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Revitalizing the negotiation of contentious political issues

Key considerations going forward



Introduction

Over the past decade, significant progress has been made in Somalia's post-conflict trajectory, including the formation of the Federal Government of Somalia (FGS) in 2012 following the endorsement of the Provisional Federal Constitution. Federal Member States (FMSs) were formed from 2013 onwards and a range of significant institutional reforms have followed. However, there are several key weaknesses with Somalia's current political settlement – the underlying agreement on 'the rules of the game' – that have made sustained progress difficult. For example, there are ongoing disagreements about the fundamental components of the federal model, the structure of the country's security forces and the role of democratic elections as a means of peaceful political competition.

Since 2012, the weaknesses of the political settlement have contributed to instability and violent conflict. This has hindered progress towards achieving essential development and governance objectives. Despite a common awareness of the critical importance of addressing these weaknesses, a meaningful negotiation process to address them has yet to emerge. This is due to a number of factors, but particularly the lack of trust between different political and social groups following decades of conflict, and a lack of accountability that would otherwise encourage political elites to act in the national interest.

The start of a new political cycle presents a fresh opportunity for Somalis to address the contentious issues obstructing the country's path towards a more stable and prosperous post-conflict future. This can build off the successful conclusion of a meeting between FGS and FMS leaders on 12 June, which took place soon after the election of President Hasan Sheikh Mohamud. This can be achieved through a careful revival, enhancement and institutionalisation of effective and inclusive political negotiation and dialogue mechanisms. This paper outlines several options to support these objectives, including considerations for how to design an effective negotiation architecture, as well as an outline of key thematic areas on which to focus dialogue.

The paper draws from a series of preliminary discussions convened by the Somali Dialogue Platform (the Platform) since August 2021 with a range of Somali stakeholders referred to as the F20. Throughout these conversations, the Platform has facilitated extensive discussions on the contentious issues related to Somalia's political settlement and possible solutions. The process concluded with a final workshop in Mogadishu to finalize a suite of papers. This paper serves as an introduction to the issues discussed and how they might be addressed during the current political cycle.

Designing an inclusive negotiation architecture

The establishment of an inclusive negotiation architecture, encompassing a range of actors and organized by collective prioritisation of issues, could be an effective mechanism to address some of Somalia's main contentious issues. This section outlines options for how such an architecture could be structured and the principles that might successfully guide such a process.

Structure

There are several options for how negotiations and dialogue could be organized and run. Decisions will need to be made about how Somalia's political leaders would be involved, what kind of structures will be responsible for the day-to-day running of the process (and how these would be selected and managed), and how the views and voices of the Somali public can be integrated into the discussions. Some of the options are discussed below.

National Consultative Council (NCC): The NCC would be composed of the FGS President and Prime Minister, the leaders of both chambers of Federal Parliament, and the FMS Presidents and Governor of Benadir. With the institutionalisation of political parties, it may also include the leaders of major parties that meet pre-agreed criteria. Chaired by the President, the NCC would serve as the highest level of decision-making, establishing collective priorities and schedules for addressing contentious issues, and meeting on at least a quarterly basis with a rotating venue.

NCC Secretariat: The Secretariat would serve as the critical preparatory and management function, organizing NCC meetings, preparing and informing principals, and managing agendas and discussion formats. Options for establishing such a body may include:

- Hosting the Secretariat at the Office of the Prime Minister with the Prime Minister then serving as Deputy Chair of the NCC. At least in the short-term, this may represent the most efficient and cost-effective approach, though it also risks centralizing authority within the NCC with the Federal Executive. The Office of the Prime Minister could, however, be tasked with transferring the secretariat role to another office within a defined period.
- Establishing a secretariat consisting of appointees of all offices represented in the NCC, with a rotating Chair appointed following each NCC meeting. This may ensure greater political buy-in and neutrality but may also hamper efficacy and leave the NDS and NCC more prone to political divisions.
- Establishing the Inter-State Commission as mandated by Article 111F of the 2012 Provisional Constitution and tasking it to serve the Secretariat function. This would provide a clear legal basis for this Secretariat, but would also likely take time to establish, and may not carry sufficient political weight.

Issue-specific Working Groups: Different issues will need to be worked on by relevant institutions and technical specialists. The NCC secretariat would coordinate these working groups, which would be tasked with conducting initial discussions and consolidating options/recommendations for discussion at the NCC meetings, and can allow for multiple issues to be worked on in parallel. Working Groups, appointed and managed by the secretariat with the approval of the NCC, may include representatives of relevant Federal and State ministries, independent commissions, parliamentary committees, academic and research

institutions, and civil society organisations. Such Working Groups could be organized according to the four contentious areas outlined in section 3.

Public consultation: Consulting and listening to a wider set of actors beyond major institutions, and enabling a wide array of perspectives to inform the dialogue process, will strengthen the chances of its success, and increase its legitimacy. The NCC Secretariat, together with the working groups, may be tasked with organizing such forums, and documenting the arguments and recommendations raised by their participants. Beyond conventional in-person meeting formats, such consultations can also extend to various media platforms.

Dialogue Principles

This paper proposes six different principles that an inclusive negotiation architecture should be based around. These have been developed through observation of the key weaknesses of previous such processes.

- 1. Addressing grievances and re-building trust:** To re-establish trust among political actors, sufficient space and time should be afforded to address past grievances in the dialogue process. Aligning the process with the National Reconciliation Framework (NRF), moving discussions beyond formal settings to include a broader set of actors, and involving cultural activities to assert a shared set of values may further strengthen the chances of success.
- 2. Somali ownership and approaches:** Signalling a break with past initiatives, the dialogue process should be led and managed by Somali actors in Somalia. While the support, engagement, and expertise of international partners is welcomed, Somali ownership and responsibility should be maintained throughout. As a starting-point, this could involve a high-level 'Mogadishu Conference' – a contrast to previous events that have been led by international priorities. As well as prioritizing the role of Somali institutions, this can also involve including Somali approaches to peace-making in the process by drawing on traditional leaders and concepts such as *xeer*.
- 3. Incrementality:** Issues to be addressed are clearly contentious, and it will require time and careful negotiation for any consensus to be reached. Dialogue will need to be carefully prioritized and sequenced. This will help avoid any expectations that all issues can be resolved swiftly and simultaneously with political agreements being raised to unrealistic levels. Attention will need to be paid to the effective implementation of such agreements with a National Consultative Council maintaining a role throughout.
- 4. Equitable participation:** While public consultation should strengthen citizens' inputs into technical and political discussions, it will also be important to ensure that those directly participating in the Consultative Council reflect the diversity of Somali society. This may be achieved by establishing roles for relevant ministries and other institutions representing women, youth, and marginalized communities. It can also include ensuring that the NCC secretariat is gender-balanced.
- 5. Codification:** Codification of relevant agreements through the preparation of standardized formal policy documents, legislation, or constitutional amendments will strengthen their legitimacy. Where possible, significant political agreements should be transferred to relevant line ministries or parliamentary committees to convert them into draft legislation or constitutional amendments for parliamentary approval. In effect, this would lead to a gradual, incremental approach to the constitutional review.
- 6. Constitutional alignment:** The dialogue process should be aligned, to the extent possible, with Somalia's existing constitutional framework. Where

possible, existing or constitutionally mandated government institutions should complement and support the work of the NCC, avoiding, where possible, duplication of institutional mandates and the formation of new institutions.

Key areas for negotiation

Given the number of contentious political issues in Somalia, this paper recommends breaking these down into four core thematic areas. For each of these areas, issue-specific NCC Working Groups led by the NCC secretariat can conduct technical-level negotiations to develop policy options and recommendations for leaders alongside public consultation. It is important to note that other important issues such as the relationship between Somalia and Somaliland, and any potential exploratory negotiations with Al-Shabaab are presumed to be outside of the scope of this dialogue mechanism, and would need to be addressed separately.

The security architecture

Some limited progress has been made on a security settlement, most notably with the preliminary agreement in early 2017 between FGS and FMS leaders on a National Security Architecture (NSArch). This went some way towards clarifying key issues, such as the size and distribution of security forces and the command and control structures within and between them. The process for preparing the architecture was, however, criticized for lacking Somali ownership and it was never implemented. Instead, greater reference was made to a Somali Transition Plan (STP), which offered an ambitious operational strategy for the defeat of Al-Shabaab and the recapture of territory. However, it did not provide an alternative framework for addressing the more fundamental elements of the security settlement.

Security forces have therefore remained fragmented between different levels of government with affiliation to different political and clan factions. This has undermined their ability to operate effectively and occasionally led to clashes between different units. Addressing this is particularly urgent, given the intention for the newly mandated African Union Transition Mission in Somalia (ATMIS) to begin drawing down in the next three years and to exit in five.

Key priorities for negotiation in this sector will include:

- **The National Security Architecture:** Given progress already made towards its establishment, the existing NSArch still serves as a valuable starting point for dialogue. But, it will likely require intensive re-negotiations, taking into consideration the addition of new forces and the application of lessons learned since its initial endorsement. Discussions will need to clarify command and control structures, finalize the distribution of SNA and police across different geographies, agree on the role of Darwish forces, and ensure that questions of affordability are addressed.
- **A revised Somali Transition Plan harmonized with the National Security Architecture:** The current STP provides an action plan for the conduct of military operations against Al-Shabaab, and the ultimate handover of security responsibility from ATMIS to Somali security forces. Following consensus being reached on a revised National Security Architecture, attention should then turn to ensuring the STP remains appropriate and compatible.

Technical-level negotiations will likely require the involvement of the following actors and entities:

- Office of the National Security Advisor

- The National Integration Commission, agreed as part of the 2017 Security Pact
- Federal Ministry of Defence
- Federal and FMS Ministries of (Internal) Security
- Federal and FMS Ministries of Finance (On questions of affordability)
- Parliamentary Defence Committee
- Parliamentary Internal Affairs, Regional Administration, and Security Committee
- Senior commanders of both Federal and State-level security forces

It may also prove valuable to establish a National Security Commission as mandated in Article 111H of the 2012 Provisional Constitution to support this process. Careful consideration should be given to the efficacy, timing and costs associated with establishing any new institutions.

The distribution of executive and judicial authority

While the 2012 Provisional Constitution clearly affirms Somalia's adoption of federalism, the distribution of executive and judicial authority across different levels of government has not been fully determined. This ambiguity has been a consistent source of conflict and tension between the FGS and FMSs over the past few years that has contributed to the breakdown of effective cooperation between different levels of government in many areas. A related issue is the continuing lack of clarity regarding the status of the federal capital, Mogadishu, within the federal framework, despite the concentration of power and wealth in the city.

Attempts to resolve disagreements between institutions are made more challenging by the continuing lack of clarity with regards to Somalia's judicial model. While Article 109 of the PFC provides some guidance, consensus on the relations and jurisdiction of Federal and State-level courts remains elusive. The constitutional mandate of the Judicial Service Commission is contradictory, leaving the legal status of the existing commission in doubt, and the constitutional court is yet to be established. Consideration may also be given to revisiting the executive structure of government to avoid the previous history of tension between the president and prime minister.

Key priorities for negotiation in this sector will include:

- **The allocations of executive powers across different levels of government:** This will involve agreeing which government responsibilities should be assigned to federal, FMS, or local government, or shared as a 'concurrent' power. Key areas of responsibility to be negotiated include foreign relations, economic policy, control of strategic infrastructure including ports and airports, and the provision of social services. Consensus on, and the appropriate codification of, these issues will lay the foundations for more constructive relations between Federal and State authorities.
- **The Status of Mogadishu:** Options include defining Mogadishu as a Federal District, as a Federal Member State, and as Federal District within a Federal Member State. At stake in negotiations will be how the citizens of Mogadishu are governed; how they are represented in national institutions such as the Upper House, and; how revenue from the city is managed. How this is fi-

nalized will have broader implications for Somalia's federal system, and the role of the capital in symbolizing national unity.

- **Somalia's judicial model:** A political agreement on the justice and corrections architecture was signed in Jowhar in January 2018, providing an affordable, federalized basis for structuring the judicial system. Though effectively abandoned, it provides foundations for new negotiations, although other options such as a unified or dual justice model may still be considered. The role and formation of the Judicial Service Commission and constitutional court will also need to be considered.

Technical-level negotiations will likely require the involvement of the following actors and entities:

- Federal and FMS Ministries of Constitutional Affairs
- Federal and FMS Ministries of Justice
- Independent Provisional Constitutional Review and Oversight Committee
- Parliamentary Provisional Constitutional Review and Implementation Oversight Committee
- Parliamentary Judiciary, Religious Sites and Religious Affairs Committee
- Judicial Service Commission (upon agreement and confirmation of its legal status)

Fiscal federalism and resource-sharing

Mechanisms for the sharing of revenues and resources between different levels of government are critical to determining the extent of autonomy of different levels, and wider prospects for economic development and effective service-delivery. Somalia has made important progress in this area, amidst broader success in fiscal reform in line with the HIPC process, including the passing (albeit without the approval of the Upper House) of the 2019 Revenue Administration Act (providing a legal basis for harmonising tax policy between FGS and FMS); the 2019 Public Financial Management Act (providing a basis for managing budgets, expenditure, and reporting at different levels of government); and 2020 Petroleum Law (providing, inter alia, a framework for sharing revenue between different levels of government). In 2018 and 2019, further important agreements were reached on the issuance of licences for tuna fishing and the broader management of the country's fisheries, providing a basis for the sharing of revenues accrued.

However, fundamental aspects of fiscal federalism remain undefined. In practice, revenue-raising powers are determined by territorial control with the FGS raising taxes in Banadir and with FMS authorities raising revenues from major urban centres under their control. Fiscal transfers between the FGS and FMS remain largely ad hoc and project-based, and do not address inequalities between states. An agreement on a formal mechanism is complicated by a general scarcity of resources at all levels of government.

Key priorities for negotiation in this sector will include:

- **Mechanisms for the distribution of external support:** External support continues to make up for significant revenue deficits at both the Federal and State level, and is likely to increase in the coming years. Preliminary agreements have been reached but not implemented and external support

is therefore mostly shared according to informal arrangements. Formalizing and implementing agreements on the distribution of external support is therefore an important step towards strengthening the foundations for constructive relations between federal and state authorities.

- **Assignment of revenue-raising responsibilities:** The following revenue-raising powers around each tax base will need to be assigned to a level of government including: owning the tax base, setting tax rates, and administering and collecting tax. These powers can all be assigned to one level of government, or shared across them to enhance cooperation. Given its importance as a source of government revenue, an agreement on the management of customs duties accrued from international trade is particularly important.
- **Mechanisms for determining and implementing fiscal transfers:** Options for determining transfers between federal and state levels include: a per capita or negotiated formula to manage inequalities between states; filling the fiscal gaps in FMS budgets; or providing conditional grants for delivering FGS policy.
- **The management of revenues acquired from the extraction of natural resources:** The Petroleum Law and fisheries agreements provide basic frameworks for sharing revenue accrued from extractives, though there remains a lack of consensus on their principles and implementation among some FMS. These and other resource-sharing agreements will require close attention to ensure they are fully endorsed and implemented.

Technical-level negotiations will likely require the involvement of the following actors and entities:

- Federal and FMS Ministries of Finance / Inter-Governmental Fiscal Forum
- Federal and FMS Ministries of Petroleum and Natural Resources
- Parliamentary Budget, Finance, Planning, International Cooperation and Financial Oversight of Public Institutions Committee
- Parliamentary Natural and Environmental Resources Committee

Representation in institutions and competition for power

Representation in institutions currently remains largely defined by clan-based power sharing arrangements. At the national level, the 4.5 system is used to allocate seats in the House of the People of the Somali Federal Parliament and the Federal cabinet, as well as dividing up and rotating among the executive offices. Although advocates for the system argue it has contributed to stability and protects the representation of certain groups, it is often criticized for excluding or under-representing other important groups, including women and youth, and its perceived incompatibility with democratic governance. Similarly, each FMS has been constituted based on clan power-sharing deals that assign seats in the state legislature and executive and determine the rotation of power between clans in key positions, such as the presidency. These face the same criticism as the 4.5 system. It has, therefore, remained a priority for many Somalis to agree upon mechanisms to reduce the role of clan-based power-sharing in politics.

Despite the passing of the National Election Law in 2020, and the development of a Political Parties Law in 2016, competition for power in institutions continues to be mostly managed through indirect election models in which each seat in the legislature has a fixed representation for a certain sub-clan or grouping of sub-clans. At both the national and state-level, these systems have been crit-

icized for being subject to extreme political interference, vote-buying, and the exclusion of key groups such as women. At the national level, efforts to agree upon an appropriate election model have also been a major source of instability. At the FMS level, elections have also proved contentious and trigger points for violent conflict and protracted political tensions, as well as contributing to strained relations with the FGS.

Key priorities for negotiation in this sector will include:

- **New modalities for national elections:** Somalis will need to agree upon the process for federal elections in 2026. This either means reaching agreement on a direct election model that is practically implementable; designing an enhanced indirect election model that mitigates the flaws of the previous process; or a hybrid model that combines elements of the two.
- **State-level settlements and elections:** Careful attention will need to be paid to state-level settlements to support consensus-based state electoral processes that can avoid conflict and provide better foundations for wider reform. Where possible, a national dialogue process can facilitate the emergence of negotiation processes at the state-level that can address issues around power-sharing and electoral models. In the long-term, these state-level processes can address wider issues such as fiscal governance, the configuration of state-level security forces, social reconciliation and managing land conflict. This could also include strengthening local governance and accountability through the implementation of the Wadajir Framework (FGS's framework for establishing local governments in Somalia).
- **Local elections:** Following on from the relative success of pilot direct elections in some districts in Puntland, an opportunity exists to increase the scope of suffrage in local elections elsewhere in, other carefully chosen parts of the country. A harmonized approach to district-level elections across the country, codified in federal and state legislation would represent significant progress in Somalia's democratisation process.

Technical-level negotiations will likely require the involvement of the following actors and entities:

- Federal Ministry of Interior, Federal Affairs, and Reconciliation
- FMS Ministries of Interior
- National Independent Election Commission
- Parliamentary Internal Affairs, Regional Administration and Security Committee

Prioritisation and sequencing

Not all of the issues identified above can be resolved comprehensively in one political cycle. Many relate to long-standing contentious grievances connected to previous phases of conflict and protracted state collapse. Attempting to resolve too many issues at once may overload political bandwidth and could even provoke instability. With this in mind, it will be essential for Somali leaders to prioritize within and between these thematic areas to increase the chances of making tangible and sustained advances in any one area. Some considerations for sequencing include:

- **Priority 1: Finalize the security architecture** Advances in the security sector have the potential to transform the lives of Somali citizens. The security sector also represents by far the greatest expense for Somali authorities. By revisiting the National Security Architecture, political leaders have an opportunity to make significant security gains in the country, whilst also establishing a model for the distribution of responsibilities and expenditures that can inform further dialogue with regards to the distribution of executive and judicial authority as well as fiscal federalism and resource-sharing.
- **Priority 2: Determine the allocation of executive powers within the federal framework** Greater clarification of the allocation of executive powers would represent a significant milestone in the establishment of a functioning federal system. This may be done in tandem with or subsequent to negotiations on the National Security Architecture. Whilst resolving the status of Mogadishu is important, interim arrangements could be made in this political cycle in terms of the allocation of powers, fiscal responsibilities, and representation in institutions so that the issue can be addressed comprehensively later. With regards to the judicial system, the model agreed to in Jowhar in 2018 may also serve as an effective interim arrangement while the focus of attention is applied elsewhere. Similarly, the establishment of a Constitutional Court need not necessarily be prioritized if consensus is reached on, for example, the Supreme Court serving the same functions on an interim basis.
- **Priority 3: Agree a formal mechanism for sharing external support** Progress on security and the allocation of executive powers would provide a strong foundation for determining key aspects of fiscal federalism. A preliminary focus on the distribution of external support may be the most feasible starting point, and can address existing inequalities in domestic revenue between FMS, whilst building confidence between FGS and FMS. With greater confidence and trust among political leaders, focus could then return to an incremental approach for agreeing the sharing of revenues accrued from international trade, the country's natural resources and other areas of revenue generation.
- **Priority 4: Deepen democratisation** This can start with agreeing the growth of political parties, by amending the political parties law to allow their formalisation, regardless of election system. There are a number of approaches that could be used to improve the democratic credentials of election systems in Somalia:

 - a. **Prioritizing the implementation of local elections:** This would involve establishing a national local elections strategy and could include conducting local elections in Banadir and some regional capitals. This would provide important lessons for rolling out universal suffrage in the future. For national elections, leaders could agree in the first year of this administration to use an indirect election model for the 2026 elections, applying lessons learned from the last two electoral processes to reduce political interference and ensure a more credible process.

- b. **Prioritizing the implementation of national elections based on universal suffrage:** To achieve this it may be valuable to consider hybrid election models, including one-person-one-vote (OPOV) elements, but perhaps also aspects of clan power-sharing and other indirect components where necessary. A pragmatic approach such as this may increase the likelihood of success and reduce the risk of conflict. Any such attempts should, however, be accompanied by realistic deadlines and timeframes, which, if not met, can provide the basis for an early adoption of an indirect election model, drawing on lessons learned from the previous cycle.
 - c. **Focusing on other areas and returning to election design once progress has been made.** If progress is made in other areas, election design will likely become less contentious. However, this will significantly reduce the chances of advancing universal suffrage in Somalia, as preparations for this could only begin late in the political cycle, when it would likely be too late to implement a more direct election process in 2026.
- **Priority 5: Promote consensus-based state-election processes:** It will be essential for the national dialogue process to enable early agreement on the conduct of state elections to avoid breakdowns in the FGS and FMS relations, which could derail progress across all thematic areas. This could be enabled by aligning the timetable of all state elections to later in the current political cycle.

Credits

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