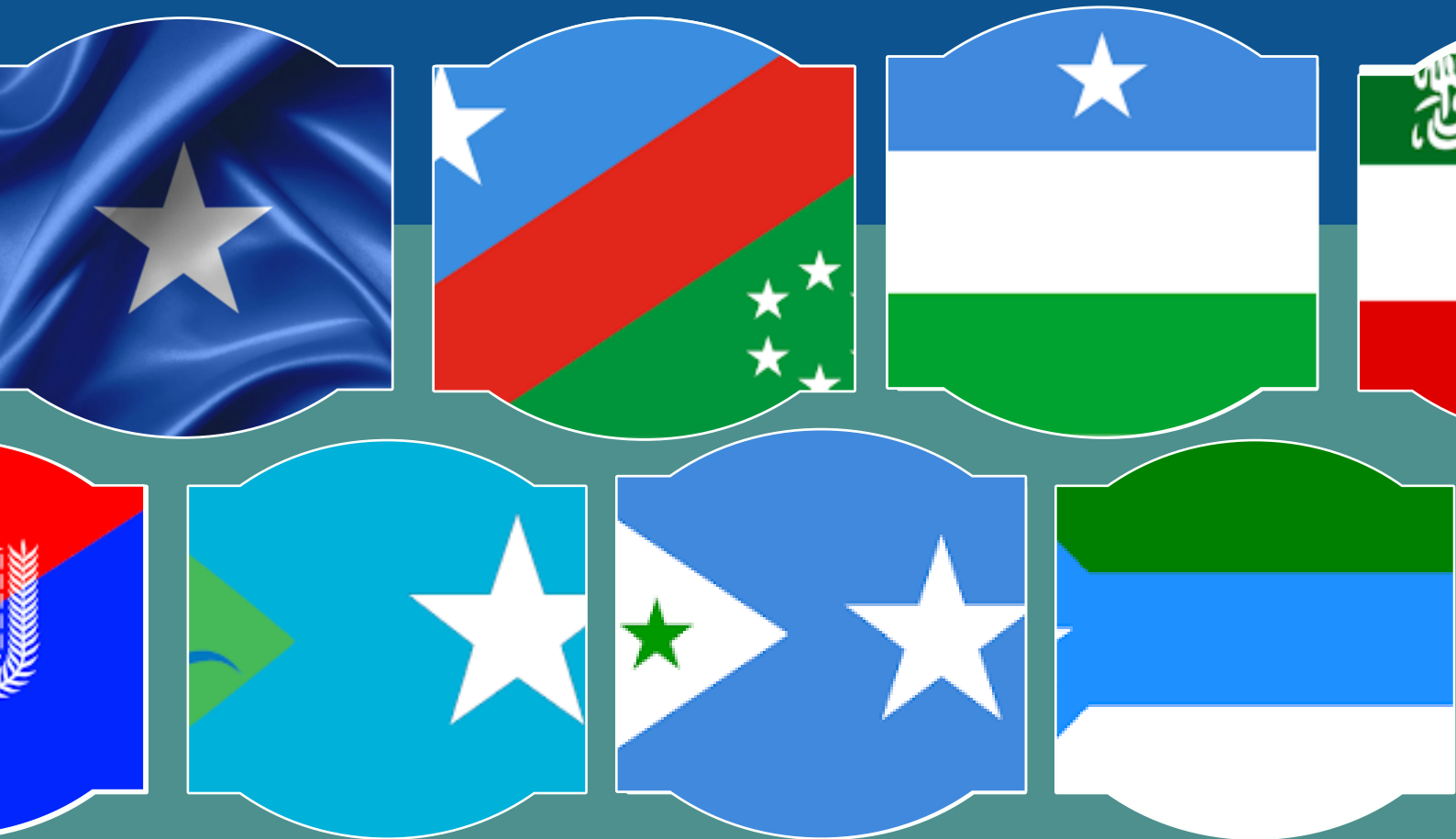


SOMALIA FEDERAL STATES' TERM EXTENSIONS:

A Constitutional Conundrum or Solution?



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Table of Contents

Introduction	1
Term Extensions by the FMS	2
Constitutionality of Term Extensions	3
Legality of Term Extensions	4
Extraordinary Circumstances that Warrant a Limited Term Extension	6
The Rationale for State Election Alignment Questioned	7
OPTIONS: Ways to Resolve the Illegal Extension	8
CASE STUDY: South-West State	09

The regional governments of Somalia—South West, Hirshabelle, Jubbaland, and Galmudug—have extended their terms in office by one year through motions presented to their respective state parliaments. However, the Federal Government of Somalia (FGS) has not yet clarified its position regarding these extensions. It remains uncertain whether President Hassan Sheikh Mohamud will push for the Federal Member States (FMS) to adhere to their constitutional term limits, or if he will take a more lenient stance, potentially uniting the leadership to allow for an extension of the federal government’s own tenure.

Amid growing concerns over famine and the ongoing campaign to eradicate Al-Shabaab, the political landscape in Somalia is becoming increasingly volatile. This situation risks escalating into a constitutional crisis that could destabilize the country. A similar scenario in 2021, when the previous FGS administration extended its term, resulted in armed clashes between government forces and opposition factions in Mogadishu. This move was also met with strong opposition from international partners.

This essay will examine the issue from both constitutional and legal perspectives, proposing potential solutions to address the current political challenges. Additionally, we will analyze the specific anomalies surrounding the term extension in South West State and suggest ways to resolve these issues.



Term Extensions by the FMS

The regional governments of Somalia have extended their terms in office by one year through motions presented to their respective state parliaments.

1. Hirshabelle:

On December 23, 2020, the Hirshabelle Regional Assembly amended the State Constitution, extending the terms of both the Parliament and the President from four (4) years to five (5) years. This amendment affected Articles 28 and 70 of the Constitution, which means that the terms of both the Parliament and the current President will now end on November 10, 2025.

2. Jubbaland:

On August 21, 2022, the House of Representatives of Jubbaland State amended the term lengths for both the House of Representatives and the President, extending their terms from four (4) years to five (5) years. Amendments were made to Articles 28 and 70 of the State Constitution. President Ahmed Madobe, who has held office since 2013 and was re-elected for a third term in 2019, will now serve until August 21, 2024, rather than the originally planned end date of August 21, 2023.

3. Galmudug:

On September 13, 2022, the Parliament of Galmudug amended the State Constitution, extending the term of government institutions from four (4) to five (5) years. This extension added one year to the term of both the President and the State Parliament. Amendments were made to Articles 32, 42, 49, and 54 of the Constitution, aligning the end of the terms with the new five-year period.

4. South West:

The term extension in South West differs from those in Hirshabelle, Jubbaland, and Galmudug. Unlike the other states, the South West House of Representatives did not amend the State Constitution. Article 39 of the South West Constitution explicitly states that the term of office for the House of Representatives is four (4) years. However, in a resolution passed on April 20, 2020, the South West Parliament decided to extend the term of the current President by one year and three months, resulting in a total term length of five years and three months for the President. The extension was made to align the elections of both the President and the second Parliament of South West, which is set to end in March 2024.

5. Puntland:

The Puntland State Constitution mandates that the term of office for both the House of Representatives and the Legislature is five (5) years. The Constitution specifies a five-year term for both the House of Representatives and the President.

FMS	Current Term	Date elected	End date	New date after term extension	Note
South-West	4 years	19/12/2018	18/12/2022	March 2024	Extension of one year and 3 months for the President only
Jubbaland	4 years	22/08/2019	21/08/2023	Aug 2024	One year extension - House of Representatives and President
Puntland	5 years	08/01/2019	07/01/2024	-----	
Galmudug	4 years	02/02/2020	01/02/2024	Feb 2025	One year extension - House of Representatives and President
Hirshabelle	4 years	11/11/2020	10/11/2024	Nov 2025	One year extension - House of Representatives and President

Constitutionality of Term Extensions

In this section, we examine the constitutionality of extending the terms of both the Federal Parliament and the Parliaments of the Federal Member States (FMS), as well as the power of these parliaments to extend the terms of the President and the executive.

1. Principle of Sovereignty:

Most modern constitutions around the world affirm that sovereignty rests with the people. The Constitution of the Federal Republic of Somalia reflects this principle clearly in Article 1 (2), stating: "Besides Allah SWT, all power belongs to the people, and they exercise it directly or through the institutions they have entrusted, in accordance with the Constitution and the laws." Additionally, Article 46 (1) stipulates: "The power of self-governance begins and ends with the people, by holding institutions and their representatives accountable when necessary."

For any decision made by Parliament to be constitutional, it must be rooted in the powers granted to it by the people, as enshrined in the Constitution. Furthermore, the constitutions of the regional governments are derived from the Federal Constitution and thus must align with its provisions.

2. Lack of Constitutional Authority:

The Federal Constitution of Somalia does not contain any provisions that empower Parliament to extend its term, which is set at four years. Nor does it provide any authority for the President or the Federal Government to extend their terms.

Similarly, the constitutions of the regional governments do not contain provisions that grant their parliaments the power to extend the terms of elected offices or allow Presidents to extend their terms.

3. International Legal Perspectives:

International constitutional experts generally agree that parliaments should not have the power to extend their own term limits, nor should they extend the term of the executive branch. Even if 100% of parliamentary members agree, such a decision would not be considered legal. The reasoning behind this is that the power to extend terms rests solely with the people. Any change to term limits should either be approved in a national referendum or through a temporary constituent assembly. Any extension outside of the original constitutional process is deemed invalid.

4. Provisions in the Federal Constitution:

As mentioned above, the Federal Constitution of Somalia does not authorize Parliament to extend its own term or the term of the President or the Executive. Articles 60 and 91 of the Constitution clearly specify that the term of office for the Federal Parliament and the President of the Federal Republic of Somalia is four years.

Similarly, the constitutions of most regional governments set the term of office for their parliaments and presidents at four years, with the exception of Puntland, where the Constitution (predating the Federal one) specifies a five-year term for both the House of Representatives and the President.

What, then, does the Constitution of Somalia say about the issue of extending the term of office for government branches?

5. The 1960 Constitution:

The Somali Constitution of 1960 addressed the issue of term extensions in a manner consistent with global democratic practices. Article 52 (1) of the 1960 Constitution states: "Each Legislative Branch shall be elected for a period of five (5) years, starting from the day the election results are declared. Any amendment to this term of office shall not affect the term of office of the Legislature that made this decision."

6. Exceptional Circumstances:

In principle, the Parliament cannot extend its constitutionally prescribed term, nor can it extend the term of the executive. However, exceptional circumstances may arise, such as situations where elections or a national referendum cannot be held. To address such scenarios, previous constitutions have made provisions for such contingencies. For example, Article 62 (3) of the 1979 Constitution, Article 59 (4) of the 1990 Constitution, and Article 131 (1) of the 2012 Federal Constitution include provisions to guide actions in the event of special circumstances that prevent the holding of elections or referendums.

Legality of Term Extensions

Do the parliaments have the right to extend their constitutional mandates, or to extend the terms of other government branches, such as the President or the Executive?

The answer is no. Neither the Federal Parliament nor the State Houses of Representatives have the constitutional authority to extend their own mandates or to extend the term of the President or the executive branch. The following points outline the reasons why:

1. The Social Contract between Citizens and Elected Representatives:

During the election campaign, citizens and candidates were fully aware that the term of office for elected representatives was fixed at four years, as explicitly stated in the constitution. This creates a social contract between the voters (citizens) and the elected representatives (Parliament). Therefore, it is illegal for Parliament alone to alter this contract without the approval of the people. Any changes to the agreed-upon terms must be submitted to the public for approval through a national referendum. The power to amend the term limits is vested in the people, not in the Parliament.

2. Politicians' Job Security and Public Interest:

The extension of terms is often viewed as a strategy by politicians to secure their positions and remain in office longer. Extending the term of regional governments by just one year serves no public interest or solution to a larger problem—other than allowing politicians to stay in power longer. The practice of extending terms is universally disliked and should not be within the power of Parliament.

Allowing such extensions would:

- *Weaken Accountability:* The ability of the people to hold their elected representatives accountable would be undermined. Regular, periodic elections are essential for ensuring that representatives remain responsive to their constituencies.
- *Undermine Democratic Principles:* Citizens' right to participate in their country's governance and to control the affairs of the state would be diluted. This would also erode the democratic culture and principles of representation enshrined in the constitution.
- *Diminish Political Motivation:* Allowing an extension of the term could diminish a parliamentarian's motivation to represent the people or advocate for national interests, as the fear of electoral accountability would no longer be a factor.

3. Process for Extending Terms:

If circumstances arise that necessitate a change in the term of office for the Legislature or the Executive, the proposed extension must be subject to approval by the people through a national referendum.

Such an extension would not apply to the incumbent Parliament or President, but would apply only to the next Parliament or President following the approval. This ensures that no sitting officeholder benefits from an extension decided by the previous legislature.

4. Somali Constitutional Practice:

A longstanding principle in Somali constitutional practice, as outlined in Article 52 (1) of the 1960 Constitution and subsequent constitutions, has established that changes to terms of office or other significant amendments must involve the people's approval and cannot be imposed unilaterally by Parliament.

5. Salaries and Allowances:

This principle also extends to the issue of salaries and allowances for elected officials. For example, if the legislature decides to increase the salaries or allowances of members of Parliament, the President, or ministers, such increases only apply to the next elected officials, not to the current officeholders. This prevents sitting representatives or executives from self-enriching by increasing their own financial benefits.

6. Preventing Abuse of Power:

The rationale behind this approach is to safeguard government institutions from potential abuse and prevent the normalization of practices such as unchecked power expansion. Without constitutional limits, elected officials could repeatedly extend their own terms or financial perks, thus undermining democratic principles and leading to possible authoritarian practices. The constitution must impose clear boundaries to prevent such abuses.



Extraordinary Circumstances that Warrant a Limited Term Extension

While the constitution generally restricts the extension of parliamentary terms, certain extraordinary circumstances may necessitate a temporary and limited extension. These situations, which may justify an extension of the usual four-year term, include:

a) National Emergencies:

In cases of large-scale national calamities, such as war or a major natural disaster, where urgent emergency measures are required, the extension of the parliamentary term may be justified. If these emergencies occur close to the end of the parliamentary term and elections have not yet been conducted, it may be impossible to hold a national referendum to approve or reject the proposed extension. The Somali Constitution acknowledges such situations in Article 131 (1), which outlines the provisions for addressing national emergencies that prevent normal democratic processes.

b) Inability to Elect a New President:

If, within the last thirty days of a president's term, the National Parliament or the parliaments of the regional governments are unable to elect a new president, or if the Parliament itself cannot function effectively due to its imminent expiration, an extension may be warranted. In such cases, the extension is needed to allow the necessary time to organize presidential elections and ensure continuity of governance.

c) Unexpected Presidential Vacancy:

If the newly elected President dies, resigns before taking office, or becomes permanently incapacitated, a limited extension may be necessary. In this situation, Parliament would require additional time to prepare for a new election and ensure the proper functioning of the executive branch. Such circumstances require a brief extension to facilitate the orderly transfer of power.

d) Delays in Presidential Swearing-In:

If the swearing-in ceremony of the newly elected President is delayed for any reason, Parliament may grant a short-term extension to allow for the formal inauguration. Such delays could arise from logistical challenges or other exceptional circumstances.

In all of these cases, any extension of the parliamentary term should be strictly limited in duration, ideally ranging from three months to a maximum of twelve months. Such extensions should only be enacted to address the immediate need for governance continuity and should not be seen as a permanent or broad-based solution.

The Rationale for State Election Alignment Questioned

It is important to address the issue of election alignment, especially in the context of the recent election, during which the President remained in office for over a year after his term expired. This raises several crucial questions:

a) Should the Legislative, Executive, and Presidential elections be held simultaneously, or should they be staggered?

b) Is it appropriate for government agencies whose mandates have expired to continue functioning after their terms have ended, thereby leaving one branch in charge while others are overdue for elections?

In evaluating these questions, it becomes clear that staggering elections might be more beneficial in maintaining order within the government. Holding separate elections allows for greater flexibility and avoids the complications of having all branches of government transition at the same time.

The election of the President in a state is generally considered more critical and complex than the election of members of the House of Representatives. The President is elected solely by the House of Representatives, a process that is simpler in comparison to organizing a broader election. As such, moving the presidential election to coincide with the parliamentary elections does not offer substantial benefits. It does not significantly save time or money, and it does not add any value to the overall election process.



OPTIONS: Ways to Resolve the Illegal Extensions

As discussed in Part II of this article, the term extensions of the Houses of Representatives, as well as the President's extended term, are unconstitutional because these changes were made without the approval of the people, as required by the Constitution. The term of office for both the President and the Houses of Representatives is clearly defined as four years. However, in light of the special circumstances facing the country, we must consider ways to address this situation and make the changes legally valid.

It is important to note that both the Federal Constitution and the constitutions of the regional governments are provisional, and their authority is based on temporary approval by the National Constituent Assembly and the People's Representatives of the regional governments. Therefore, any amendments made to these constitutions must return to the same process of provisional approval. Given that a national referendum cannot be held to approve these amendments, a Constituent Assembly could be formed to temporarily approve them, with two-thirds (2/3) of the total number of representatives in each council participating, along with representatives from Civil Society Organizations to ensure broad support.

OPTION I: Maintaining the Original Term Limits

The extension of the terms for the Houses of Representatives and Presidents should not be hastily implemented. Instead, the focus should be on ensuring that the term of office for the House of Representatives, the Federal President, and the Presidents of the regional governments remains unchanged until the Federal Constitution is completed and harmonized with the constitutions of the regional governments.

The constitution is not an ordinary law that can be easily amended at any time. It serves as the foundation of the country's legal system, with specific, more difficult procedures for amendments. If the current approach of the regional governments is adopted, it could lead to unregulated, inconsistent changes in the law.

OPTION II: A One-Year Term Extension for Stability

To address the political instability and turmoil, the Federal and Regional Governments may consider agreeing to a one-year term extension. Since a national referendum cannot be held, the following steps could help stabilize the situation and move toward a more structured legislative framework:

- a) Amend the constitutions of the Federal Government and the regional governments to extend the term of office for the two Houses of the Federal Parliament, the Federal President, the House of Representatives, and the Presidents of the regional governments to five years.
- b) Amendments should be approved by the Legislative Councils at both the federal and regional levels, which would be converted into Constituent Assemblies. These Assemblies would include additional members (more than two-thirds of the total number of representatives in each council) and Civil Society Organizations to help ensure broad representation and legitimacy.
- c) The resolution or act approving the constitutional amendment should explicitly state that the new five-year term will apply only to the next Parliament and Presidents, not to those currently in office. The election of new representatives and presidents will occur after the constitutionally mandated four-year term has ended, ensuring that the extension does not retroactively affect the current officeholders.

The South-West State's constitutional amendment differs from other regional governments in its approach to term extensions. South-West extended Article 50 of its Constitution by 15 months, concerning the term of office of the President. However, Article 39 regarding the term of the House of Representatives remains unchanged at four years. In contrast, other regional governments have extended both the President's and House of Representatives' terms by one year.

The House of Representatives amended Article 50 to include an additional clause (3), which states: *"The President of the SWS Regional Government, elected in 2018, will remain in office until the end of the House of Representatives' term in March 2024, with a presidential election to be held within 30 days after the new House of Representatives is sworn in."*

This amendment aligns the presidential and parliamentary election cycles, preventing any gaps in governance, where one branch's mandate expires before the other. Originally, the presidential election was scheduled for December 2022, while the House of Representatives still had over a year left in its term. This creating a situation where one government body would remain in office while the other was in transition, potentially avoid a power vacuum.

The April 20, 2020, resolution directs that the President, House of Representatives, and Executive Branch should all step down simultaneously and hold elections at the same time. The South-West government should reassess its decision to align presidential and parliamentary elections in the same cycle and ask whether:

1. It is more beneficial for the South-West to hold joint elections for the President, House of Representatives, and Executive Branch, as suggested by the April 2020 resolution?
2. Or would it be better to stagger the elections so that one government body remains in charge at all times, ensuring continuity?

The South-West faces two potential paths:

1. If the proposals for alignment are adopted, the South-West would mirror neighboring regional governments in terms of governance structure.
2. The South-West could develop its own unique model, engaging leaders, academics, and the community in a consultative process to establish a democratic and exemplary government.

Recommendations

- The South-West House of Representatives should reconsider and revoke the April 2020 resolution.
- If extending terms is preferred, amend the constitution to extend the term of office for both the House of Representatives (Article 39) and the President (Article 50) to five years, starting with the new session of the House and the election of a new President in March 2024 and December 2022, respectively.

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