Forming the next government in Somalia

Key considerations for building consensus

SOMALI DIALOGUE PLATFORM

Overview

The vote of no confidence on 25 July in the Prime Minister has led to renewed political uncertainty in Somalia; the constitution gives the President thirty days from this date to appoint the next Prime Minister, who will in turn appoint a Cabinet.

This development comes at a crucial moment in Somalia's political trajectory. The Presidential term ends on 7 February 2021 and parliament's term ends on 27 December 2020. Yet there is a continued stand-off between political actors on which election model should be used to elect the national leadership at the end of the term. There is a growing risk that, regardless of the election model chosen, that election implementation will not be completed before these critical milestones. The removal of the Prime Minister has only added to this uncertainty.

At the same time, this development also offers Somali stakeholders an opportunity to form a new consensus-based government through dialogue, that can resolve the current impasse around elections. If the next government is formed through extensive consultation, and has widespread buy-in, it can set the stage for a credible and trusted election process, that can also advance participation and representation in Somalia.

To promote constructive dialogue around the formation of the next government at this challenging time, the Somali Dialogue Platform has produced this policy brief, which lays out seven key questions relevant to the establishment and functioning of a consensus-based government. These questions draw on examples from other contexts, where a new process of government formation has been used to manage differences, and, in some cases, support the implementation of a credible elections process.

This brief does not promote any one approach, nor does it endorse any one election model, but is intended to stimulate collective discussion on the formation of the next government. Certain constituencies in Somalia support an indirect election process to ensure a timely transfer of power. These considerations can be still be useful for establishing consensus-based mechanisms for designing and managing such a process, and, if necessary, ensure buy-in to any technical extension required to complete implementation.

Other constituencies in Somalia support a direct election, based on the election law, signed by the President on 21 February 2020. These considerations may also be useful for establishing a government with sufficient and sustained buy-in and capacity to successfully deliver such an electoral process in a longer timeframe. The formation of a consensus-based government may even provide the space for dialogue and trust-building amongst political actors that could lead to the development and acceptance of an election model that is a compromise between these two positions.

Key considerations for forming a consensus-based government

1. What are the types of consensus-based government?

There are many types of governments that promote consensus. These include, among others: caretaker government; coalition government; government of national unity; government of national consensus; power-sharing government; technocratic government; and unity government.

Different terms imply different understandings of the purpose, mandate, and composition of the government. For example, "national consensus" implies that all political actors consent to major decisions, whereas a "coalition government" may be inclusive of a majority of, but not all, political actors, and therefore require only majority consent for key decisions. A "unity government" may suggest an aspiration to overcome past divisions between political rivals, whereas "power-sharing" may suggest that existing divisions remain but institutions are re-configured to better manage these differences. Key to finding the most acceptable concept are the following questions: how power is distributed, how decisions are made, how disputes are resolved, and what is legitimate in the eyes of citizens.

Somalia also has had a long experience of advancing its post-conflict transition through short- and long-term consensus-based processes of government, from the establishment of the transitional government and the 4.5 system at the Arta conference in 2000, to the management of indirect elections by the National Leadership Forum in 2016. These processes, whilst not without limitations, offer a precedent for consensus-based politics from which Somali stakeholders can draw learnings from, when considering the current stand-off.

2. What is the composition of the consensus-based government?

Forming a government that emphasizes power-sharing usually involves the formal allocation of some institutional decision-making power to many, if not all, key political actors. These governments are usually formed subsequent to a crisis or political impasse, in order to facilitate the inclusion of constituencies in disagreement. The government established after the 2007-8 Kenyan electoral crisis was both a coalition government of the two leading presidential contenders and their political parties, and a power-sharing government between those two individuals. Recent power-sharing governments in South Sudan were ostensibly broader, and included the ruling party, the primary opposition party, as well as most minor political parties. Emphasising power-sharing, however, may undermine the managerial coherence of the government.

Elsewhere, short-term, technocratic governments have been formed, as in the Central African Republic in 2014, where an interim, non-partisan president was named to steer the country to elections in 2015-16. The 2011-13 government of Italy consisted entirely of technocrats and was led by an economist to confront the country's economic crisis. Neither of these governments were fully inclusive of all national political actors, however.

There is therefore a possible trade-off between power-sharing and effectiveness that is worth considering. Governments that prioritize inclusion above all else may suffer from paralysis, especially when those in government are looking to protect their interests in an upcoming national election process. However, it may also be the case that term-limited political office-

holders use their brief time of appointment to prioritize their own interests, knowing that they are set to lose their positions of power.

In Somalia, there are a number of stakeholders to consider in the composition of a consensus-based government. A power-sharing government would need to accommodate the Federal Member States (FMS), in order to effectively manage differences between the Federal Government of Somalia (FGS) and the FMS. Another important constituency are the opposition political groupings in Mogadishu. Parliament is also a major stakeholder, and its role will need to be clarified, such that power-sharing does not undermine the role of the legislature. The 4.5 clan-based power-sharing system would also need to be considered in the formation of a new government.

Alternatively, Somalis may agree on a short-term technocratic government, whose leadership agree to exclude themselves from competing in subsequent elections. Such a government could have a very short and narrow mandate to deliver a credible elections process and mitigate incumbency bias, or it could implement a broader set of agreed reforms.

3. What is the purpose of the consensus-based government? How does this purpose relate to mandates provided in the constitution or in legislation?

Clarity of purpose is essential to the effective functioning of consensus-based government. Such governments are generally established to deliver a specific task, such as the organization and delivery of a national election. However, the day-to-day business of governing, particularly when national insecurity is an acute problem, cannot be ignored. Typically, short-term governments are weighed down with an onerous list of responsibilities, making their achievement unrealistic. In Sudan in 2005, the responsibilities of the government of national unity included everything from organizing a national census to achieving national reconciliation to introducing economic devolution. The objectives of the Congolese transitional government established in 2002 included reconstruction of the country, the re-establishment of peace nationwide, national reconciliation, the creation of an integrated national army and the organization of elections. While each task may be vital to the country, a list of priorities that is too long and too complicated may mean the government that is formed will struggle to deliver any of them and will likely disappoint.

It is also important to consider the purpose of a consensus-based government which continues to operate within an existing constitutional framework. While a government's powers may be laid out in a constitution, a supplementary agreement or declaration may be needed to specify its powers - what it should and, crucially, should not do. Constitutional declarations may be used to supersede the existing constitutional order, as in Sudan in 2019. Or, negotiation could result in an understanding of how different executive and legislative actors will work together for the duration of the government.

In Somalia, one option would be simply to appoint a new Prime Minister in line with the Provisional Federal Constitution, who is amenable to all stakeholders and can steer the country towards the least contentious elections process in the shortest possible time. At the other end of the spectrum, the next government could be formed through a new political agreement that provides greater confidence to a broader range of actors – for example by including specific modalities for including FMS in decision-making around elections and specifying how this relates to parliament. This could include some type of national conference that includes different levels of government, that is mandated to have oversight over specific decisions.

This might allow for broader reform, such as advancing the constitutional review, as well as for the implementation of a democratic elections process.

4. What is the timeframe for the consensus-based government?

The question of timing is critical in Somalia and any form of unilateral extension would provoke serious negative backlash. Political actors may have an idea of what would be considered an acceptable timeframe for a new government. However, determining the timeframe of the next government, needs to take into account the logistical and practical requirements of the tasks it is mandated to deliver. For example, the term of the government should be sufficiently long to account for timeframes for election implementation, and a period sufficient for a post-election handover, to allow for an orderly transition of power to the elected government. At the same time, delays to the electoral calendar can often lead to further extensions, beyond the previously accepted timeframe.

In Somalia, most political actors prioritise the timeliness of the election process over other factors. At the same time, the timeframe of the next government needs to be considered carefully, based on the feasibility of possible election models. Even the most straightforward indirect election process might require more time to deliver than the current term allows, due to the political agreement required to deliver it and the technical challenges of implementing it. More complex election models would require longer timeframes, which in turn must be based on broader trust and consensus amongst the political elite, in order to be viable. Regardless, any changes to the current constitutionally mandated timeframe, would require consensus amongst all major stakeholders.

5. How are government decisions taken, and deadlocks and disputes resolved?

Consensus is easier to achieve in principle than in practice, and consensus-based governments risk being deadlocked by political wrangling. Power-sharing formulas can account for such possibilities by implementing thresholds for decision-making, such as requiring super-majorities for certain issues. However, such formulas can be problematic if they risk making certain political constituencies permanent minorities in the government that can always be outvoted, or empower certain institutions over others. The 'sufficient consensus' model, as used in South Africa during the transition from apartheid and in Northern Ireland's 1998 Good Friday Agreement, is one approach that can improve the inclusivity of decision-making in such situations. In South Africa, sufficient consensus required an attempt to achieve overall consensus, but failing this, the consent of political actors beyond the African National Congress (ANC) and the incumbent government was still required. In Northern Ireland, the support of the majorities of both the divided religious-political communities of unionists and nationalists was required. A majority of only one of the communities would have been insufficient, but the lack of agreement of some factions would not necessarily block a decision.

Consensus-based governments can also define the level of consensus needed for different decisions. For example, there could be some issues that are mandated to require consensus; others for which consensus is desirable but for which sufficient consensus would be acceptable; and those for which a simple majority is sufficient. Deadlock-breaking mechanisms can also be introduced, to move the locus of decision making away from personalities in the executive, by, for example, providing a deadlock breaking role for the legislature. This may also clarify the role the parliament is expected to play during the government's functioning.

The formation and functioning of a consensus-based government should not be thought of in isolation of the broader state building agenda. Other national institutions, such as the courts and auditors-general, can play important watchdog roles and supplement the specific provisions of any political agreement. A regular schedule of reporting to the national legislature on the progress of the government can also be introduced to ensure oversight. Some political agreements establishing consensus-based government invite regional review of their progress by the respective regional economic community (e.g. IGAD), or create formal oversight mechanisms chaired by respected, independent figures, who can also monitor the progress that is being made, or both.

Somalia's' political dynamics are often characterised by the contestation between different institutions, and this is certainly the case now. Recent political contestation has included disagreement between different branches of the FGS executive, between the executive and parliament, between the houses of parliament, as well as between the FGS and FMS, and between players in and out of government. Although, these relationships need clarifying as part of the constitutional review process, a consensus-based government could be grounded in a political agreement on how these institutions should relate to each other in exercising the specified mandate, when consensus is needed, and how this would be defined. Alternatively, specific oversight mechanisms could be constituted by key political players to resolve disputes. The international community has often acted as a guarantor of such political agreements in Somalia, providing good offices, and they could do so again in this context.

6. How can the functionality of power-sharing be improved?

Beyond decision making, consensus-based governments can benefit from regular communication between the constituent elements of the government. Most transitional arrangements do not go into detail about how such consultations will occur, which can lead to difficulties later. However, there is nothing to stop the formal agreement of a standing weekly or bi-weekly meeting of representatives of the government, in addition to the formal meetings that may be required of the cabinet or of other state institutions. Such meetings can provide both formal and informal ways to improve relations, address concerns and offer a forum to iron out differences between the parties.

In Somalia, there has been a trust deficit among politicians, set against the broader backdrop of the absence of reconciliation. Ensuring regular in-person conversation between stakeholders can work to address this gap. This is especially important to increasing the acceptability of any electoral outcome, where trust amongst the political elite will be critical.

7. How might state-level power-sharing be affected?

In a federal system, power-sharing at the national level may affect, at least indirectly, subnational governance arrangements. Reconfiguring subnational governance arrangements as part of a national power-sharing arrangement may offer additional opportunities for accommodation of political groupings, and thereby promote inclusion. Recently, power-sharing in South Sudan was extended to the subnational level, in part, to recognize the localised conflict beyond the capital, as well as to integrate political factions at all levels of government. However, subnational power-sharing may also complicate the implementation of national governance arrangements, particularly when time is short.

In Somalia, the interaction of tensions at the Federal level and at the state level is a common issue. For example, differences between the FGS and FMS have recently intersected with more localised conflict dynamics in Jubbaland, where a cabinet has yet to be announced. The formation of a cabinet in Jubbaland could form the locus of a state-level power-sharing arrangement that could complement a Federal-level agreement. Such considerations may also be relevant to other states, to support a wider consensus-based approach to government.

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