

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.

The constitutional review process

The CRC decided that a systematic revision of the provisional constitution was needed. With the help of an advisory team, the first draft of the revised constitution was completed by November 2008. The next phase was to involve consultations with wider society and by January 2009 plans for public dissemination and formal consultative meetings were ready.

The dissemination of a radio education programme on the constitution generated a great deal of public discussion in Puntland, resulting in many of the key constitutional articles becoming ‘buzz words’. Consultation meetings were held throughout February 2008 in Garowe, the Puntland capital, with a broad spectrum of organizations, prominent personalities, and a cross-section of representatives from the different sectors and geographical regions of Puntland. These ranged from governors, mayors, and officials from ministries, to civil society groups and religious and traditional leaders.

Public responses reflected the concerns of participants’ interests. These included calls from local authorities for increased autonomy from central government, demands for women’s rights by women’s organizations, calls for freedom of expression from journalists, and for a bi-cameral legislature by traditional leaders.

The CRC incorporated the inputs from the consultative phase into the final draft constitution. It also added a number of last-minute changes unrelated to the consultations, such as removing the conditions under which the president can introduce a state of emergency, which presented serious contradictions with the principles of a democratic constitution.

The CRC forwarded the final draft to the Puntland cabinet for review at a special session on 2 June 2008. Ignoring technical advice about a number of contradictory articles, the cabinet delivered the draft revised constitution to parliament for its approval prior to preparations for a popular referendum.

By now however the mandate of parliament and the government was about to expire. In order to dispel speculation that parliamentary approval of the revised constitution would be used as leverage for the extension of their mandate, parliament voted to defer the proposal to the next parliamentary session.

A peaceful political transition was achieved in Puntland in late 2008. A new parliament was sworn in on 31 December 2008, a new president was chosen by the parliament on 8 January 2009 and a new State Minister of the President for the Democratization Process was appointed in the government.



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The new administration envisages that transition to a democratic multi-party system will be completed by the end of its first two-year period of office in early 2011. It asked parliament to return the draft constitution to the cabinet so it could familiarize itself with the content. This resulted in more changes that introduced new contradictions into the text. Some address observations made by Interpeace, others are oriented towards limiting the independence of the judiciary and increasing the power of the executive.

The president called for an extraordinary session of parliament in April 2009 to discuss, among other things, the draft constitution for referendum. Parliament spent the whole of May discussing the draft and making further revisions to the text, but some contradictions remained. In late June 2009 the new constitution of the Puntland State of Somalia was approved by a vote of 49 in favour, 2 against and 3 abstentions (with 12 MPs absent).

Subsequently there has been a call from civil society organizations and prominent personalities for a final review to correct the most serious contradictions and defects in the text approved by parliament. At the time of writing the executive had not yet signed off on the version approved by parliament or made it public. Nor had it expressed an official position on how to resolve existing problems with the text.

Some provisional lessons learnt

In a political process that remains incomplete, it is premature to draw conclusions and lessons learned. Nevertheless it is possible to advance some propositions recalling the Puntland experience. The following are observations that have emerged from the process to date.

1. This type of process is political and cannot be treated simply as technical. This presents serious challenges to external agencies called on to support constitution making, especially as it risks making the exercise externally driven by substituting internal actors with external expertise. A fine balance needs to be struck between what is technically sound, and respect for local ownership and control of the process.
2. It is important to recognize the impact of the social structure in the constitution making process. Modern constitutions are based on concepts of 'citizen' and 'state' and presume the supremacy of the constitution over any other legal norms. However in Puntland the clan rather than the individual is the primary bearer of rights and responsibilities. This contradiction manifested itself throughout the constitution making process. Although the text carries the usual dispositions on individual rights, the structures of clan power had to be taken into consideration so that the traditional systems remained valid instruments for exercising power.

On the other hand the constitutional process started with an existing state structure and practices. Puntland has a fragile and simple governance structure with limited capacity in which the exercise of power by the president is highly personalized. An alternative, more complex, state structure risks becoming an economic burden for the country or not being implemented.

3. In view of the above considerations, the constitution making process needs to develop an 'outside force' in favour of the process. There is no substitute for strong public advocacy for democracy. The more intimately the different sectors of society are involved and take a stake in the process, the greater the guarantee that democracy will take hold in the country and that the constitution will have an instrumental role in defining and protecting it.

The most critical moment in the constitution making process occurs when the consultation is complete and the text is ready for adoption. There is a real possibility that the work developed over many months, involving a broad

range of stakeholders and technical expertise, will be in vain if the executive and legislative organs are unfamiliar with constitutional matters and political interests become paramount. The 'outside force' should play a public role in pressuring the state organs to maintain the democratic features of the new text. External actors, especially the donors, should also maintain pressure for the approval of a participatory constitution.

4. A final lesson from Puntland concerns the educational role of external agencies. Members of the Constitutional Review Committee were unfamiliar with constitutional texts and lacked legal training. External actors avoided the temptation to invest heavily in educating the committee members and providing elaborate technical support.

The approach taken in Puntland involved a different pedagogical strategy that consisted of a very brief introduction to the constitutional task and the development of the overarching framework and structure of the constitution. The committee members were progressively exposed to relevant information and analysis as each chapter of the constitution was developed. This gradual approach proved more effective, less costly and less prescriptive.

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