

THE UPPER HOUSE OF SOMALIA

Constitution Anomaly, Constituency Imbalances
and Show Elections.



DECEMBER 2021

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Acronyms

AMISOM	African Union Mission in Somalia
CID	The Criminal Investigation Department
CPC	The Council of Presidential Candidates
EDRC	Election Dispute Resolution Committee.
FEIT	The Federal Electoral Implementation Committee.
FGS	Federal Government of Somalia
FMS	Federal Member States
FNP	The Forum for National Parties
HDMS	Hizbia Dastur Mustaqil Somalia
NCC	The National Consultative Council
NIEC	The National Independent Electoral Commission
NLF	National Leaders Forum
OPOV	One-Person, One-Vote
SEIT	The Federal Member State Electoral Management Committee.
UNSOM	United Nations Mission on Somalia

EXECUTIVE SUMMARY

The Upper House (UH) of Somalia is the Upper Chamber of the bicameral legislature of Somalia. Founded in 2016 and with 54 seats, together with the House of the People makes up the Federal Parliament of Somalia. Deliberating on proposed laws and representing the states are core functions of the upper House. However, the anomalies in the constitution in terms of Upper House composition and the de-facto nature of the Federal Member States (FMS) makes the Upper House performance and relevance worth deliberating.

The Constitution provides for a bicameral system, where proposed laws must be agreed to by two differently constituted houses of parliament. Upper House's legislative duties were hindered by constant infighting and endless disputes between the two houses which resulted in the Upper House completely suspending its work. Consequently, the Executive routinely ignored the Senate by establishing key national commissions and signing critical legislations without the consent of the Upper House.

The Senate, as presently constituted, is politically toothless and incapable of also representing the States in a meaningful way. Despite its efforts, the Upper House was ineffective to resolve recurrent FGS-FMS disputes and was also unable to protect the FMS from the Government interference in their state elections.

According to the Constitution, all FMS were supposed to have an equal number of representatives in the Upper House and the senators should be representative of all communities. However, some FMS are allocated more seats than other administrations while some communities are under-represented in the Upper House. The current Senate representation is neither fair nor constitutional. These disparities are the source of continuing tension and grievance.

The 2021 elections for the Somalia Upper House members were recently concluded. The senators election started in July 2021, more than a year after its originally scheduled, and took over four months to conclude. Overall, the total number of candidates in 2021 was less than 2016 candidates. The election was a show election where candidates cherry-picked by the presidents of the FMS and most of the seats were not contested. The hefty registration fee are also seen to be a major barrier to political participation. Vote-buying during the election was an open secret. Somalis hoped to get leaders who will respect the constitution and enhance the government capacity to deliver services to its citizens. Many observers acknowledged the 2021 Upper House election process dims that hope.

In order to make Upper House more relevant, representative and effective, the anomalies in constitution is to be rectified, FMS legal status revisited and addressed and all States and communities must be equally/equitably represented. Indirect elections should also be avoided in the future and independent commission should manage Upper House elections.

INTRODUCTION

Somalia is still struggling to establish viable democratic governance systems and credible elections to fulfil its citizens' aspirations. Aaran Center looks back at the creation of the Upper House in Somalia quest for a functioning parliamentary system and assesses the extent to which the 2021 Upper House electoral process was peaceful, free, and fair.

Aaran Center used a combination of qualitative research methods (interviews) and documents (secondary and primary) in preparing this paper. We have interviewed stakeholders including the member of the current and former FGS, former senators and MPs, electoral staff, and civil society representatives. The paper is organized into four sections:

Section 1 - In this section, we look back at the rationale behind UH creation, its constitutional role and composition. We look first at the anomalies in the Consideration and the justification for the imbalance distribution of Senate seats.

Section 2 - We briefly discuss the performance of the UH during its first term about its legislative and representative mandates. UH's working relationship with House of the People, executive oversight and FMS representation are reviewed in this section.

Section 3 - This section provides an assessment of the 2021 election to the extent it was a free and fair election compared to the 2016 election.

Section 4 - The final part summarises the key findings and outlines several recommendations on how to make UH more legit, clarify its constitutional role and improve its effectiveness and relevance.

*Representation
and election are
key issues for
this paper.*

SECTION 1: HISTORICAL CONTEXT

The Upper House of Somalia is the Upper Chamber of the bicameral legislature of Somalia. Together with the House of the People makes up the Federal Parliament of Somalia. Founded in 2016 and with 54 seats, the first Upper house senators were elected during the Somali parliamentary election held in late 2016.

The Rationale for Creating the Upper House

Historically, the issue of whether the state structure of the country should be unicameral (unitary state) or bicameral (federal state) is not new in Somalia. This was heavily discussed back in 1959-1960 during the debate and adoption of the New Constitution by the then political parties in preparation for the independence of the country. The political parties pro federal systems, such as Hizbia Dastur Mustaqil Somalia (HDMS), claimed that through federalism political stability, peace and security, reliable progress of social justice, economic development and the preservation of the traditional values of the nation and faith can constantly be achieved and preserved. Whereas the parties against federalism but for unitary state claimed that in the case of federalism with bicameral legislative a superstructure is required to be in place and the complex procedures are involved for the legislature to adopt the necessary laws.

After a lengthy debate, it was then opted and adopted the unicameral structure, which was seen simpler, speedier and far more favourable for the achievement of the then prevalent national objective for the liberation and unification of the remaining Somali territories under colonial rule.

After the state failed in 1991 and the subsequent prolonged civil war not only destroyed the fiber of state institutions but also revived the old rivalries of clannism that caused the loss of trust among the people of Somalia.

In the process of the quest for re-building the state, the same issues of a unitary or federal state with bicameral legislature refaced and were revisited. In 2004 agreement was reached that the federal system as the best structure to administer the country, appropriate to regain back the trust among the people and the right way forward to the devolution of the powers of the state to take closer to the people.

CONSTITUTIONAL ROLE

In a nutshell, the purpose of the Upper House, known also as the 2nd House, is to give a presentation and voice to FMS in the gestation of the affairs of the federation. The main legislative duties of the Upper House are listed in Article 71 of the Somali Provisional Federal Constitution of 2012. Accordingly, the job of senators is to represent their constituencies and the states they come from.

The Legal Status of the FMS

Before discussing the issues related to the FMS representation in the Upper House (UH), we find necessary overview few basic principles enshrined in Article 49 of the constitution that determine the establishment, the legal status of becoming a Federal Member State of the Somali Federation.

a) Art 49 (1) states that “the number and boundaries of the Federal Member States shall be determined by the House of the People of the Federal Parliament”. No law determining the number and boundaries of the FMS has ever been adopted by the House of the People (HoP) or ever tabled for consideration

b) Article 49 (4) states that “the number and the boundaries of the districts in a Federal Member State shall be determined by a law enacted by the parliament of the Federal Member State, which must be approved by the House of the People of the Federal Parliament”. No law determining the number and the boundaries of the districts in a Federal Member State has ever been enacted by the Parliament or ever tabled for its consideration.

c) Article 49 (5) states that: “Federal Member State boundaries shall be based on the boundaries of the administrative regions as they existed before 1991”. And para (6) of the same article states: “Based on a voluntary decision, two or more regions may merge to form a Federal Member State.”

In the absence of the laws indicated in the above, these basic principles have not been observed during the establishment process FMS of Jubaland, South-West, Galmudug and Hirshabelle nor the will of people of these regions were properly consulted about the regions they voluntarily merge with.

In looking back the process of the formation of these FMS, it becomes evident that (i) with considerable pressure from the then International Community the present formation was an imposition from the top void of the peoples’ will, and (ii) due to the lack of abiding by the constitutional principles stated above the present status of the FMS’s existence is just de facto and void of De Juris.

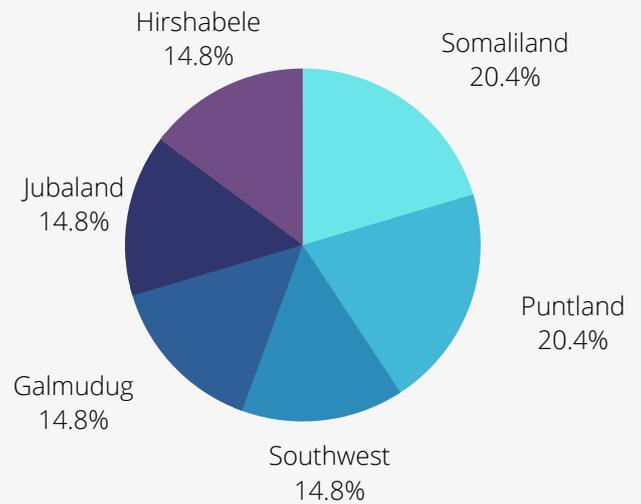


SENATE COMPOSITION

Anomalies in the Constitution and Clan States

Article 72 of the Provisional Constitution caps the number of Senators at 54 based on the eighteen (18) regions that existed in Somalia before 1991. The composition of the Senate shall also consider the number of the FMS and Somaliland, all FMS 'shall have an equal number of representatives in the Upper House of the Federal Parliament.' The Article also stipulates members of the UH shall be representative of all communities in the Republic of Somalia. Puntland and Somaliland have more seats than other administrations, each with 11 members. Four FMS (Hirshabelle, Galmudug, Southwest and Jubaland) have 8 members each. Banadir region is yet to have legal status thus not represented in the Senate.

To understand better the representation imbalances in the UH, it is worthwhile to look first at the anomalies in the Provisional Consideration and discuss how these imbalances occurred in the process of allocation of the UH seats to the FMS in 2016.



The Provisional Constitution-makers obtained the 54 seats that compose the UH by allocating three (3) seats for each of the 18 regions that pre-existed in 1991. At this junction, it is worth observing that the pre-1991 regions were drawn irrespective to the clans that populated the regions but merely as administrative border lines to service the population therein. The present complication effaced from how the regions composing some FMS, namely Puntland, Somaliland and Galmudug were reconfigured based on clan border lines instead of composing them based on the non-clan demarcations of pre-1991 administrative regions.

a) Although contested by Somaliland, Puntland's territorial claim at the present day is based on the former regions of Bari and Nugaal regions plus the Eastern part of Sanaag region, Easter part of Sool Region, half of the northern part of Mudug region and the District of Buuhoodle of Togdheer region. This clan borderline demarcation makes Puntland a Hartiland and a territory surely equivalent to three and a half (3½) regions or approximately four regions, which in line with Article 72 (1) gives Puntland approximately 11 representative seats in the Upper House which they are held since 2016.

b) Considering the territorial composition of Puntland indicated above, the remaining regions composing Somaliland are the pre-1991 regions of Awdal and Northwest, plus Part of Togdheer, Part of Sanaag region and part of the region of Sool. This clan borderline demarcation makes Somaliland a Northern Dirland, a territory equivalent to three and a half (3½) regions, which in line with Article 72 (1) gives Somaliland 11 representative seats in the UH which they are holding since 2016.

c) The next anomaly occurs in the regional composition of the State of Galmudug, which is not in line with Article 49 (6) which makes compulsory that: "Two or more regions may, on a voluntary decision, merge to form a Federal Member State." - in contrast, the State of Galmudug composed only with one and a half (1½) regions. This strict clan borderline demarcation makes Galmudug a Hawiyeland and a State territory, which in line with Article 72 (1), gives Galmudug State at most, a representation of five (5) seats in the UH instead of the actual eight (8) seats it is holding since 2016.

The states of Hirshabelle, Southwest and Jubaland were correctly composed of two or more pre-1991 regions in line with the Constitution.

- Hirshabelle is composed of two regions, Middle Shebelle and Hiraan, its rightful representation in the UH should have been six (6) seats in line with Article 72 (1) of the constitution and not the eight (8) seats it is holding since 2016.
- Southwest is composed of three regions, Lower Shebelle, Bay and Bakool, its representation in the UH should have been nine (9) seats in line with Article 72 (1) of the constitution instead of 8 seats.
- Similarly, Jubaland is also correctly composed of three regions, Middle Jubba, Lower Jubba and Gedo, its representation in the UH should have been nine (9) seats instead of 8 seats.

Senate Seats Allocation Process

In 2016, the National Leaders Forum (NLF) self-mandated to manage the 2016 elections including allocation of the UH seats to nascent FMS and Somaliland. Because of contradictions within the Article, the NCF has met the dilemma of whether to allocate the seats based on pre-1991 regions (as per Paragraph (4) of Article 72 of the Constitution) or FMS to have an equal number of seats (as per Paragraph (5) of the same Article). It became apparent that distributing 54 seats equitably and in line with the Constitution has become impossible without amendment. NLF considered several possible solutions among them:

Option 1: Increase the UH seats

The NLF considered increasing the number of the UH seats from 54 to almost 80 Seats to give representation to the most prominent clans. This proposal required constitutional amendment by the Parliament since the NLF had no constitutional authority to make such deliberation.

Following pressure by the international community, it was agreed that no changes to the number of seats would be made prior to the presidential election, subsequently, this proposal was dropped.[1]

Option 2: Postpone the UH creation

The NLF proposed to postpone one year for the election and establishment of the UH to allow the Parliament to correct the anomalies in Article 72 of the Constitution. Puntland and Somaliland vehemently opposed the postponement by threatening to boycott the House of People elections unless the UH issue is solved.

Option 3: Mogadishu status/representation

The Forum discussed but could not agree on the Status of Mogadishu and how many seats should be allocated in the UH.

[1]<https://www.garoweonline.com/en/news/somalia/somalias-national-leadership-forum-suspends-election-of-new-upper-house-members>

Because of the discrepancies of the geographic configuration of some FMS, it was eventually agreed the 54 seats be equally shared, nine seats for each FMS including Somaliland. After several weeks, Puntland President informed the NLF that he had difficulty in allocating the nine seats to the various main clans in the Puntland State since Somaliland is refusing to give out the share of the Warsangeli and Dhulbahnto of Sool and Sanaag regions. Likewise, Somaliland claimed that nine seats were not sufficient and need at least two additional seats exclusive for the Northern Dir only. Both Puntland and the Somaliland States again declared that they will not take part in the elections at all unless this issue is resolved thus throwing the entire election process into complete disarray.

As a goodwill gesture, the States of Jubbaland, Southwest, Galmudug and Hirshabelle decided each deduct one seat from their quota of nine and temporarily contribute two seats each to Puntland and Somaliland. It was agreed that as early as the next Parliament is sworn in to deliberate and amend Article 72 of the Constitution to ensure that all states and communities enjoy equal and equitable representation in the UH. This agreement was never tabled to the Federal Parliament.

Banadir Region.

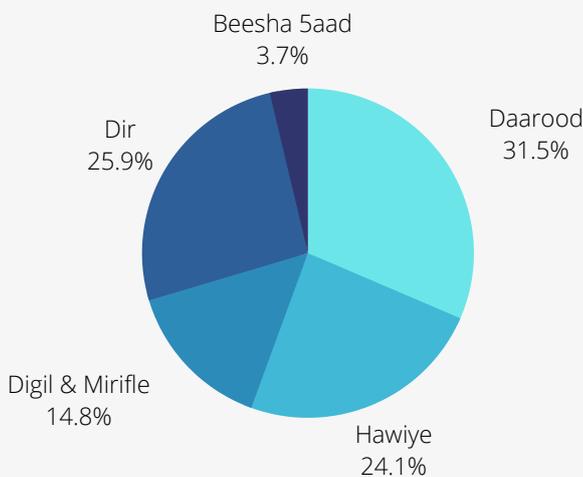
Mogadishu, or Benadir, is the capital city and most populous city of Somalia. Article 9 of the Constitution declares Mogadishu as Somalia capital city and it's legal status be determined through constitutional review process. But the review process has become a never-ending saga.

In 2016 the NLF discussed the Status of Mogadishu should be a Federal District with no representation in the Upper House or give FMS Status. A Parliamentary Ad Hoc Committee proposed seven seats, some Forum members proposed five seats while other members of the same Forum proposed fifteen seats to be shared in the power-sharing formula of 4.5. No decision could have arrived thus this issue was differed to be determined during the constitutional review process.

The House of the People on 27 June 2020 adopted a resolution on Mogadishu representation in the UH that grants thirteen (13) senators. Although, the Speaker of the UH opposed the resolution citing that the law requires a complete constitutional amendment, President Farmajo, on 28 January 2021, has penned a bill to represent the Benadir region in the UH - But this was seems as purely political stunt. The political agreement between the FMS and the FGS in Dhusamareb and Mogadishu did not address the issue of representing the Banadir region in the UH. Thus Benadir legal status and representation in UH remains controversial issue.

DISTRIBUTION OF SEATS

According to the Constitution, the members of the UH should be representative of all communities of the Federal Republic of Somalia. Each State adopted its formula for distributing its seats among its communities. The current UH Senate representation is neither fair nor constitutional. The Upper House is divided into Somali clans: Dir (14), Digil and Mirifle (8), Darod (17), Hawiye (13) and minorities with two seats. These disparities are the source of continuing tension and grievance.



During Arta Conference in Djibouti in 2000, Somali stakeholders adopted a political representation system formula (known as 4.5) that provided equal shares to the four large clans (Daarood, Dir, Hawiye and Digil & Mirifle) and a half share for a grouping of smaller clans. The 4.5 model was an attempt to sew together the social cleavages through guaranteed equitable political representation for all groups within society and as a bridging model to a more democratic representation. The 4.5 system is seen as a major stability factor, as it creates an equilibrium among the Somali clan families in the absence of an agreed alternative mechanism. The UH Senate representation is deeply undemocratic it confirms neither the constitution nor the agreed 4.5 formula. The distribution of Senate seats does not give equal representation to states nor is strictly based on population.

The distribution of UH seats is hotly contested as some states and communities are under-represented. Some clans (specially Digil & Mirifle and 5th Clan) are under represented in the UH. For example, in the 1956 election, the Digil & Mirifle clan represented by HDMS party were the second strong party winning 13 seats out of 70 seats. Now they were allocated only 15% of total UH seats. Southwest communities would like to see the UH seat allocation revisited. Members from the minority clans are systematically disadvantaged as well. While the 4.5 formula is far from justice and fairness. In the spirit of Article 72(c), if the 4.5 formula was applied as the basis for UH seat allocations, the minority groups should have received 5 seats instead of the 2 seats in the UH that they are currently allocated. Mogadishu population also remains unrepresented in national politics. National unity under these conditions of uneven representation seems a pipeline dream at best. Federalism was thought to require such a UH to prevent the legislature from being dominated by the larger state and protecting the interests of regional minorities - this is not the case in Somalia. UH does not accurately reflect social and political reality in Somalia. Therefore, Somali political elites need to figure out a way to break the cycle.

Somalia is heading to multiparty model democracy and one person one vote. A proportional representation of the seats in the UH apportioned based on state population size is worth exploring. Under PR, parties, groups, and independent candidates are elected to the UH in proportion to the number of votes they receive. Alternatively, all FMS must have an equal number of seats regardless of the size of the population. Any reference to pre-1991 regions should be removed from the Constitution as it is creating distortion. State-level parity and equitable community representation can be achieved when states and communities feel that they are adequately represented in the UH.

SECTION 2: PERFORMANCE OF THE UPPER HOUSE

After the creation of the UH, there was confusion over how the UH would increase with the devolution process in Somalia. Deliberating on proposed laws and representing the states are core functions of the UH. On 27 December 2016, the members of the two houses of the Somali parliament were sworn in together and it was the first time they had a joint meeting. The two houses have failed in their mandates to finalize the constitution, hold the government accountable, and deliver a one-man-one-vote election.

Ambiguity Legislative Role

The Constitution provides for a bicameral system, where proposed laws must be agreed to by two differently constituted houses of parliament, as a safeguard against misuse of the law-making power. The Senate certainly has the legislative or legal power to pass or reject bills. The Constitution also provides a method for resolving deadlocks if the Senate fails to pass a bill from the House of Representatives. During their term, the relationship of the two houses was marred by constant infighting and endless disputes, which resulted in the UH completely suspending its work for almost two years. There were several laws and appointment of national commissions which the UH was not part of it. Though UH speaker slammed these moves as unconstitutional[2], President Farmajo routinely ignored the UH, establishing key national commissions and signing critical legislation without the consent of the UH.[3]

Challenges in Representing States

Apart from their legislative powers, the UH was to ensure the interests of the states were adequately represented in the Federal Parliament. To link the national government to the FMS, the UH members are 'indirectly' elected by members of FMS assemblies. However, the links with the assemblies are not meaningful. Members of the UH who are elected by FMS assemblies have almost as little contact as their counterparts in Lower House. Although senators are elected by State parliaments, they do not vote along State lines.

The cooperation between the FGS and FMS has often stalled during their first mandate. The UH despite many efforts failed to end FGS and FMS bickering and to protect FMS from FGS interference in their state elections. The Senate, as presently constituted, it is incapable of representing the States in a meaningful way.

Political Power Struggle

There were also concerns that the emergence of two chambers of parliament would undermine the political power and prestige of the House of the People. The question was that the UH was not factored in the power-sharing system and therefore should not be involved in major political decisions. The UH does not have the executive power to make the government accountable. The executive is to be responsible to the House of Representatives only. The Somalia constitution is unclear in delineating the political roles of each house and in the absence of a court empowered to review such issues has led the two houses' differences to go on unresolved. The Speakers of the two Houses of the Federal Parliament has been at loggerheads in the past, and cooperation between the two Houses and the Speakers has come to a standstill. In January 2019, the UH issued a statement in which it declared that UH could not work with the House of Representatives and demanded the President intervention.[4] Their rift has reached the point where the House of Representatives speaker aligned with the Government and UH speaker aligned with the opposition group. The truce in July 2019 between the two speakers was short-lived as the speaker of the UH was barred from being part of the National Consultative Council (NCC) where national electoral issues were discussed

From the above discussion, it is clear UH was not so effective in discharging its legislative mandate nor able to adequately represent the interests of states and communities. Many ask if there is any need to have another legislative house in Somalia. This question is beyond the scope of this paper, but some argue the Senate is politically toothless and expensive.

[2] <https://www.thenewhumanitarian.org/news-feature/2021/5/20/somalias-political-crisis-explained>
[3] <https://ecfr.eu/article/somalias-election-impasse-a-crisis-of-state-building/>

[4] Upper House Standing Committee letter referenced GAS/B-10/KF4/04/2019. 1 January 2019

SECTION 3: UPPER HOUSE ELECTIONS

ELECTION PROCESSES AND ISSUES.

According to Article 72 of the Somali Constitution, the members of the Upper House are supposed to be elected through a direct, secret, and free ballot by the people of the FMS. In Somalia, there is no tradition of regular free elections therefore questions of electoral engineering come to the fore. Domestic and international actors pressure FGS and FMS leadership to hold at least some kind of election.

2016 Election

The 2016 electoral process is best defined as a political process with electoral features determined by the NLF agreement on the indirect elections model. The NLF established three electoral bodies with the mandate to oversee and implement the 2016 indirect electoral process.

The UH elections were conducted following the provisions of the NLF agreement. Members of the UH were elected by the FMS' parliament by secret ballot. FMS leaders were given the power to cherry-pick favourite candidates and limiting each seat to be contested only by two candidates set a wrong precedent. Multiple elections took place simultaneously in different FMS. The Galmudug state assembly was first to conduct an UH election on 16 October, followed by Southwest and Jubbaland on 19 October, Puntland on 20 October and the newly formed state of Hirshabelle on 9 November. Conducted under special arrangements, elections for Somaliland UH seats began on 8 January 2017 and were completed on 7 February 2017.

The 2016 indirect electoral process was largely completed peacefully but marred by many irregularities and incidents that resulted in the overall process falling short of Free and Fair 2016 Indirect Elections.[5] The UH election results largely reflect the political interest of the respective state president. Some argue the 2016 election model was seen as a stepping stone to help Somalis get to the next stage.[6] The 2021 elections were likewise marred by allegations of manipulation.

[5] <https://www.saferworld.org.uk/downloads/somalias-2016-electoral-process---deom-report-final.pdf>

[6] <https://www.saferworld.org.uk/en-stories-of-change/witnesses-to-somalias-democratisation-process>

2021 Election Preparations

The long, drawn-out process of achieving consensus on the 2021 electoral model, because of the dispute between FGS and FMS, leadership tensions between the two houses of the parliament, and FGS and opposition groups, had eaten up much of the time needed to prepare for the 2021 elections.

For more than three years, Farmajo's administration was vowing to hold a one-man, one-vote (OPOV) election – something that has happened just once in Somalia since it gained independence in 1960.[7]

The UN and Western donors pressed President Farmajo government to move toward a OPOV system for 2020-2021,[8] in part to address suggestions that indirect voting had opened up the 2016-2017 elections to manipulation and corruption. [9] In February 2020 Mohamed Farmajo signed legislation, passed by both houses of parliament, giving all citizens the right to vote in parliamentary elections. However, it was clear right from the onset that OPOV was largely not viable due to prevailing political and security conditions. Key stakeholders, including some FMS and opposition groups, rejected the law as un-implementable. Lack of preparations, the absence of political consensus, worsening health crisis caused by the Covid-19 pandemic was making it impossible to realize a universal suffrage election by early 2021.

Fundamental questions, such as the distribution of electoral constituencies for both Houses, women representation, Somaliland election process and Benadir representation in the UH were unaddressed. For that reason, a Joint parliamentary Ad Hoc Committee was established by the Federal Parliament to resolve those outstanding issues. At that point, however, it remained highly questionable though, that this Joint Ad Hoc Committee would come up with workable solutions.

[7] <https://www.aljazeera.com/news/2021/2/10/what-is-delaying-somalias-election>

[8] [https://undocs.org/S/RES/2472\(2019\)](https://undocs.org/S/RES/2472(2019)), UN: Security Council Press Statement on Elections in Somalia. 28 February 2020.

[9] <https://www.crisisgroup.org/africa/horn-africa/somalia/b163-staving-violence-around-somalias-elections>

In June 2020, the National Independent Electoral Commission (NIEC) announced that the committee couldn't organize the OPOV election in time citing the political crisis, insecurity, COVID-19, and humanitarian disasters as key factors scuttling OPOV elections.

Neither the universal suffrage election promised by the government nor an alternative modality was in place, and only a few short months remained from the constitutional mandates of the federal parliament and the president, the international partners started exerting pressure on FGS and FMS to find common ground. The Forum for National Parties (FNP) stressed the importance of engaging FMS in reaching a consensus on the national election model.[10] By late June 2020, leaders of the FGS and the FMS began meeting in Dhusamareb, the capital of Galmudug state and discussed how to create a workable electoral model. In August 2020, after three meetings, the FGS and FMS agreed on an indirect electoral modality that was broadly mirrored the 2016 elections. Both Somalis and international partners hailed the agreement as a breakthrough. The Dhusamareb agreement was later refined, and a new model was agreed in Mogadishu by all National Consultative Council (NCC) members on 17 September 2020. The model, commonly known as "The 17 September Mogadishu Agreement", become the basis for 2021 election and is similar to the framework for the 2016-2017 elections. The model was later endorsed in a joint parliamentary session on 26 September 2020 superseding the February 2020 OPOV electoral law. Subsequently, the FGS issued the "Procedure for the Implementation of the Agreement Guiding the 2020/2021 Elections at the Federal Level (3). The processes for filling the upper house (selected by the state assemblies) remain unchanged. The Council of Presidential Candidates (CPC) was formed in November 2020 as a group of 14 presidential candidates following the scrapping of OPOV electoral model and adoption of indirect elections.

[10]The FNP – an alliance of political parties - was founded in October 2019. The alliance has been formed ahead of the 2021 Somali elections in anticipation of holding one-man one vote elections.

Disagreements over the implementation of the 2021 Election Model` came to the fore when the FGS appointed the election governing body, the Federal Electoral Implementation Team (FEIT). Puntland, Jubbaland and an opposition umbrella group rejected the FIET - they alleged that FEIT members are drawn from the office of the president, security agencies and the diplomatic corps. Other points of contention have also arisen; The UH speaker, Abdi Hashi Abdillahi, rejected the FGS-appointed electoral management body for Somaliland's parliamentary seats and Jubaland state opposed how to handle the 16 parliamentary seats allocated for Gedo region.

FGS and FMS held emergency talks over the election crisis in Dhusamareb on February 3, 2021.[11] Stakeholders failed to compromise on the contentious issues. On 6th February 2021, at an emergency parliament meeting, President Farmajo accused the regional leaders and foreign entities of the stalemate. On 12th April 2021, the House of the Representatives introduced unilaterally (with the absence of the Upper House) and endorsed a resolution that extended the president's mandate by two years. The President signed the resolution instantly. On 25 April, the political impasse exploded into violence sparking gun battles on the streets of Mogadishu.[12]

On May 1, under mounting local and international pressure, the president reversed the mandate extension and the House of the Representatives met again and repealed its previous (extension) decision. On the same day, the president publicly handed over the election and security management to the Prime Minister. This was a turning point. On May 27, members of the National Consultative Council (NCC) signed an election agreement in Mogadishu. The agreement, which consists of eight procedures and a roadmap for the post-election government, addresses the core outstanding issues of the indirect elections.

[11] <https://www.dw.com/en/somalia-holds-emergency-talks-over-election-crisis>

[12] <https://www.aljazeera.com/news/2021/4/12/somalias-parliament-votes-to-extend-embattled-presidents-term>

Election Governing Bodies

Somalia has established temporary and separate election governing bodies that function only during the 2021 election at the national level and in each state, namely.

- The Federal Electoral Implementation Committee (FEIT), mandated to oversee the electoral process to ensure that it takes place uniformly and to align 2016 procedures with the 2020/2021 electoral process and to issue these procedures. FEIT was composed of 22 members and is based in Mogadishu.
- The Federal Member State Electoral Management Committee (FMS-EMC). Each FMS-EMC had 11 members and implemented the elections in their respective FMS under the supervision of FEIT.

The FEIT should have consisted of technocrats with no political affiliation and should be of proven integrity, competent, and impartial. Forming such a committee of technocrats has not been the strategy of the Government. As consequence, the credibility of the FEIT and EMC are compromised by the perception of being aligned with the incumbent government. Opposition groups have demanded a total overhaul of the electoral committees. They alleged that the FEIT members were either biased, were associates of the president, or were out to rig the election.[13] The composition of the FEIT initially included government officials and Government loyalists. Opposition groups demanded reform that would remove Government influence. In June election committees were reformed and some members were replaced.

State Parliaments

Except for the Somaliland senators, State parliaments elect members of the UH. The speakers of the respective State Parliament administered the election of UH senators and announced the results. The UH election took place in FMS capitals; Garowe, Dhusamareb, Jowhar, Baidoa and Kismayo while the Somaliland election took place in Mogadishu. The total number of state parliamentarians who elected the 54 senators were 413 members. It is worth noting that the total number of state parliamentarians who took part in the 2021 UH election was less than in 2016. Southwest state parliamentarian numbers were reduced from 149 to 95 to align with the State constitution.

The importance of the state parliamentarians in the lead up to the UH election was one of the key contentious issues between FMS and FGS. FGS embarked on a campaign of parliamentary gerrymandering, rigging FMS elections to install loyalist MPs.[14] FGS meddling in state elections resulted in the installation of compliant allies in Southwest, Hirshabele and Galmudug which was aimed to improve President Farmajo's prospects for re-election. Consequently, Southwest, Hirshabele and Galmudug leaders have closely aligned themselves with FGS whereas Jubaland and Puntland are aligned with the opposition groups. We will briefly review how each state managed the UH election in more detail in the following section.

The Election Process

The elections for the members of the UH were managed by ad-hoc electoral committees established by each FMS' state parliament. Upon candidate nominations for each seat, the state assemblies voted for each seat individually.

- The State Electoral Commission (SEC) sends a written request to the FMS Presidents to nominate at least two candidates for each Upper House seat.
- The FMS president sends a list of candidates contesting all seats in the Upper House of the State, to the Electoral Commission
- The Commission shall ensure representation of women at least 30%.
- Registration fee for male candidates is set a \$20,000 and \$10,000 for female candidates
- The Commission publishes the timetable for the UH election for each seat.
- Any candidate who gets 50%+1 wins the election. If none of the candidates wins 50%+1 in the first round, then the two candidates with the most votes advance to the second round. The second round shall win by the candidate who receives 50%+1 votes.

[13] Daily Nation, Somalia's Opposition Calls For Dissolution Of Electoral Teams. 27 November 2020

[14] <https://ecfr.eu/article/somalias-election-impasse-a-crisis-of-state-building/>

Candidate Selection and campaigning

The state presidents nominated candidates for the UH, giving them effective control over who would occupy the seat. Although a minimum of two candidates had to be nominated per seat, the state presidents adopted a similar approach by nominating a preferred candidate and one proxy candidate with the outcome thus agreed in advance. In almost all senate seats, the proxy candidates withdrew during the election leaving a single candidate to win the seat unopposed.

In terms of political participation, overall, the total number of candidates in 2021 there were 6% less than 2016 UH candidates. Candidates in Jubaland, Puntland and Galmudug decreased by 20%, 24% and 16% respectively. In contrast, Hirshabele candidates increased by 57% while Southwest remained the same. One to seven candidates contested each UH seat. The least contested seat was the seat of the former UH speaker, Senator Abdi Hashi. Initially, it was proposed that he will contest the seat unopposed and then on the election night a proxy candidate was proposed but he also withdrew from the race, allowing Senator Abid Hashi to be elected unopposed. In contrast, the most contested seat was in Hirshabele where up to 7 candidates contested in one seat which also become the most controversial seat resulting in its election being postponed multiple times.

Once the FMS leader announces the list of a candidate, the process is concluded within a short period – usually 3 days. One day for registration, one day for speech and 3rd day for the election. Before voting, candidates were allowed 15 minutes to present their respective speeches and political agendas before the FMS MPs. Leaving no time for campaigning.

Although there were many eligible candidates who met the criteria set by the FEIT they were not considered because of their political stand. This is one of the main shortcomings of the indirect election. The cherry-picking process was intended to influence the presidential election. It does not seem much consideration to be given the effective representation of the FMS and communities post-presidential election. Depriving a citizen to be elected is unconstitutional and immoral.

The UH elections were held at the parliamentary buildings in each of the FMS. Somaliland election was held in Mogadishu. Total 128 candidates contested 54 seats. 27% of candidates were women. Hirshabele had the highest number of candidates (33 candidates for 8 seats) -double of 2016 candidates.

FMS	No Seats	Candidates		Senators elected		
		M	F	M	F	Female (%)
Jubaland	8	10	6	6	2	25%
Southwest	8	12	4	6	2	25%
Puntland	11	15	7	8	3	27%
Galmudug	8	12	4	6	2	25%
Hirshabele	8	27	6	6	2	25%
Somaliland	11	18	7	8	3	27%
TOTAL	54	94	34	40	14	26%



ELECTION TIMELINE

The UH senators' election started in July 2021, more than a year after its originally set date, and took over four months to conclude. After repeated delays UH members election started on 29 July 2021 in Kismayo and concluded on 13 November 2021 in Dhusamareb. The delay was caused by some FMS leaders who decided to withhold some seats for unknown reasons. Puntland and Southwest were able to complete the election within a month while Jubaland and Galmudug took four months from start to finish of the UH election in their state.

FMS	START DATE	END DATE
JUBALAND	29 JULY 2021	21 OCTOBER 2021
SOUTHWEST	2 AUGUST 2021	15 AUGUST 2021
PUNTLAND	11 AUGUST 2021	12 AUGUST 2021
GALMUDUG	12 AUGUST 2021	13 NOVEMBER 2021
HIRSHABELE	14 SEPTEMBER 2021	4 OCTOBER 2021
SOMALILAND	29 SEPTEMBER 2021	30 SEPTEMBER 2021

Despite prolonged delays, In general, the UH election was peaceful. There were no critical incidents during the UH election period. However, the election is at best described as show election, with most candidates cherry-picked by the presidents of the states. Vote-buying and nepotism during the UH election was also an open secret.

Jubaland

Jubaland state kicked off the elections for the UH putting electoral plans back on track after a prolonged period of uncertainty and political crisis. The Jubaland President Ahmed Madobe released nine contenders for the first four seats, delaying the announcement of contenders for the other four seats.[15] Jubaland State parliament elected 4 out of its allocated 8 seats on July 29, becoming the first members of the 11th Upper House of Parliament. After International Community pressure, the Jubaland parliament has concluded the election of the remaining four seats on 21 October. Only two incumbent candidates were re-elected, the rest are new senators.

Puntland

On August 10, Puntland President Said Abdullahi Deni has released the list of candidates vying for Puntland's 11 seats in the UH. The candidates released by President Deni were mostly new and were members of the Puntland cabinet including a governor. Only two former senators were included in the list of candidates while other prominent politicians, like two-time prime minister Omar Abdirashid, were sidelined.[16]

The Puntland regional parliament elected 11 senators in two consecutive days (11-12 August) becoming the first administration to complete the upper house elections. The election process was perfectly choreographed. Nine of the candidates were elected without contest after their 'proxy' candidates withdrew from the race. Only two candidates went through a one-round election were each received around 80% of the 66 votes.

Southwest

The Southwest State elected 5 out of its allocated 8 seats on August 2. The remaining 3 seats were elected on 15 August Southwest becoming the 2nd state to complete the Senate election process. The UH election for Southwest was marred by allegations of nepotism and other forms of favouritism. President Laftagareen was accused of running the Southwest administration as his personal domain by nominating family members and close allies to the UH seats.

Hirshabele

On September 8, 2021, The President of Hirshabele Ali Gudlawe has released the list of candidates for the eight UH seats from Hirshabele. Unlike the other States, Hirshabele State, despite its parliament and president being handpicked by the FGS in late 2020, made the election open allowing all candidates to contest. Over 30 candidates contested the eight Hirshabele UH seats. The main reason Hirshabele's election was different from other administrations were that a large number of national security forces who opposed President Farmajo's term extension were present in Jowhar and they threatened that they will take action if the election was rigged. In addition to that, President Gudlawe was facing the Beledweyne people opposition to his government, therefore he was forced to keep the election process open for all candidates. A scuffle broke out among the Hirshabele MPs and the lights in the polling station were turned off during the counting of votes for one of the UH seats. After mediation, the seat election was elected on October 4.

Galmudug

On August 12, 2021, The Galmudug state parliament has, by a show of hands, elected six Senators. After much domestic and international pressure, Galmudug eventually concluded the UH election on 13 November – becoming the last State to elect UH senators. There were not contest for all eight UH seats in Galmudug – all proxy candidate withdrew their candidacy leaving remaining candidate elected unopposed. This also concluded the election of the 54 seats of the UH. As many as 50% of senators were incumbent senators who were re-elected and many described this as President Qorqor repaying his political friends for their support.

[15] <https://www.theeastafrican.co.ke/tea/news/east-africa/jubaland-elects-senators-to-somalia-parliament-3491104>

[16] Hiiraan Online: Barlamaanka Puntland oo Doortay Xiidhibaanada Puntland u Matalaya Barlamaanka Aqalka Sare. Aug 11, 2021.

Somaliland

Lawmakers from Somaliland, including the senators, are elected in Mogadishu. The presidential candidate who has Somaliland's backing stands a good chance of being elected president. For that reason, Somaliland's Senators elections has become the bone contentious national election issue. Former UH Speaker Abdi Hashi and Deputy Prime Minister Mahdi Guled, a close ally of President Farmajo, have been embroiled in controversy for some time over how to manage the election of Somaliland and nomination of the Somaliland electoral committee.

The SEIT for the Somaliland parliamentary caucus are appointed by the FGS prime minister for procedural reasons. In November 2020, the Prime Minister nominated an 11-member election committee to select members from Somaliland for both houses of parliament. This was followed by months of dispute over the chairmanship of the committee - members nominated by Former Speaker Abdi Hashi and Deputy Prime Minister Mahdi Guled split, with each electing a separate electoral commission chair. On September 5, 2021, both have reached an agreement on the election dispute and committed to unifying the election committee and on 19 September they issued the Electoral Procedures whereby 46-member delegation from the 23 nominated by traditional elders and 23 members selected by the signatories to elect members of the Upper House and MPs. On 29 and 30 September, all seats in UH Somaliland were elected in Mogadishu, with Abdi Hashi Abdullahi becoming the first senator to be elected.

Women Quota

In June 2020, Somalia's parliament approved a bill allowing for 30% of parliamentary seats to be reserved for women. President Farmajo and FMS leaders signed an electoral agreement in September which included the 30% quota. At least 17 seats out of 54 seats in the UH is needed to achieve the 30% women quota. There was no clear mechanism for reaching that target in the 2021 federal elections.[17] In July, the Prime Minister appointed 13-member committee as Goodwill Ambassadors to promote and oversee the 30% women quota.[18] Female candidates represented 27% of all candidates in the 2021 UH election— an increase of 2% from 2016. The increase was mainly due to the drop in the number of male candidates. Overall, the total number of women candidates remained the same. However, women representation in the UH increased by 2% from 24% to 26%. This is mainly due to one additional seat from Jubaland in which in 2016 Jubaland has only 1 female representation.

Dispute Resolution Process

The Electoral Dispute Resolution Committee (EDRC) was mandated to address all election-related disputes/complaints. The EDRC is composed of twenty-one (21) members, 9 of whom are nominated by FGS, while the other 12 members are nominated by FMS and Somaliland, two each. A person whose application for candidacy was rejected or not accepted may file a complaint following the EDRC procedures. Although there were informal complaints and some aired their complaint through media, there were no official complaints registered with EDRC.

Security

In general, the UH election was peaceful. There were no critical incidents during the UH election period. However, in Hirshabele there were clashes and disturbances in the election hall as disgruntled members objected to the results of the first round of one of the UH seats. During the counting process, electricity and microphones at the polling station were turned off and the election for the seat was called off. This was later resolved.

Observers

Senators are usually elected by local legislators in the federal states under the watch of the local electoral commission in conjunction with the federal polls team. A coalition of seven civil society organizations observed the UH election as domestic observers.

Domestic observers find UH elections marred by uncompetitive contests and extensive delays. External observers play a fundamental role in promoting transparency and accountability in the electoral process, as well as improving voter confidence in Somalia. However, only the Somaliland UH election was observed by Prime Minister Roble and UN Special Envoy James Swan. The international community wary about the delay of the election welcomed the conclusion of the UH election and did not raise any concerns publicly about the corruption that marred the election. For the international community the completion of Somalia elections were more important than the election fairness or transparency.

[17] <https://reliefweb.int/report/somalia/crucial-election-plans-somalia-now-advancing-following-period-uncertainty-special>

[18] <https://www.caasimada.net/aqriso-magacyada-rooble-oo-magacaabay-guddi-cusub-oo-qaabilsan-qeyb-kamid-ah-heshiiskii-doorashada/>

Alleged bribery, nepotism, and corruption

The election of the UH have started in a corrupt manner, with most candidates cherry-picked by the presidents of the states. FMS leaders vet candidates and approve only those deemed acceptable to them.

Though the President is normally elected in a joint seating of both Houses, and UH represents only 16% of the total votes for the presidential election, having more senators in a presidential candidate's camp grants the presidential candidate one foot in power. Each of the five FMS presidents nominated only those that toe the line. Claims of favouritism have marred Somalia's senate elections and outspoken opposition politicians were elbowed out of the nomination process.

Somalia is one of the poorest countries in the world with a poverty rate of 71%. The hefty registration fee of \$20,000 for male candidates and \$10,000 for female candidates are seen to be a major barrier to political participation. Observers argue the exorbitant amount will make government seats exclusive to wealthy elites and/or those who can successfully mobilise local and international sponsors in exchange for political favours.[19] Some critics indicated that candidates secured campaign funds from Somali leaders who were themselves, presidential candidates. Over \$2m were collected as part of the registration process. Hirshabele collected the highest amount (\$600,000) as it allowed more candidates to contest. The non-refundable registration fee is supposed to be used to pay expenses related to the implementation of the electoral process at the federal and member state level. But there is no transparency around how these funds are utilized.

Candidate Fees			
State	Candidates		Total
	M	F	
Jubaland	200,000	60,000	260,000
Southwest	240,000	40,000	280,000
Puntland	300,000	70,000	370,000
Galmudug	240,000	40,000	280,000
Hirshabele	540,000	60,000	600,000
Somaliland	360,000	70,000	430,000
TOTAL			2,220,000

Vote-buying during the UH election was an open secret. All FMS administrations are actively involved in vote-buying from state parliamentarians in monetary exchange. According to sources at the Somaliland polling station, all the candidates have paid various fees to 46 delegates and traditional elders. Three of the first six seats are believed to be hotly contested. An eyewitness at the elders' compound confirmed that some candidates had paid \$2,000 to \$4,000 per delegate.[20] According to reliable sources interviewed, the Jubaland administration paid a total of \$20,000, in two instalments, to each state parliamentarian. Candidates separately paid around from 500 to 1500 to each parliamentarian.[21] In Puntland, it was alleged that the Puntland administration paid more than \$2m to the state MPs to elected hand-picked candidates.[21] Southwest MPs were paid \$3,000 each[23] and Galmudug MPs were also paid an undisclosed amount. In Hirshabele the situation was different. Hirshabele leadership stayed away from the candidate campaigning. Candidates were directly vying for votes from the state MPs. According to several people interviewed candidates paid between \$1000 and \$4000 to each state MP. Another source confirmed to Aaran Center on average Hirshabele state MPs may have netted around \$40,000 each during the UH election.[24]

The autonomy of state parliaments is grossly undermined as consequence of vote-buying practice. Since getting paid for their votes state MPs have no autonomy to cast the vote that they truly want and vote buying creates a dependency of voters on the income that they are receiving for their votes. On the other hand, the most corrupt politicians who are engaging in vote-buying, remain the ones that dictate how the country is going to be run. This, in turn, perpetuates corruption in the system even further.

[19] <https://reliefweb.int/report/somalia/somali-political-crisis-calls-question-its-transitional-plan>

[20] <https://puntlandtimes.ca/2021/09/hordhac-yaa-soo-baxaya-kuraasta-aqalka-sare-ee-somaliland-dhaqaalaha-labaxshay/>

[21] Interview, Kismayo 28 Nov 2021

[22] Interview with prominent politician, Garowe, 20 Nov 2021

[23] Interview, Baidoa 25 Nov 2021

[24] multiple interviews Mogadishu Nov 28, 2021

CONCLUSION

One of the key function of the UH is to represent states within the national parliament. Most of the FMS that UH was supposed to represent were not legally constituted and their state constitutions are not harmonized with the Somalia Federal Constitution. On the other hand, the UH Senate representation is deeply undemocratic. The distribution of Senate seats neither gives equal representation to states nor is representative of all communities.

The relationship between the two houses was marred by constant infighting and endless disputes, which resulted Upper House not being able to discharge it's legislative role. There were several laws and the appointment of national committees which the UH was not part of it. The UH was inept to mend the bickering between FGS and FMS, and was also powerless to protect the FMS from the FGS interference in their state elections. The Senate, as presently constituted, it is incapable of representing the States in a meaningful way.

The 2021 UH Election has not improved from the 2016 elections. FMS leaders had unprecedented power, they designed the election model and its procedures, nominated election committees, vetted UH candidates and they also financed the candidate campaign. While this is a federal level election the undue influence of the FMS leadership not only prolongs the democratization process in Somalia but is also hinders state-building and citizen political participation. The sham senatorial election driven by nepotism, patronage and favouritism sets a bad precedence for the future national federal elections. While some may argue, for Somalia having no election is better to have a show election. If this trend continues into the next election, we will witness a huge setback for Somalia to achieve democracy, economic development and political stability.

RECOMMENDATION

1. The incoming government to amend Article 72 of the Constitution to ensure that all states and communities enjoy equal and equitable representation in the UH.
2. Benadir status and representation to be addressed in the first year of the new government.
3. The legal status of the Federal Member States needs to be rectified:
 - The law determining the number and boundaries of the FMS has to be adopted by the House of the People (HoP).
 - the law determining the number and the boundaries of the districts in a Federal Member State has to be enacted by the Parliament.
4. Establishing a regular election cycle, the development and professionalization of opposition parties and empowering the electorate is crucial for the stabilization of democracy and the prevention of violence.
5. In terms of electoral administration, the National Electoral Commission (NEC) should be well-equipped to carry out its task. These commission members are to be revised to ensure they consist of technocrats, non-partisan credible and impartial and with integrity.
6. Finally, there should be no limit to the number of candidates to UH provided that they fulfil the candidate criteria.

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