

# Revisiting the UN-Controlled Constitution-Making Process for Somalia

Written by Afyare Abdi Elmi

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AFYARE ABDI ELM I, SEP 2 2012

For the last three decades the Somali people have experienced multi-layered political, economic, and religious conflicts. A legitimate and Somali-owned constitution would help address or contain many of these problems. However, controversy surrounds how the UN has approached and controlled the constitution-making process of the country. The process is fundamentally flawed because political expedience, secrecy, exclusion and hastiness mar the mandate and selection of the commission members, the drafting of the document and the adoption of the draft constitution. Therefore, like the previous charter, the current draft-constitution has legitimacy-deficit. It does not express the aspirations of the Somali people, regulate individual and group conflicts effectively and peacefully, or prescribe context-appropriate institutions that are necessary for building durable peace and a functioning state in Somalia. This leads me to conclude that the constitution-making process that was employed when Somalia was under the Italian trusteeship in the 1950s was more inclusive and transparent than the process used now under the current de facto United Nations and Inter-Governmental Authority on Development (IGAD) rule.

### **The Process: What is it?**

When it comes to constitution-making, the process is as important as substance because processes affect the legitimacy of the outcome. Jill Cottrell and Yash Ghai (the Kenyan legal expert who helped draft the constitutions of Afghanistan and the Fiji Islands) identify several factors that make the process inclusive and legitimate.[2] The most important and relevant features are the initial definition of the project, the nature of participation, and the rules for decision-making. In other words, the mandate given to the people writing the constitution, the selection and composition of the team, the openness in the drafting process, the inclusivity of the different groups and the way the final outcome is adopted all matter. In addition, as Noah Feldman observes, imposed constitutions are limited in terms of their legitimacy and functionality on the ground.[3]

### **Mandate and Selection of the Commission**

The process of Somalia's constitution-making has passed through three phases: mandate and selection of the commission members, drafting of the constitution articles, and the adoption of the draft constitution. Political expedience, secrecy, exclusion and hastiness shrouded all three stages.

In August 2004, during the Ethiopian-controlled and Kenyan-hosted peace process, a committee was tasked to draft a new Transitional Federal Charter (TFC). As expected, constitution-drafting became so controversial that the committee broke into two groups. To reconcile the two groups, thirteen Somali experts, led by professor Abdi Samatar, were tasked to harmonize the two documents that these two groups produced.[4] Unfortunately, political considerations carried the day, thus forcing the recommendation of the harmonization committee to be abandoned. As a result, the faction leaders and warlords that had the support of Ethiopia and the hosting state of Kenya imposed their will and their version of the Charter through an illegitimate process. The TFC became the law of the land in subsequent years.

The consequences of this controversial process were threefold. First, the Charter has reflected the interests of the

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neighbouring countries.[5] Second, it could not manage the conflicts between Somali groups, institutions and individuals. For instance, because of political conflicts, there were two presidents, five prime ministers and months of political stagnation for the last seven years. Finally, and more importantly, Article 11 of the Charter has mandated a new 'federal' (three levels: national, regional and local) constitution that is based on the 2004 Charter to be written and ratified before the transitional government becomes a permanent government – even though Somalia had a democratic and legitimate constitution that had been ratified through referendum in 1961.[6]

Interestingly, Article 11 of the Charter[7] sets out a clear roadmap in which a 'federal' constitution should be made for the country. It calls for the government to establish an Independent Federal Constitution Commission (IFCC) which has to be ratified by parliament. The Charter then requires the IFCC to draft a 'federal' constitution, conduct public consultation and present it directly to the public. The Charter never conceived that politicians would be involved in any way other than appointing members of the IFCC. The intention was to keep the constitution-making process as far away as possible from the politicians.

Because of the prevalent reality on the ground in 2008-2009, there was a new political agreement between the Transitional Federal Government (TFG) and the Alliance for the Re-Liberation of Somalia (ARS) in Djibouti. Although a new government led by the former ARS chairman, Sharif Sheikh Ahmed, was elected, the Charter was largely kept as it was in 2009. However, the new government doubled the membership of the IFCC by adding fifteen new members.[8] Moreover, in 2011, the Somali government created a nine-member Committee of Experts,[9] under the leadership of a legal specialist Mohamed Jawari, in order to assist the IFCC. Besides leading the process, the United Nations Development Programme (UNDP) and United Nations Political Office for Somalia (UNPOS) have provided financial and technical assistance to the IFCC and the Committee of Experts (CoE). Members of the Commission have visited many capitals in order to learn from other countries that have had similar experiences.

The mandate given to the IFCC was restricted to writing a 'federal constitution'. This restriction reflected the preferences of the neighbouring countries and faction leaders that imposed their version of the Charter in 2004 during the peace conference in Kenya. Neighbouring countries have been pushing their proxies to accept clan-federalism because this served the long-term interests of Ethiopia and Kenya. These two countries have had issues with what they call 'Somali irredentism' or united Somalia. For this reason, it is no secret that Kenya and Ethiopia wanted to install a weak and divided Somalia. As such, Ethiopia has been championing the 'building block approach'[10] while Kenya is determined to create a buffer zone in the Juba regions of Somalia. Both countries have troops in Somalia. The IFCC, therefore, did not have the opportunity to debate the type of system that would be suitable for the context or advance the interests and aspirations of the Somali people, at least in this case.

With regards to the selection of members for the IFCC, neither former President Abdullahi Yusuf nor the current President Sharif Sheikh Ahmed has taken seriously the competency of the members they were appointing. Although a few are competent, such as the chair, Dr Abdullahi Jama, most of the members could not comprehend the tasks required. One expert who was assisting them observed that many IFCC members did not have the capacity to understand and then apply the experts' advice. The selection was based on the simplistic 4.5-clan power-sharing system where the four 'major' clans get equal number of representation and the fifth clan would get one-half. Politicians, therefore, considered the membership of the IFCC as an employment opportunity for some of their supporters. Somali politicians and the international community realized this later and perhaps this is why the Committee of Experts was established in 2011.

Restricted mandate and arbitrary selection of the IFCC members have had serious implications for the constitution-making process of Somalia. For more than six years, Somalis have been locked into an emotional debate on the suitability of a federal system. The irony here is that most Somalis have similar goals and interests when it comes to dealing with this issue as there is a universal demand from communities in every region for electing their representatives, accessing basic services close to home, and getting their fair share of development projects. A discussion based on interests and reason is yet to begin among Somalis. As of now, the issue remains highly controversial and will continue to be so for a long time to come. In fact, the Istanbul Gathering of the Civil Society in late May 2012 (which brought together traditional elders, academics, religious scholars and many from civic/political and women's groups) recognized the contested nature of the issue and recommended further discussions among

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Somalis until a consensus of some sort emerges.[11]

Moreover, the selection of unqualified members for the IFCC has negatively impacted the quality of the constitution that the Commission produced in 2010. In other words, competent commission members, with an open mandate for producing context-appropriate institutions, would have helped to legitimize the process.

## Drafting the Constitution

In July 2010, the IFCC presented the first draft of the Constitution to the Somali public.[12] Then, to improve the first draft, the Commission began to collect the views of the different sectors of society. The public reacted negatively to the draft, pointing to a number of issues including federalism, citizenship, role of Islam, and the structure of the government. Many politicians were also opposed, though others welcomed it.

In order to manage this negative public reaction, the newly constituted Committee of Experts and the previous members of the IFCC came together and revised the 2010 Draft Constitution. This time the two committees did not share their revised draft with the public. Instead, in April 2012 they presented it to the seven signatories of the 2011 UNPOS-prepared Roadmap: Special Representative of the Secretary General (SRSG) Ambassador Augustine Mahiga, and six Somali politicians. The six Somali politicians are the TFG President Sharif Sheikh Ahmed, the TFG Prime Minister Abdiweli M. Ali, former TFG speaker Sharif Hassan Sheikh Adan, Puntland President Abdirahman Mohamed Farole, Galmudug President Mohamed Ahmed Alim, and one of the leaders of the Ethiopian-supported Ahlu-Sunna Wal-Jama'a, Abdulkadir Moallim Nur.

Unexpectedly, the signatories' first move was to marginalize the IFCC and CoE members that had prepared the second draft document after the committees submitted it in April 2012. For unexplained reasons, the seven signatories shifted a planned constitution-meeting in Mogadishu to Addis Ababa in May 2012. Puntland President Abdirahman Farole later told Somali media that he demanded the meeting be held in Addis Ababa because he wanted the international community to be present.

Although the Addis Ababa conference focused on the constitution, the IFCC and the CoE members were not invited to the meeting. Instead, the seven signatories secretly formed a review committee from their delegations. The review committee revised the Draft Constitution that the IFCC and CoE presented while in Addis Ababa. The signatories did not reveal the names of the committee members they put together or the reasons behind revising some of the articles of the proposed draft-constitution. Through a hasty and secret process, the signatories announced that they agreed on all of the contested issues without explaining what these issues were.[13] Interviews with some of the members of the delegations in Addis Ababa revealed that the review committee was composed of three members from each of the seven delegations (signatories). While in Addis Ababa, the seven signatories officially disbanded the IFCC and the CoE committees that had created the second draft. Then, the signatories kept the Addis Ababa draft to themselves.

Within a week, the secret review committee had convened another meeting, in Nairobi, to further edit and revise the Draft Constitution. The new committee worked for about two weeks on the document and completed its revisions in the middle of June 2012. Signatories were then called to sign the final draft of the constitution on June 22, 2012.

What is mind-boggling is that the signatories were not only playing games with the public; they were also playing games with each other. President Sharif Sheikh Ahmed came to the Nairobi meeting with the document that was revised in Addis Ababa arguing that it was the genuinely negotiated version. Yet Prime Minister Abdiweli Mohamed Ali and other signatories contradicted him saying that the last version is the one that the committee completed in Nairobi. The President complained that his office was not informed about the Nairobi meeting. UNPOS and several Western diplomats intervened and pressured all of them to sign the document. On June 22, 2012, the seven signatories signed their own draft constitution and four protocols that deal with a number of issues including the creation of a National Constituent Assembly (NCA) in Nairobi. UNPOS first shared the Somali-language version of the signatories' draft constitution and the protocols with the public on June 25, 2012.[14] As such, for the remainder of this article, 'Draft Constitution' means the signatories' final draft completed and signed in Nairobi.

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## Implications of the Hasty and Secretive Drafting Process

UNPOS and a narrow group of unrepresentative politicians have controlled the drafting process of the Somali constitution since April 2012. Given the time they had (from late April to June 22, 2012) they negotiated the articles in the constitution secretly and wrote the document hastily. Three implications result from the manipulation of the seven signatories. First, the hasty and secretive drafting process has permanently damaged the legitimacy of the outcome (the draft constitution). Both committees of the IFCC and the CoE have publicly distanced themselves from the signatories-driven process. The leaders of the IFCC and CoE met with civil society members and religious groups in Mogadishu and explained to them the differences between the draft that the two committees had produced and the draft that the signatories had signed. The two committees produced a matrix that identified more than seventy articles that had either been deleted from the original document or differed. They highlighted several articles that relate to the role of Islam, boundaries of the country, electoral systems, design of the second chamber, and Mogadishu as a capital for Somalia. The signatories could not explain or defend their actions well.

Second, civil society members, Islamists and other political forces were excluded even though they all wanted to participate in the constitution-making process. As a result these political forces and many diaspora communities have refused to endorse the outcome. In addition, the fact that the signatories finalized the document in Addis Ababa and Nairobi further raised the suspicions of many Somalis. This invokes bitter memories as it was only a few years ago, in 2004, when Ethiopia and Kenya imposed a charter of their own on Somalis. Many people, therefore, considered the draft constitution as yet another document that subordinates Somali interests and aspirations to those of their hostile neighbours. Two factors further compounded these suspicions: (a) most of the signatories are proxies of these two countries – some are supported militarily while others are backed politically; (b) when the signatories signed the document they refused any changes to be made. Traditional elders meeting in Mogadishu demanded some changes. The signatories resisted, saying that the National Constituent Assembly or the next parliament would have the powers to amend the constitution. Yet when the NCA met in Mogadishu in late July 2012 they were also denied the opportunity to make any changes to the document. Rhetoric aside, the protocol that established the NCA clearly says that the draft that the signatories negotiated will be Somalia's provisional constitution despite the results of the NCA or referendum.

Third, because of the hasty process, the quality of the Somali version of the draft constitution UNPOS released on June 25 was extremely poor. It was obvious that the Somali version had been hastily translated from an English source by unprofessional translators. UNPOS eventually published the English version, though too late. The Somali translation was evidently not proof-read as even the name of the country "Somalia" was misspelled many times in the Somali language. Referencing and counter-referencing were also inaccurate. For instance, Article 26(1 and 2) deals with the right to own property and the right of the state to nationalize a given property for the national interest respectively. However, Article 26(3) says that 26(1 and 2) will not apply to Article 49 which deals with the levels of 'federal' governance. There is no relationship between Article 26 and Article 49.[15] Interestingly, the English version has omitted Article 26(3). Moreover, Article 72 (in the Somali version), which deals with the powers of the second chamber, is incomplete as it does not counter-reference at all. The poor quality of the draft constitution indicates that the signatories and their hand-picked individuals who prepared the final draft did not have the professional skills or sufficient time to think through the issues, or edit and proof-read the document. As a result, Somali people are not well-served when it comes to understanding their own constitution in their language. In comparison, the English version has been improved. Obviously, a new Somali translation will be necessary.

More importantly, since the document is incomplete, it has serious limitations in terms of the content. Issues of federalism, structure of the government, role of Islam, electoral systems, amendment formula and territorial disputes are still contested.[16] In particular, the design of the second chamber that transforms the eighteen administrative regions to political regions is alarming as it might create further unnecessary conflicts among Somali communities. Due to considerations of space, I deal with these issues in a forthcoming wider study on the development of the Somali constitution. Moreover, although the sections of the draft constitution that deal with rights seem to be stronger, many of the rights protected in the document cannot be guaranteed in any practical way by Somalia's failed state.[17] As Feldman accurately argues, this may further contribute to the de-legitimization of the constitution.[18] Many rights are cut and pasted from other constitutions without due regard to context. The rights of internally

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displaced people are not enumerated well, for example, even though most Somalis are displaced within the country and sectarian authorities are known to abuse these IDPs.

## Puppet Constituent Assembly: The Process of Adopting the Constitution

By 2009, it became clear to all that the security conditions on the ground would not allow the IFCC to present the constitution to the Somali people through a referendum as originally was conceived in 2004. UNPOS, which has led and funded the constitution-making process, realized that another way of adopting the constitution was needed. The SRSG at the time, Ahmedou Ould-Abdallah, proposed that Somalia's Parliament could provisionally adopt the constitution. He argued that the parliaments of 27 European countries adopted the EU constitution and therefore the Somali parliament could do the same, albeit it was not elected.[19] Before a decision was made on the issue, Ambassador Ould-Abdallah vacated his post and a new SRSG, Ambassador Augustine Mahiga was appointed to lead UNPOS, thus leading Somalia's constitution-making process.

Ambassador Mahiga dropped the idea of taking the Draft Constitution to the Somali parliament. Instead, he created what he called 'major stakeholders', consisting of the six Somali politicians already mentioned above: the TFG President Sharif Sheikh Ahmed, the TFG Prime Minister Abdiweli M. Ali, former TFG speaker Sharif Hassan Sheikh Adan, Puntland President Abdirahman Mohamed Farole, Galmudug President Mohamed Ahmed Alim, and one of the leaders of the Ethiopian-supported Ahlu-Sunna Wal-Jama'a, Abdulkadir Moallim Nur. The SRSG brought these six individuals together in Mogadishu and they (including Mahiga himself) signed an UNPOS-prepared Roadmap in 2011. The Roadmap had four components, of which security and constitution-making were the most important.

The seven signatories became the entity that decided on all of the major issues of Somalia, thus replacing the parliament, the cabinet and all other political groups in the country. Known as the Roadmap signatories or the 'principals', the six Somali politicians and the SRSG signed subsequent and at times contradicting agreements in Mogadishu, Garowe, Galkayo, Addis Ababa and Nairobi. These agreements focused on the two most sensitive issues: the Draft Constitution, and selection of the members of the new parliament.

With respect to the provisional adoption of the constitution, the seven signatories decided to create a puppet assembly that would support their draft without making any changes. They signed a protocol, "Establishing the Somali National Constituent Assembly". In this protocol, the signatories created an 825-member 'National Constituent Assembly'. Somalia's traditional clan leaders select the members through the 4.5 tribal formula – such that the so-called four 'major' clans will get about 183 members of the NCA while the fifth clan would get 93 members. But, ironically, the signatories' Technical Facilitation Committee managed the adoption process and the minister of the constitution (a proponent seeking a Yes vote) was the chair of the NCA. Moreover, the NCA voted on the following loaded question: "*Should this draft provisional constitution provisionally adopted to provide for a better Somalia, help reconstruct our country, and set us on the right path to justice and lasting peace, pending final adoption at the referendum?*"[20]

According to the Protocol, the NCA could approve or reject the whole document. But they could not amend articles as they wish. Instead, the NCA could give recommendations to the signatories' Technical Facilitation Committee which would pass the suggestions to the so-called 'principals'. In fact, this was consistent with the previous agreements in Garowe in which the signatories explicitly agreed that the NCA could vote either Yes or No for the draft constitution.[21] In addition, according to the protocol establishing the NCA, a No vote would not have any impact on the document. The Protocol notes: "In the event of a No vote, this draft provisional constitution will nevertheless take effect until a new constitution is adopted." In fact, the signatories further agreed that even if this draft constitution is rejected in the referendum, it will still be the provisional constitution of the country, thus making this a fait accompli. In other words, regardless of the results of the NCA and the referendum, the signatories' draft constitution that was signed on June 22, 2012 becomes the law of the land.

Constituent Assemblies come in many shapes and forms. However, the basic function they often carry out is to write a constitution.[22] The UN, which has led Somalia's constitution-making process, missed a great opportunity here. The government of the United Kingdom, under its London initiative on February 2012, proposed a constituent

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assembly that would not only write the constitution but also become the legislature for the next few years. Had the signatories listened, this would have improved and simplified the process, thus producing a more legitimate and Somali-owned constitution.

Instead of drawing from the best practices of establishing constituent assemblies, the UN and its signatories preferred the approach that dictatorships use – an approach that never legitimizes constitutions. They have created a rubber-stamp constituent assembly in which 96% of the delegates ‘approved’ the draft-constitution. On August 1, 2012, the day the assembly approved the text, the Voice of America Somali Section aired interviews with some of the delegates who were complaining about many irregularities.

In fact, the military government led by General Mohamed Siyad Barre used a similar mechanism in order to adopt the 1979 constitution. The military government brought together 832 delegates[23] from all the districts and regions of the country to provisionally approve the constitution, albeit they could not make any changes. Even the 27-member technical committee led by Ahmed Ashkir Botan did not make significant changes before Congress approved it on January 25, 1979. This was followed by a referendum which took place on August 25, 1979. According to the government, 99.69% of the Somali people ratified the constitution and the Supreme Court endorsed it.[24]

By way of comparison, during the Italian trusteeship era (1950-1960), Somalia’s first constitution was drafted by a technical committee comprising 23 members. The technical committee presented to the administration a constitution that consisted of 143 articles. Then, a fifty-member inclusive political committee debated the constitution article by article and created a new draft of 100 articles and made changes as needed. Moreover, a constituent assembly comprising the ninety-member parliament and twenty additional individuals from different sectors again deliberated article by article, made some changes and provisionally adopted it.[25] Finally, in 1961, the Somali people ratified it through a referendum.[26] Because the process was so open and transparent, the outcome became a legitimate and Somali-owned constitution that expressed the aspirations of the nation and regulated political conflicts well. With some amendments the 1960 constitution could still be used now, as it is more legitimate and functional than the current UN-led draft constitution.

## Conclusion

From its inception, Somalia’s constitution-making process was deeply flawed. The process was designed, funded and controlled by UNPOS, with help from the regional organization IGAD and the neighbouring countries. Originally, the constitution-making process aimed at keeping the politicians at bay. Ironically, the process ended up in the hands of six unrepresentative Somali politicians and the SRSG of the UN. These seven individuals have dominated the constitution-making process of Somalia. They have excluded civic, political and Islamist forces; they have secretly and hastily negotiated on the articles of the constitution; and they have imposed a poor draft through a sham process by creating a puppet constituent assembly. As a result of this political expediency, secrecy and haste, both the IFCC and CoE which were tasked to prepare the draft and many civic and political forces distanced themselves from the UN-controlled constitution-making process. In short, flawed processes lead to illegitimate outcomes – and this has proved to be the case with the UN-led constitution-making process in Somalia. More problematic is that besides the failure to regulate individual, institutional and group disputes, there is an increased risk of further conflicts, particularly if plans to establish the second chamber are implemented.

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[1] This article is part of a wider study on the Constitutional Development of Somalia. The discussion is limited to the process of constitution-making for Somalia (2004-2012). Other sections of the study address the substance of the constitution including the role of Islam, design of the bicameral legislature, electoral system and the federal model.

[2] Jill Cottrell and Yash Ghai, "Constitution Making and Democratization in Kenya (2000–2005)", *Democratization*, Vol. 14, No. 1, p. 19. See also Nicolas Haysom and Sajit Choudhry, "Mechanisms for Resolving Divisive Issues in Constitutional Negotiation", Constitution-making in Focus: Issue Paper, by Interpeace, 2010; available at [http://www.interpeace.org/constitutionmaking/sites/default/files/guidance\\_papers/InFocus\\_HaysomChoudhry\\_FINAL.pdf](http://www.interpeace.org/constitutionmaking/sites/default/files/guidance_papers/InFocus_HaysomChoudhry_FINAL.pdf)

[3] See Noah Feldman, "Imposed Constitutionalism", *Connecticut Law Review*, Vol. 37, pp. 857-889; see also Simon Chesterman, "Imposed Constitutions, Imposed Constitutionalism, and Ownership", *Connecticut Law Review*, Vol. 37, pp. 947-954; and Zaid Al-Ali, "Constitutional Drafting and External Influence", in Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law* (Northampton: Edward Elgar, 2011).

[4] See Abdi I. Samatar and Ahmed Ismaiel Samatar, "Somali Reconciliation: Editorial Note", *Bildhan: An International Journal of Somali Studies*, Vol. 3 (2003): 1–14.

[5] See Afyare A. Elmi, *Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding* (London: Pluto Press, 2010).

[6] See the Constitution of the Somali Republic, 1960; available at <http://www.somalilaw.org/Documents/Constitution1960.pdf>

[7] See Article 11, Transitional Federal Charter of Somalia, 2004; available at <http://www.somalilaw.org/Documents/The%20Transitional%20Federal%20Charter%20of%20the%20Somali%20Republic.pdf>

[8] See all thirty members' names on the IFCC website, [www.dastuur.org](http://www.dastuur.org)

[9] Reliefweb, "Somali Government Establishes Committee of Experts on Draft Constitution", September 26, 2011. Unfortunately, political considerations came because the process was so open and transparent, the outcome became a legitimate and Somali-owned constitution that expressed the aspirations of the nation and regulated political conflicts well. With some amendments the 1960 constitution could still be used now, as it is more legitimate and functional than the current UN-led draft constitution. This forced the recommendation of the harmonization committee to be abandoned. As a result, the faction leaders and warlords that had the support of Ethiopia and the hosting state of Kenya imposed their will and their version of the Charter through an illegitimate process. The TFC became the law of the land in subsequent years; available at <http://reliefweb.int/report/somalia/somali-government-establishes-committee-experts-draft-constitution>

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[10] See Matt Bryden, “New Hope for Somalia? The Building Block Approach”, *Review of African Political Economy*, Vol. 26, No. 79 (1999), pp. 134–140.

[11] See the communiqué from the Istanbul Gathering of the Civil Society at <http://www.insightonconflict.org/2012/07/istanbul-conference-somalia-civil-society/>

[12] For the 2010 Draft Constitution, see the IFCC copy available at <http://www.dastuur.org/images/stories/docs/IFCC%20FINAL%20PROGRESS%20REPORT%2020th%20May%20English.pdf>

[13] Addis Ababa communiqué available at <http://unpos.unmissions.org/LinkClick.aspx?fileticket=c5df15pV7q8%3d&tabid=9744&mid=12667&language=en-US>

[14] See the latest Draft Constitution and four protocols at the UNPOS website, <http://unpos.unmissions.org/Default.aspx?tabid=9705&ctl=Details&mid=12667&ItemID=19206&language=en-US>

[15] See article 26 and article 49 of the Draft Constitution in Somali language, available at [http://unpos.unmissions.org/LinkClick.aspx?fileticket=l\\_2yjnyPFfk%3d&tabid=9705&language=en-US](http://unpos.unmissions.org/LinkClick.aspx?fileticket=l_2yjnyPFfk%3d&tabid=9705&language=en-US)

[16] See Mohamud Uluso, “Provisional Constitution Heightens Tensions in Somalia”, *International Policy Digest*, available at <http://www.internationalpolicydigest.org/2012/08/08/provisional-constitution-heightens-tensions-in-somalia/>

[17] See Abukar Arman, “A Constitution of Ambiguity and Deferment”, Foreign Policy Association, available at <http://foreignpolicyblogs.com/2012/08/07/a-constitution-of-ambiguity-and-deferment/>. See Mary Harber, “Somalia: Failed state or fantasy land?” BBC, available at <http://www.bbc.co.uk/news/world-africa-19099442>. See also Sadia Ali Aden, “Somalia: The Consequences of a Crooked Constitution”, Think Africa Press, August 14, 2012; available at <http://thinkafricapress.com/somalia/consequence-crooked-constitution>

[18] See Feldman, “Imposed Constitutionalism”.

[19] Ambassador Ahmedou Ould-Abdallah presented a paper at the Lund Conference on Somalia on June 2, 2010. I was one of the discussants on the panel.

[20] See the NCA protocol, available at [http://unpos.unmissions.org/LinkClick.aspx?fileticket=Crs\\_XvJpAd4%3d&tabid=9705&language=en-US](http://unpos.unmissions.org/LinkClick.aspx?fileticket=Crs_XvJpAd4%3d&tabid=9705&language=en-US)

[21] See the Garowe Principles I, available at <http://www.radiodaljir.com/audio/docs/GarowePrinciplesDec2011.pdf>

[22] See Yash Ghai, “The Role of Constituent Assemblies in Constitution-Making”, Institute for Democracy and Electoral Assistance, available at [www.idea.int](http://www.idea.int). See Jon Elster, “The Optimal Design of Constituent Assembly”, Paper prepared for the colloquium on “Collective wisdom”, Collège de France, May 2008; available at



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[http://download.cerimes.fr/media/canalu/documents/cerimes/UPL55488\\_Elster.pdf](http://download.cerimes.fr/media/canalu/documents/cerimes/UPL55488_Elster.pdf). See also Nicholas Haysom and Sajit Choudhary, "Mechanisms for Resolving Divisive Issues in Constitutional Negotiation", Interpeace; available at [http://www.interpeace.org/constitutionmaking/sites/default/files/guidance\\_papers/InFocus\\_HaysomChoudhry\\_FINAL.pdf](http://www.interpeace.org/constitutionmaking/sites/default/files/guidance_papers/InFocus_HaysomChoudhry_FINAL.pdf)

[23] See "Somalia", *The African Contemporary Record*, Vol. XVIII, No. 4, February 12-25, 1979, p. 5016.

[24] See "Somalia", *The African Contemporary Record*, Vol. XVIII, No. 25, November 5-18, 1979, p. 5211.

[25] See Paulo Contini, "Integration of Legal Systems in the Somali Republic", *International and Comparative Law Quarterly*, Vol. 16 (1967): 1088-1105. See also Paulo Contini, *The Somali Republic: An Experiment in Legal Integration* (London: Frank Cass & Co. Ltd, 1969).

[26] See Contini, *The Somali Republic*, p. 16.

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### About the author:

Afyare Abdi Elmi is an assistant professor of international politics at the Qatar University's International Affairs Department. He is the author of "Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding". Dr. Elmi has provided comments to the major media outlets including the New York Times and Al-Jazeera English Channel. He has also published articles on the International Herald Tribune, the Boston Globe, the Globe and Mail, the Toronto Star, the Edmonton Journal and Al-Jazeera Online. Dr. Elmi is currently working on two research projects that relate to the Horn of Africa: Constitutional Development of Somalia; and the causes and consequences of piracy in the Horn of Africa.