

Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

Horn of africa bulletin [Vol 22 No.5.May 2010]

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Journal
Authors	Kibui, Olivia
Publisher	Life & Peace Institute
Rights	With permission of the license/copyright holder
Download date	2026-07-04 00:14:26
Link to Item	http://hdl.handle.net/20.500.12424/180556



HORN OF AFRICA BULLETIN

ANALYSES • CONTEXT • CONNECTIONS

Analyses

- **The constitution-making process for Somalia: issues and challenges**

News and events

Resources

The constitution-making process for Somalia: issues and challenges

Introduction

Since the break out of the Somali civil war in early 1991, various peace agreements that served as ‘Charters’ or ‘Constitutions’ have been drafted outside Somalia. The northern regions, ‘Somaliland’ and ‘Puntland,’ have also drafted and passed their own constitutions - drafted inside the country. Out of these, the current constitution-making process has been the most recent drawing its mandate from the Transitional Federal Charter (TFC) agreed upon by the Somali participants at Mbagathi¹ in September 2003. From 2004, the constitution making process impeded by a political crisis stalled any progress; however, since the formation of a new government, taking over from the same Transitional Federal Government (TFG), in 2009 its progress has quickened.

Undeniably, the process has faced challenges that make it complicated. One of these is the fact that the process has turned into a debate whose argument is that the constitution-making process is the real peace process. The current process also faces the dilemma of the preferred form of government in particular the concept of federalism and its application in the country. Other issues that pose a challenge include; the role of Sharia law; participation within the drafting process – the actors and their different roles; and the place of ‘Somaliland’ and ‘Puntland’ among others. With this background, this article aims at providing an overview of the process. It will try to shed more light on what the key issues and challenges are. Finally, the article will draw some recommendations for those involved in the process.

An overview of the process

The concept of constitution-making in the country’s history is not new and it began with the liberation struggle-oriented constitution of the Somali Youth League (SYL) followed by the Italian-drafted 1960 Somali constitution. This was replaced by the military regime of 1969 – 1990 which drafted two constitutions: the 1979 and the 1990.

In 1995, the European Commission (EC) commissioned the London School of Economics (LSE) to conduct an extensive research and study about the implications of different ways of decentralising political authority in Somalia.² The study³ presented a menu of options for setting up decentralized political structures and forms of government which have sided with no special group or affiliation in Somalia. The report presented four decentralized models of governance: a confederation system; a federal system; a decentralized unitary system with guarantees of regional or local autonomy; and a consociation system, which is a non-territorial option. Other than the north-eastern regions that have embraced the study's findings in 1998, the process did not lead to any tangible results. This was partly because the whole 'building blocks' concept spearheaded by Ethiopia, under the auspices of the former Organization of African Union (OAU)- now the African Union (AU) and the Inter-Governmental Authority on Development (IGAD), was opposed by much of South-central Somalia.⁴

This current process is led by the TFG's Ministry of Constitutional and Federal Affairs with support from the UN Development Programme (UNDP) Somalia's constitution-making support project which, in line with the stipulations of the TFC, aims to promote reconciliation, peace and stability through a constitution-making process at the federal level. While UNDP closely works with a group of international NGOs called the Consortium and which is charged to provide technical assistance at the various stages of the process, the Independent Federal Constitution Commission (IFCC) and the Parliamentary Constitutional Committee (PCC) closely work with the Ministry with the IFCC taking the lead in terms of drafting the new constitution. In addition to the Consortium, UNDP has an international consultant charged to advise the Ministry and the process and who is himself of ethnic Somali. The tentative deadline to produce a *Sharia*-compliant federal draft constitution is before the end of 2010.

The constitution team drafted a roadmap on how to achieve this and it was approved by the cabinet and the parliament. The IFCC is now in Djibouti working on the drafting process. During the past two and a half years, two key workshops were also held: one on federalism (Nairobi, November 2008) and another on the role of *Sharia* (Djibouti, 2010) in the Somali constitution. Both workshops brought together field experts on the subject matter and provided the opportunity to deliberate on the two key issues and make recommendations. The recommendations were presented to the constitution team and they will form part of the process.

The mission of this large inter-agency group is to facilitate the steps necessary for producing a legitimate *Sharia*-compliant constitution with broad popular Somali support, which articulates a common vision of the future state of Somalia. While the international community has had concerns regarding the incorporation of human rights norms and standards; the concerns of – for example the protection of – women and marginalized clans, sub-clans and sub sub-clans; likewise, Somali actors beyond the process also have their concerns. These include; the form of governance for Somalia and in which way; the role of *Sharia*; constitution-making without external assistance; the provision of a forum for negotiation on divisive and/or contested issues, and lastly, the applying and upholding the constitution once agreed on.

Issues, challenges and recommendations

As was earlier mentioned, since the process of constitution-making began in Somalia, a number of issues and challenges emerged from the process. For example, what the preferred form of governance in a lawless Somalia context is; the applicability of federalism in Somalia; the role and compliance of *Sharia* law; the issue of participation within the process; and the role(s) of 'Somaliland' and 'Puntland' in a *Sharia*-compliant Somali constitution among others.

Federalism, and its applicability to Somalia, has been the most contentious issue in the debate. This is a more decentralised form of governance which is preferred

in *inter-riverine* regions and in 'Puntland.' For the people of Bay and Bakol regions of southern Somalia, federalism has been the preferred mode of governance from the late 1930s while the 'Puntland' regions embraced the concept only from the late 1990s. This is, however, opposed by the clans residing in much of South-central Somalia including Mogadishu, the capital. While the historical enmity against a more centralized system plays its role in this federalist-based thinking, the term 'federalism' is not clearly understood in Somalia. Many including some of its proponents also question its applicability.⁵ There have been different initiatives to study it further but none of them strongly recommended it as the best way for Somalia. Instead, various scholars and analysts opted to compare and contrast the advantages and disadvantages. In a nutshell, there is a general agreement that many Somalis would prefer federalism not that they see it applicable to the lawless country but basically because they are fed up with a strong centralised system of governance.

Second, the role and compliance of *Sharia* law is also debated among Somalis and non-Somali actors alike. For example, groups like *Alshabab* and *Hisbul Islam* believe there is no need for a constitution as the holy Koran offers direction, while the TFG and other Somali actors (including civil society and the Diaspora) argue that there is a need for one but with *Sharia* compliance so that it does not contradict Islam since Somalia is an Islamic state. Members of the international community including regional actors are also concerned that *Sharia* compliance may deny the space needed for the inclusion of human rights issues into the Constitution. There is, however, a general agreement that the *Sharia*-compliance language has to do with the inclusion of the five (5) universal Islamic principles⁶ into the main Constitution document while its application is the duty of the courts that will detail its meaning and interpretation.

Third, the issue of participation within the process raises one important question: whose mandate is it to draft a constitution? The mandate aside, the TFG was wrong to let the relevant ministry and other actors to draft a federal constitution. Instead, the government could have asked the Ministry and other actors involved in the process to draft a *Sharia*-compliant Somali constitution and provide the required space for citizens to say what kind of a constitution they need. One other problem is that the process of consultation is very minimal. As of now, very few Somalis are involved in the process. For example, members of the civil society and the Diaspora are not fully engaged and the drafting process has already started in Djibouti and a draft constitution expected by the end of June this year. The British Broadcasting Corporation (BBC) Somali service is one great channel of communication that is available to create awareness and it can offer a platform for debate on the challenge and opportunities that exist for the process. The Ministry and other stakeholders can also visit various foreign capitals and engage the Diaspora by explaining the process and asking for their inputs. Other avenues to take the draft constitution back to the people and revise any contentious issues include the possibility of setting up a panel of Somali experts that can look at it; deliberate the contentious issues and recommend possible revisions by the parliament before it is put for validation if not through a national referendum.

Fourth, the role(s) of 'Somaliland' and 'Puntland' in a *Sharia*-compliant constitution is unclear. The two regional administrations have their own constitutions. Despite the fact that 'Somaliland' claims to have seceded from the rest of Somalia and 'Puntland' prefers regional autonomy until there is a federal system government in place, the TFG-led constitution-making process can learn from their constitution-making processes. This process is not only a learning opportunity but it also provides a more conducive environment for the two northern entities to embrace if and when they decide to join the new Somalia in the future.⁷ While it is going to be difficult to engage them, particularly 'Somaliland,' there is a need to consult as much as possible even if it is off the fence and informal. So far, the relevant ministries of

the ‘Puntland’ administration and the TFG have been talking and this needs to be encouraged.

Lastly, an inclusive validation process is needed for the new Constitution. In this context, it is very clear that the possibility for a ‘national’ referendum is not possible. There is insecurity in much of South-central Somalia; ‘Somaliland’ and ‘Puntland’ are not fully onboard in the process; the TFG controls one third of Mogadishu, the capital; and there is little political support from the UN Political Office for Somalia (UNPOS). Therefore, one way of endorsing it is passing it by a majority of an elders’ council drawn from the legitimate traditional leaders of Somalia. Despite the difficulties of who will vet such traditional leaders and where will they meet, once such a forum endorses it, the current expanded parliament can also pass it before the end of the term of the Transitional Federal Institutions (TFIs). This will also reduce the risk that, without a constitution, the current Charter will remain to serve as the basis for elections after the end of the TFIs’ term.

Conclusion

The constitution-making process in Somalia provides a number of opportunities. It will be the first time (even before the war) that the citizenry participate in the Constitution-making debate. The TFG should lead the process but make every effort to remain non-partisan and give room for dialogue and debate. Emphasis should be placed on the process rather than the final outcome so that there can be a widely consulted product, which can serve the basis of the future government to take over from the current transitional one.

It is only with hope that there shall be wide consultations with various Somali actors including the northern entities; an engagement of the Somali public in civic education on the process and through the media, preferably the BBC; wide consultations with all the past Somali constitutions and transitional Charters so that lessons can be drawn from other constitution-making processes, mainly the northern regions and that a *Sharia*-compliant constitution which addresses the concerns of a majority of the Somali public will be finally drafted and endorsed by the Somali people.

Ibrahim Farah, PhD is a Nairobi-based Somali academic whose areas of interest include political and conflict analysis – both academic and policy – on Somalia and the Horn of Africa.

- 1 Nairobi, Kenya
- 2 See I. M. Lewis and J. Mayall et al., *A Study of Decentralised Political Structures for Somalia: A Menu of Options* (London: LSE and UNPOS, August 1995), p.iii.
- 3 Ibid; the LSE team of experts included Professor James and Ian Lewis.
- 4 The “building blocks” concept was based on the realization that any unitary Somali state is improbable for the indefinite future; allowing for other alternatives, i.e. a loose federal structure, and/or even a confederal alternative modeled on the United Arab Emirates. Although this concept also allows for greater participation and accountability, as an approach it is, however, only plausible if it can operate without external interference which is impossible. See IRIN, “SOMALIA: Are “building blocks” the solution?” Nairobi, 17 July 1999.
- 5 For example, the TFG’s current Minister for Constitutional and Federal Affairs and UNDP’s international consultant working with the process, who both come from the Digil-Mirifle clan, have been accused by their clansmen of being anti-federalists.
- 6 The five (5) universal Islamic principles are the preservation and promotion of life, religion, family, wealth, and human dignity.
- 7 See Sally Healy, “Experiences of constitution making in Somalia, Puntland and Somaliland,” in Mark Bradbury and Sally Healy, *Whose peace is it anyway? Connecting Somali and international peacemaking*. Conciliation Resources, 2010.#

ETHIOPIA

Ethiopia rejects Egypt Nile claims

Ethiopia's prime minister has rejected a threat by Egypt to prevent the building of dams and other water projects upstream on the Nile River. Meles Zenawi told Al Jazeera on 19 May that Egypt will not be able to stop his country from building dams on the river. His comments came nearly a week after Ethiopia joined Uganda, Rwanda and Tanzania in signing a new treaty on the equitable sharing of the Nile, despite strong opposition from Egypt and Sudan who have the major share of the river waters. Historic agreements have given Egypt and Sudan veto power over upstream projects that could affect the flow of water. But the agreement signed last week by four of the Nile Basin countries marked the creation of a new commission to manage the water. Kenya, Burundi and the Democratic Republic of Congo are expected to sign within a year. Egypt has warned that the agreement lacks legitimacy.

He also added Ethiopia was not unstable and even though still poor, it is able to cover the necessary resources to build whatever infrastructure and dams it wants on the Nile water. The upstream countries want to be able to implement irrigation and hydro-power projects in consultation with Egypt and Sudan, but without Egypt being able to exercise the veto power it was given by a 1929 colonial-era treaty with Britain. Egypt, however, has warned that Cairo's water rights are a "red line" and it threatened legal action if a unilateral deal was reached.

Al Jazeera and agencies

KENYA

Charming Kenya over the Nile

Egypt has launched a charm offensive on Kenya even as the country insists that Egypt must sign the Comprehensive Framework Agreement (CFA). On 24 May, Egypt offered to fund a range of projects in Kenya. In a meeting with a visiting delegation led by Prime Minister Raila Odinga, his Egyptian counterpart, Dr Ahmed Nazif, said the projects include environmental conservation, water harvesting, drilling of boreholes and construction of dams. For a start, he said, the Egyptian government will revive a borehole drilling programme started in early 2000.

In Nairobi, Foreign Affairs minister Moses Wetang'ula denied that the North African country was attempting to entice Kenya and other upstream states to drop the CFA treaty and return to the 1929 and 1959 agreements. Tension is growing among the Nile Basin countries after Egypt refused to sign a new treaty on sharing of the waters from the world's longest river. Mr Wetang'ula reiterated calls to Egypt and Sudan to come on board and sign the CFA. Dr Philip Raburu, a university lecturer and hydro-biologist said that Egypt's offer to help in the conservation of Kenya's water towers was a right, not a favour. He said that in other agreements on transboundary waters, downstream countries pay the upstream countries for the water they get.

Al Jazeera and agencies

Witnesses Seek Protection

Potential witnesses appearing before the Truth, Justice and Reconciliation Commission (TJRC) on 24 May appealed for protection. They say perpetrators of crimes against humanity and other historical injustices might target them because of their testimony. The witnesses were speaking when the commission begun its public hearings in Kipkelion and Mount Elgon districts. One witness whose property was destroyed at Londiani Township, Kipkelion, told TJRC chairman Bethuel Kiplagat

to provide a mechanism that would ensure they were protected from possible harassment. He singled out the police saying they were likely to intimidate witnesses “should something related to issues that we have raised here (at the hearing) crop up later when the commission has concluded its public hearing sessions.”

Daily Nation

UGANDA

Army under investigation over Karamoja killings

President Museveni on 25 May ordered an investigation into the conduct of the disarmament exercise in Karamoja after a local politician produced a dossier accusing the Uganda’s People Defence Force (UPDF) of wantonly killing civilians. Jie MP Peter Lokii’s claims come shortly after the Uganda Human Rights Commission also accused the army of killing unarmed Karimojong and looting their cattle in the ongoing disarmament exercise. In one such case, the army reportedly killed over 30 civilians on April 24 in Rengen Sub-county in a mission to recover animals the Jie allegedly raided from the Dodoth in Kaabong.

The Monitor

US President endorses legislation

US President Barack Obama on 24 May signed a law aimed at helping Uganda and its neighbours fight Joseph Kony and his Lord’s Resistance Army (LRA) rebels. The law requires the Obama administration to develop a comprehensive strategy with regional governments for dealing with the rebels, including steps to protect the civilian population, provide humanitarian assistance, apprehend the LRA leaders and disarm its followers within six months. The legislation was introduced by US senators Russ Feingold and Sam Brownback and supported by the Republicans and Democrats, as well as humanitarian and human rights groups. The LRA is considered a global terrorist group by the US, which has been providing logistical support to the Ugandan army.

The Government has welcomed the move and implored the US to implement the law as soon as possible to stop the ongoing killings by the rebels in the Central African Republic (CAR) and the DR Congo.

LRA leader Joseph Kony and two of his deputies, Okot Odhiambo and Dominic Ongwen, are wanted by the International Criminal Court for crimes against humanity. Representatives of the Government of Uganda and the LRA began peace negotiations in 2006, mediated by the Government of Southern Sudan. But the talks failed when Kony refused to turn up for the signing of the final peace agreement in May 2008. His forces have since launched attacks in the DR Congo and CAR.

The New Vision

SOMALIA

Militia forces to Mogadishu

Sources in Mogadishu on 23 May indicate that Ahlu Sunna Wal-Jamaah, an opposition group allied with the Transitional Federal Government, have deployed fresh forces to the Somali capital. Hundreds of militias have arrived in Mogadishu after they were airlifted from training centres in Central Somalia. Ahlu Sunna has a formidable force in Central Somalia and has influence in several regions including Galgadud, Mudug, Middle Shabelle and parts of Hiran. Observers believe that the new arrivals are the second group brought to Mogadishu. They are likely to join the frontline where Ahlu Sunna followers are combating the fighters of Al-Shabaab and Hizbu Islam, the two groups opposing the pro-government forces.

Daily Nation

UN calls for a new approach to peace

Secretary-General Ban Ki-moon on 22 May called on the world to adopt a new approach to bring peace to Somalia, telling an international conference on the Horn of Africa country that a failure to act now risks expanding the violence to its neighbours and beyond. The three-day international conference, held in Istanbul and co-hosted by the United Nations and Turkey, examined Somalia's political, security and reconstruction needs, a year after a similar summit was held in Brussels.

Mr. Ban Ki-moon warned that continuing conflict in Somalia – “one of the world's most intractable crises [where] for 20 years conflict over power, resources and land has destroyed lives, created hundreds of thousands of orphans and devastated communities” – is attracting extremist elements from outside the country and young Somalis from the Diaspora, posing a threat to Somalia, neighbouring countries and beyond.

Despite some internal divisions, this Government has survived repeated attacks by extremists, and remains committed to peace and reconciliation, Mr. Ban Ki-moon added, citing a recent cooperation accord with the Ahlu Sunna Wal-Jammah group as a blueprint for other opposition groups to build on. Turning to the final pillar is reconstruction, he called the Somali business community a large part of the answer, “Somalia's business leaders, both inside the country and in the Diaspora, are one of its main assets,” he said.” They should play a key role in the reconstruction phase of the peace process. “Helping Somalia to recover is clearly a significant challenge,” he concluded. “But it is not insurmountable.”

UN News Services

RESOURCES

GENERAL

“Africa's irregular security threats” (May 2010)

This paper provides an overview of Africa's irregular, non-state threats, followed by an analysis of their strategic implications for regional peace and stability, as well as the national security interests of the United States. After reviewing the elements of the emerging international consensus on how best to address these threats, the conclusion highlights a number of new and innovative tools that can be used to build political will on the continent to confront these security challenges. This paper is intended as a background analysis for those who are new to the African continent, as well as a source of detailed information on emerging threats that receive too little public or policy-level attention. It is published by the institute for National Strategic Studies.

http://www.humansecuritygateway.com/documents/INSS_AfricasIrregularSecurityThreats.pdf

“DOD needs to determine the future of its Horn of Africa task force”

(April 2010)

This report by the United States Government Accountability Office (GAO) is an US Africa Command (AFRICOM) evaluation on a task force – Combined Joint Task Force – Horn of Africa (CJTF- HOA) – which was created to fight terrorism.

<http://www.gao.gov/new.items/d10504.pdf>

“Interview with Dr. Johan Galtung” (March 2010)

The one on one interview was conducted by Al-Jazeera. Johan Galtung is considered the father of peace studies, discusses why he dedicated his life to waging peace in the world.

<http://english.aljazeera.net/programmes/oneonone/2010/03/201032311415403979.html>

“Together for transformation: men, masculinities and peacebuilding”

(May 2010)

This publication was written as part of the International Women’s day for Peace and Disarmament celebrations on 24 May. It is published by the International Fellowship of Reconciliation – women peacebuilding program.

http://www.ifor.org/WPP/may-pack-2010_web.pdf

KENYA**“Triggers and characteristics of the 2007 Kenyan electoral violence”**

(May 2010)

This paper offers quantitative and qualitative evidence on the incidence, impacts and issues that triggered electoral violence in Kenya in 2007. Using two surveys conducted before and after the election it was found that one out of three Kenyans were affected by the violence regardless of their ethnicity and wealth. The chances of being a victim of violence were higher in areas with land conflicts and where politically-connected gangs operated. Violence, which was mainly triggered by the perception that the election had been rigged, reduced trust and social capital among communities making violence more likely to reoccur. The article is written by Stefan Dercon and Roxana Gutierrez-Romero.

http://www.humansecuritygateway.com/documents/CSAE_TriggersCharacteristics_2007KenyanElectoralViolence.pdf

UGANDA**Making Kampala count: advancing the global fight against impunity at the ICC review conference (May 2010)**

This 102-page report assesses progress and recommends steps to strengthen international justice. The report addresses the four themes identified as part of the conference’s “stock-taking exercise”: peace and justice, strengthening national courts, the ICC’s impact on affected communities, and state cooperation. The report is published by Human Rights Watch.

[http://www.reliefweb.int/rw/lib.nsf/db900sid/DNEO-85CCT2/\\$file/Full_Report.pdf?openement](http://www.reliefweb.int/rw/lib.nsf/db900sid/DNEO-85CCT2/$file/Full_Report.pdf?openement)

SOMALIA**“Somalia’s divided Islamists” (May 2010)**

This report examines the limited opportunity that exists for Somalia’s political actors and the international community to capitalise on these divisions and realignments among the armed opposition group in the country. An opportunity lies in reaching out to the increasing numbers of domestic militants disenchanted with the growing influence of foreign Islamic groups and extremist elements bent on pursuing a global agenda. The report is published by the International Crisis Group.

<http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/B74%20Somalias%20Divided%20Islamists.ashx>

SUDAN

“The politics of Women’s representation in Sudan: debating women’s rights in Islam from the elites to the grassroots” (March 2010)

This report explores the validity of this position in the context of women’s representation in Sudan, a multi-religious country with a long history of civil war. The approach of this project is two-fold and multidisciplinary, examining attitudes towards gender equality among Muslim women both at the elite and at the grassroots levels. They all frame their arguments within Islam, offering different interpretations of the Islamic law. <http://www.cmi.no/publications/file/3643-the-politics-of-womens-representation-in-sudan.pdf>

“Jonglei 2010: another round of disarmament” (May 2010)

This situation report by John Young of Institute for Security Studies (ISS) examines the proliferation of weapons which is held as the cause of the violence and is also seen as the reason for lack of development, the inability of the state to attract investment, the failure to provide services, and the ineffectiveness of local governments, according to the state governor. The problem with this explanation is that it was used to justify the disarmament campaign of 2006, but the completion of that campaign did not produce more development, investment, or services. To understand better what has become virtually the only response of the Government of South Sudan to endemic violence in the state, there is a need to summarise briefly the 2006 disarmament before examining the campaign that began in December 2009. <http://www.issafrika.org/uploads/May2010Jonglei.pdf>

Horn of Africa Bulletin, Volume 22, No. 5, May 2010

Editorial information

The media review Horn of Africa Bulletin (HAB) was published by the Life & Peace Institute between 1989 and 2006. The re-formatting of HAB as an e-bulletin 2007 is done in close collaboration with the Nairobi-based All Africa Conference of Churches (AACC) and the Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA). The electronic base of HAB is LPI and the editor is Olivia Kibui, olivia.kibui@life-peace.org. For subscription matters contact: Selin Amirthalingam, selin.amirthalingam@life-peace.org. For a link to HAB and more information see www.life-peace.org

Editorial principles

The Horn of Africa Bulletin (HAB) is an international newsletter, compiling analyses, news and resources primarily in the Horn of Africa region. The material published in HAB represents a variety of sources and does not necessarily represent the views of the Life & Peace Institute (LPI) or the cooperating partners, the All Africa Conference of Churches (AACC) and the Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA). Writers and sources are normally referred to, although in exceptional cases, the editors of the HAB may choose not to reveal the real identity of a writer or publish the source.

