives, the political parties and the Electoral Commission, seriously undermined public trust in the political process.

The House of Elders has limited powers, introduced under the 1997 interim constitution, to extend the terms of office of the president and the House of Representatives. Yet the House of Elders extended the term of office of the House of Representatives three times until the parliamentary elections were held. It also extended its own term three times, most recently for another four year term. The House of Elders assumed the power, unsupported by either the constitution or local government law, to extend the term of office of local
district councils. And since 2002 it has extended presidential terms five times, with the current president benefiting from four of these extensions, most recently in September 2009.

Upholding constitutional principles
Somaliland has managed to adopt a far from perfect, but sensible constitution that suits its current stage of political development. Yet it has become all too common for Somaliland politicians and others to ascribe some of the political and constitutional arguments or occasional crises that arise in Somaliland to defects in the text of the constitution.

While it is clear that some changes may need to be made in respect to, for example, the independence of the judiciary and the balance between the executive and the legislature, there are many other reasons why political and constitutional crises arise.

There is a lack of appreciation of the principles of constitutionalism and a continuing absence of the primary and secondary legislation required to implement many of the provisions of the constitution. Since the judicial body assigned to interpret the constitution is practically out of action it is easy for the Executive to sidestep the constitutional checks and balances or occasionally to act with impunity.

In the absence of an authoritative interpretation of the constitution from the Somaliland Constitutional Court – which has failed dismally to assume its constitutional role – Somalilanders have looked for pragmatic solutions that ensure continuing peace, preferring not to delve too deeply into the correct interpretation of the constitution.

This pragmatic approach is exemplified in the acceptance of successive unconstitutional term extensions and the settlement of partially constitutional and legal disputes through discussions in which the Executive, as the custodian of state power, always has the upper hand. The danger is that no authoritative constitutional interpretation will ever develop. Calls for constitutional amendments and disputes over its provisions will continue if issues like the assumed power to extend terms of office are not settled one way or the other.

Despite the latest last minute agreement in September 2009, if the forthcoming presidential election is not held within a few months, the dispute over the president's expired term of office will recur. The issue of constitutional dispute resolution is therefore one of the main topics that must be addressed in the years ahead.

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Puntland constitutional review process

Ahmed Abbas Ahmed and Ruben Zamora

Puntland State of Somalia was established at the Garowe Community Constitutional Conference in mid-1998 as a voluntary union of the communities inhabiting the regions of North Mudug, Nugal, Bari, Eastern Sanag, and Eastern Sool.

A transitional Charter endorsed by the conference defined the structures and functions of the government of Puntland, which was envisaged as a federal entity of a future Somali Federal State. The Charter outlined a three year timetable for drawing up a constitution and holding elections. These tasks were not completed by the time the administration's mandate expired in July 2001, but a draft constitution had been produced and approved by the legislature.

In contravention of the Puntland Charter, the first Puntland President, Abdullahi Yusuf, sought an extension of his mandate, which provoked a political crisis and military confrontation. This was ended in May 2003 with a compromise that recognized the presidential status of Abdullahi Yusuf in exchange for ministerial posts for members of the opposition and the integration of its fighters into the regular Puntland security forces. The constitutional dispute that was at the centre of the crisis was not addressed.

After Abdullahi Yusuf became President of the Transitional Federal Government (TFG) of Somalia in October 2004, the leader of the opposition, General Adde Muse, was elected by the parliament as the new Puntland President in January 2005.

In December 2006 Adde Muse issued a presidential decree setting out the following programme for the democratization of Puntland's political system:

- A constitutional review
- The establishment of an electoral commission
- Public dissemination of the amended constitution and social mobilization
- A popular referendum on the constitution
- Municipal and parliamentary elections

A 14-member Constitutional Review Committee (CRC) composed of MPs, a minister, an appellate judge and other respected members of Puntland society was appointed in February 2007. With the help of Interpeace, arrangements were put in place to conduct a constitutional review process.