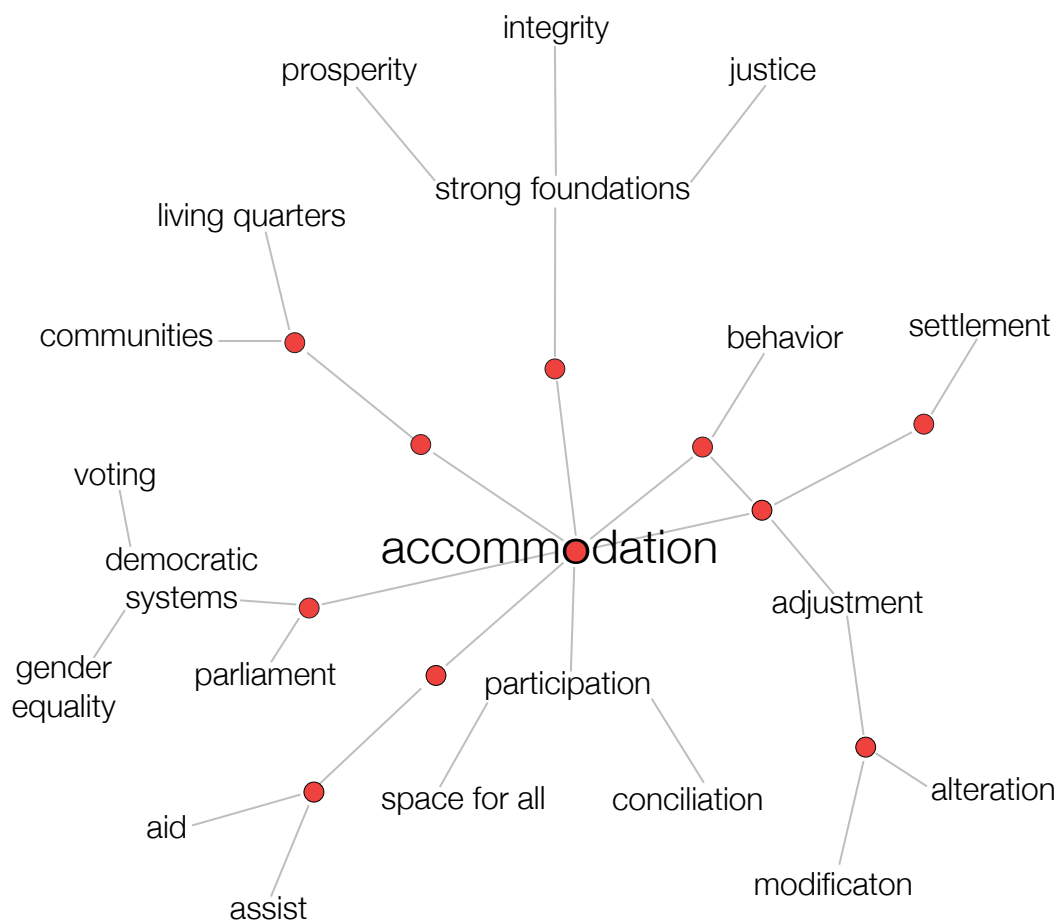


# CULTIVATING CONSENSUS

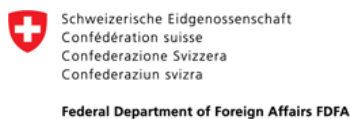
## EXPLORING OPTIONS FOR POLITICAL ACCOMMODATION AND PROMOTING ALL SOMALI VOICES

FEBRUARY 2014



**Authors:** Nanako Tamaru, Paul Simkin, Mukhtar Ainashe, Kirsti Samuels, and Roger Middleton

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# Executive summary

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This Briefing Paper presents frameworks, tools, and a range of six ‘option categories’ for arrangements that can accommodate the political interests and perspectives of the Somali people and their representatives, within and between Somalia and Somaliland.

The preliminary options presented range from a single-entity with international personality (e.g. a federal system) to multiple-entity configurations with limited political interaction (e.g. separate sovereign entities interacting through agreements). These options offer approaches for building conciliation around people’s different interests.

“ *Political accommodation encompasses the objectives, arrangements, processes, or outcomes of mutual conciliation around people’s competing political interests and perspectives.* ”

The adoption of the Provisional Federal Constitution and the selection of a new government in August / September 2012 ushered in renewed opportunities for peace and prosperity in Somalia. In addition, toward the end of the transitional period, an initial dialogue between Somalia and Somaliland commenced. However, significant security, governance, economic, and social concerns remain, which could threaten these gains and contribute to continuing or new conflicts. To build on the progress achieved requires the development of governance arrangements that can effectively accommodate diverse political interests and perspectives in all of Somalia and Somaliland.

The 2012 Provisional Federal Constitution sets out only a limited set of possible governance arrangements, the spectrum of ‘option categories’ presented in this Briefing Paper is designed to contribute to Somali approaches to developing and implementing arrangements that can achieve effective conciliation of their political interests and perspectives.

## Methodology and approach

Political accommodation provides a structured approach to exploring options to achieve conciliation of political interests and perspectives. The approach considers six ‘strands’, or focal areas, where political accommodation could be achieved through governance arrangements (see *Figure 2: Political Accommodation Strands*): (1) Political structure and decentralization; (2) Electoral system(s); (3) Executive; (4) Legislative branch; (5) Public participation; and (6) Traditional and customary arrangements, these strands are the focus of this Briefing Paper. A set of three additional process strands which relate to process arrangements for political accommodation are also explored: (A) Process design; (B) Participation; and (C) Traditional and customary mechanisms.

Looking at these different strands the methodology develops options by:

**First**, assessing existing arrangements for political accommodation within Somalia, and between Somalia and Somaliland.

**Second**, identifying political interests of key constituencies around certain themes and issues.

**Third**, identifying opportunity areas for political accommodation; namely, where are the areas within and across these strands around which it might be possible to achieve some degree of conciliation?

**Fourth**, based on the specifics of the Somali context identifying factors to consider when thinking about future governance arrangements.

**Fifth**, developing options for consideration by Somali people and leaders. The development of options draws heavily on the lessons that can be drawn from existing arrangements (Step 1), the interests to be accommodated (Step 2), the types of opportunity areas explored and factors to be considered (Steps 3 & 4), and technical arrangements drawn from other contexts.

**Sixth**, options developed using this methodology are validated through outreach with a broad range of constituencies.

**Seventh**, implementation of the options around which it has been possible to build sufficient consensus.

## **Opportunities for political accommodation in each strand**

**POLITICAL STRUCTURE AND DECENTRALIZATION:** By selecting governance arrangements that decentralize authority, and balance executive power while ensuring transparent and effective fiscal decentralization, and building subnational units that accommodate varying levels of capacity, Somali people can establish accommodating structures.

**ELECTORAL SYSTEM(S):** Considering ideas such as rounds of voting; multi-seat or single-seat geographical constituencies; use of thresholds, quotas, and other distributive mechanisms; indirect elections or appointments; interlinked elections across levels of government could provide means to ensure that elections reflect a diversity of communities and interests.

**EXECUTIVE:** Measures to establish executive structures that are accommodating could include: a multi-member or rotating executive; establishing checks and balances for executive decision-making; incorporation of traditional authorities into the executive; ensuring public transparency; and measures to promote representativeness of minorities and women.

**LEGISLATIVE BRANCH:** To accommodate different interests within and through the legislature Somali people could consider the use of public interaction mechanisms; roles for indirectly elected prominent personalities; transparent decision making mechanisms; and measures to ensure representation of member states' interests.

**PUBLIC PARTICIPATION:** This can play an important role to ensure political accommodation. Interlinkages with local community groups; participatory policy and legislation development; interactive civic education; and mechanisms for public accountability are useful options.

**TRADITIONAL AND CUSTOMARY ARRANGEMENTS:** Incorporation of traditional and religious leaders through advisory councils for the executive and legislature; and measures to formally incorporate traditional arrangements into governance systems can help build accommodation and legitimacy.

## Options for political accommodation within and between Somalia and Somaliland

Each of the option categories below interlink all six strands into coherent governance arrangements. Collectively the six option categories provide a spectrum of arrangements, they are not recommendations; they merely serve to illustrate approaches that would prove politically accommodating. Each option category reveals the merits and risks for political accommodation, and highlights how coherent choices can be made across the six strands.

**Option category A** represents a unitary State where authority is decentralized to the constituent entities through a system of devolution, primarily through legislation.

*Case study examples:* Ghana; Indonesia; United Kingdom

**Option category B** represents a federation of member states, reflecting a structure comparable to the governance arrangements in the 2012 Provisional Federal Constitution.

*Case study examples:* Argentina; Iraq; Malaysia

**Option category C** represents a highly decentralized state union, the most decentralized single-entity option category. This option category provides limited set of responsibilities to the state union government, while member states exercise autonomy over their internal affairs.

*Case study examples:* State Union of Serbia-Montenegro (2003-2006); United Arab Emirates

**Option category D** represents a free association arrangement, which could be integrated into any of the option categories. Free association creates a formal relationship between a principal State and an associated state, where the associated state typically exercises considerable autonomy over internal affairs and the principal State can manage defense, foreign policy and other identified responsibilities.

*Case study examples:* Bougainville associated with Papua New Guinea; New Caledonia associated with France

**Option category E** represents a multi-entity configuration (where each member State possesses international personality) and forms a structured union or confederation of two or more independent, sovereign States with formal institutions and arrangements to facilitate political and economic interaction.

*Case study examples:* Egypt and Sudan Integration Charter (1982); Benelux Union; European Union; East African Community

**Option category F** also represents a multi-entity configuration, yet includes no formal governance arrangements. Economic and political interactions are solely governed by treaties and high-level meetings between heads of state and relevant ministerial representatives.

The opportunity areas and options presented in this Briefing Paper are not exhaustive or fixed; components from different option categories could be combined for example.



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# 1. Introduction

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The adoption of the Provisional Federal Constitution and the formation of a new government in August and September 2012 ushered in a renewed opportunity for peace and prosperity in Somalia. In addition to these achievements, the political and security environment emerging at the end of the transition facilitated the initiation of dialogue between Somalia and Somaliland. Yet, while this progress offers great hope, significant security, governance, economic, and social concerns remain which could threaten these gains and lead to continued or resurgent conflicts. Essential to building on the progress achieved will be the development of governance arrangements that can effectively accommodate the diverse political interests and perspectives of the Somali people, throughout both Somalia and Somaliland.

As regions of Somalia have emerged from the control of armed groups, various constituencies are seeking to have their voices heard. Having operated without central government oversight for over a decade, Puntland has also expressed reservations regarding any retrenchment of autonomy. Efforts to establish new federal member states in the south have been controversial at times. Before the Addis Ababa Agreement to set up the Interim Jubba Administration (27 August 2013), attempts to establish ‘Jubaland’ were rejected by the federal government. In addition to acknowledging and responding to these increasingly vocal expressions of political interests, the federal government is faced with other competing priorities and demands, including nurturing an integrated Somali society, resolving overlapping territorial claims, and limiting parallel processes of regional and local governance consolidation.

Historic tensions between Somalia and Somaliland, which involve both sovereignty and territorial issues, also remain a significant challenge. Since declaring independence in 1991, Somaliland has asserted its full sovereignty, while the Federal Government of Somalia continues to advocate for the territorial integrity of pre-1991 Somalia.

Somalia’s New Deal Compact, endorsed at the Brussels Conference in September 2013, emphasizes the importance of inclusive politics for future stability and prosperity. Marginalized groups including over one million internally displaced people face particularly severe humanitarian and human rights challenges.

This post-transitional period offers an opportunity for Somalia and Somaliland to cultivate further dialogue and develop politically accommodating governance frameworks and arrangements. The governance frameworks created by the 2012 Provisional Federal Constitution illustrate only a limited scope of the possible arrangements available, since the Provisional Federal Constitution left many important issues unresolved. The purpose of this Briefing Paper is to offer approaches for the Somali people to build conciliation of their political interests; any process that seeks to contribute to the development of sustainable peace and prosperity for all Somalis will need to be inclusive and representative.

### **Defining terminology: Somalia and Somaliland**

This Briefing Paper presents options to accommodate political interests and perspectives of individuals, communities, and groups. Some of these options envision Somaliland as an independent sovereign entity whereas other options include Somaliland as part of a decentralized configuration. Thus, “Somalia” is used in this note to refer to the territory of the former Somali Democratic Republic (pre-1991) OR to that territory excluding current day Somaliland, depending on the context.

## **1.1 Purpose**

The purpose of this Briefing Paper, and the underlying research and consultations, is to contribute substantively to peace and prosperity in Somalia and Somaliland. This Briefing Paper presents frameworks and tools that Somalis can use to explore, generate, and implement options to effectively accommodate the many political interests and perspectives across Somalia and Somaliland.

In pursuit of this overall purpose, the objectives of this work are:

1. To provide a framework and tools for exploring technical options for political accommodation.
2. To catalogue and assess existing arrangements within the framework of political accommodation at the national and subnational levels.
3. To provide tools and a useful vocabulary to facilitate dialogue within and between different constituencies on possible future governance arrangements.
4. To present and assess preliminary categories of options for political accommodation in Somalia and between Somalia and Somaliland.
5. To share and ‘feed in’ these frameworks and options into ongoing and planned dialogue and consultation processes.

## **1.2 How to use this Briefing Paper**

This Briefing Paper is intended as a ‘toolkit’ from which the reader can extract concepts to help facilitate political accommodation in Somalia and between Somalia and Somaliland. Throughout, this paper intentionally uses the term ‘options,’ rather than ‘solutions’ or ‘recommendations.’ Arrangements for political accommodation can only be developed and decided upon by the Somali people, through inclusive and participatory political processes. The Briefing Paper, therefore, presents a series of ideas to serve as a catalyst for discussion and dialogue. The goal is to support Somali efforts to develop and implement arrangements that can accommodate their interests. This Briefing Paper is organized into six sections:

**Section 1** provides an overview of the function and purpose of the paper.

**Section 2** introduces the methodology, framework, and other tools that encompass a practical, structured approach to political accommodation.

**Section 3** outlines the existing provisions pertaining to political accommodation in key Somali legal texts – including the Provisional Federal Constitution (2012), the Constitution of the

Puntland State of Somalia (2012)<sup>1</sup>, the Constitution of the Republic of Somaliland (2001), and the Constitution of the Somali Republic (1960) – and assesses the potential of those arrangements to promote conciliation and accommodation of political interests.

**Section 4** synthesizes the information gathered through extensive consultations and research, and identifies Somali specific considerations, opportunity areas, and other components used to inform the development of the options categories.

**Section 5** presents the option categories for governance arrangements in Somalia and between Somalia and Somaliland.

**Section 6** highlights some conclusions based on the finding of the Briefing Paper.

This Briefing Paper is intended for persons engaged in or interested in efforts to achieve conciliation of political interests in Somalia and Somaliland, including: the Federal Government of Somalia; the Government of Somaliland; the Government of Puntland; political and other representatives in Somaliland, Puntland, and emerging administrations; other political parties/actors; non-State armed groups; civil society constituencies (including academics, professional associations, and women’s and youth groups); the United Nations, the African Union and other key regional supporters and facilitators (e.g. the Intergovernmental Authority on Development and the European Union); supporting States; and other concerned groups and individuals.

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<sup>1</sup> The Constitution of the Puntland State of Somalia was written in 2008 and formerly adopted in 2012. The English translation used in preparation of this document was produced in 2009 by the National Democratic Institute (NDI) Somalia Program.



## 2. A structured approach to political accommodation

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This section briefly explains the political accommodation methodology. The methodology includes a seven step process that analyses political interests and develops context specific options for political accommodation. This approach examines six ‘strands’ or focal areas which can provide the structure for translating interests into cohesive governance options.

### 2.1 The meaning of political accommodation

Political accommodation aims to facilitate the reconciliation of diverse political interests and perspectives. This approach promotes mutual conciliation, or the conciliation of all interests represented, particularly where there is an absence, but not complete lack of, comprehensive consensus. The term *political accommodation* encompasses the objectives, processes, and outcomes of mutual conciliation around people’s competing political interests.<sup>2</sup>

Political accommodation affords significant benefits over other approaches to political interaction:

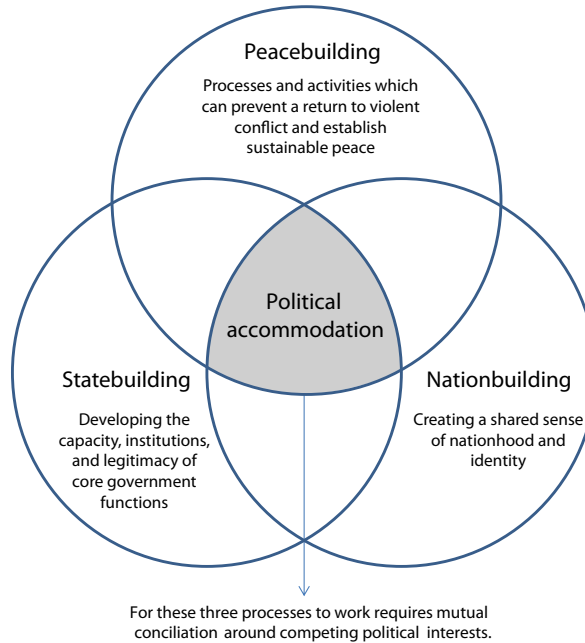
- **Political accommodation provides more opportunities to reconcile different and potentially competing political interests** than a singular focus on ‘power sharing’ or legislative decision making procedures, by incorporating a number of interwoven strands (see *Section 2.2.1*).
- **Political accommodation goes beyond elite-based processes or mechanisms** and offers modalities for inclusive ownership and representation.
- **Political accommodation is not limited to any one type of governance structure** and, thus, opens a space for dialogue between stakeholders and provides the flexibility needed to develop viable governance structures that are specific to the needs and interests of the Somali people.

Political accommodation is a particularly useful approach in societies recovering from conflict. It can contribute to both Statebuilding and Nationbuilding in ways that ensure they are complementary and support peace; Statebuilding and Nationbuilding can have destabilizing effects unless each includes avenues for mutual conciliation.

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<sup>2</sup> The definition of political accommodation provided here is adapted from Brian Barry, “Political Accommodation and Consociational Democracy,” *British Journal of Political Science* 5, no. 4 (1975): 477-505.

Figure 1 – Political accommodation in the context of Peacebuilding, Statebuilding, and Nationbuilding



## 2.2 A structured approach to political accommodation

In practice, political accommodation requires a sequential approach of interconnected steps, from exploration to implementation:

- Step 1** assesses existing arrangements and prospects for political accommodation along the six strands or focal areas.
- Step 2** identifies and maps political interests through consultations with interlocutors.
- Step 3** synthesizes the interests gathered and identifies opportunity areas for building political accommodation.
- Step 4** examines the opportunity areas identified and highlights specific contextual considerations to account for when making choices about governance arrangements.
- Step 5** develops coherent option categories for governance arrangements, using a range of technical building blocks based on policy-oriented research and comparative case study analysis.
- Step 6** tests and appraises option categories through outreach and consultations with interlocutors.

Where there is consensus around particular options, **step 7** includes implementation of those options.

This Briefing Paper presents the information gathered in steps 1 through 4 and suggests a range of possible option categories, as described in step 5. Thus, the overall purpose of this paper is to engage step 6 and evaluate the option categories with stakeholders.

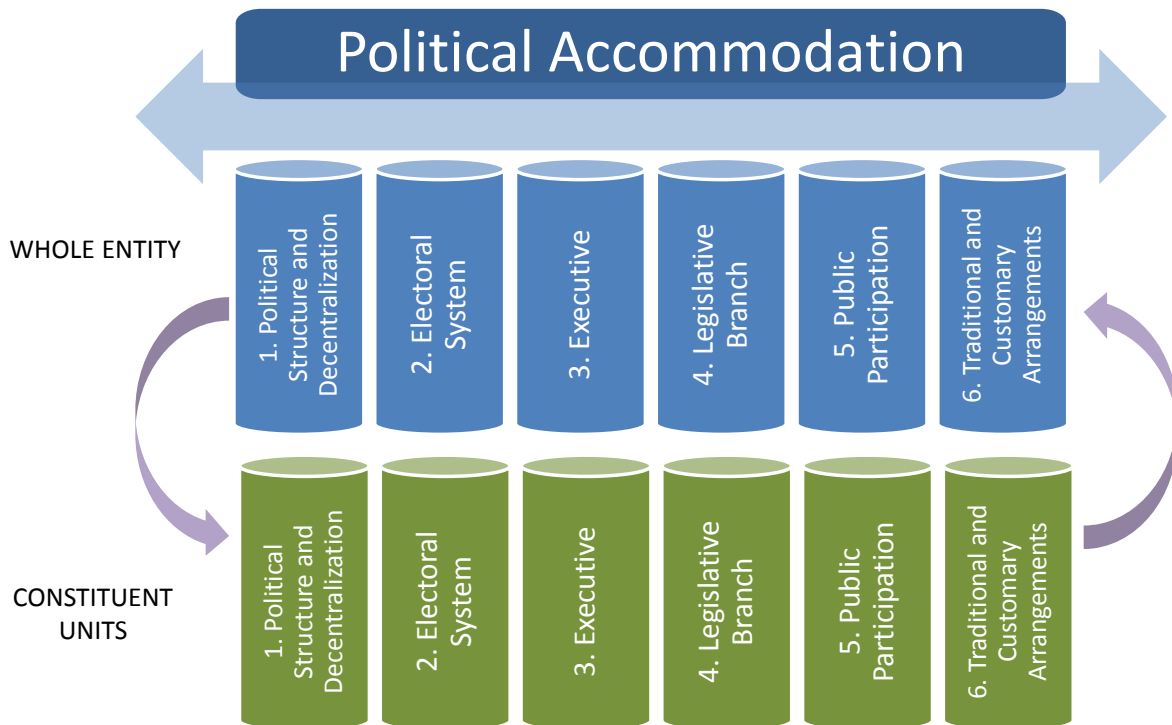
### 2.2.1 Six ‘strands’ of political accommodation

Six ‘strands’ function as focal areas when assessing prospects for accommodation, identifying opportunity areas, and developing technical arrangements for achieving accommodation. The six strands are:

1. Political structure and decentralization
2. Electoral system(s)
3. Executive
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Focusing on a single strand can help to maximize mutual conciliation within that particular strand, but the typology also serves as a tool to weave the strands into a ‘rope,’ providing a broad view of how conciliation operates within the system as a whole. The typology is equally applicable to political interactions within a single entity with international personality (e.g. a State) and to political interactions within multiple-entity configurations (e.g. formal interactions of independent States on political and economic issues).

Figure 2 – The political accommodation strands







## 3. Assessing existing arrangements

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This section assesses existing and previous legal texts and identifies possible mechanisms within these texts that may serve to accommodate political interests and perspectives in Somalia and Somaliland. Compiling and assessing existing arrangements establishes a baseline to work from and can assist in identifying areas to achieve more effective accommodation of political interests. This type of assessment also helps to capture the similarities and differences across the texts, which can be useful in identifying areas of shared interest and providing insight on the importance of political accommodation at all levels of government.

### 3.1 Existing arrangements across the six ‘strands’

This assessment of select existing and previous arrangements examines the provisions of the following four texts: the Provisional Federal Constitution (2012); the Constitution of the Puntland State of Somalia (2012); the Constitution of the Republic of Somaliland (2001); and the Constitution of the Somali Republic (1960). This section highlights specific provisions pertaining to political accommodation within each of the texts, organized across the six ‘strands’. While the Provisional Federal Constitution (2012) is an interim document, it is included in this analysis to illustrate how the provisions may operate as drafted. This comparative analysis is designed to support further dialogue on a permanent constitution. Specifically, this assessment serves to:

- Clarify some of the similarities and differences between the Provisional Federal Constitution and the 1960 Constitution (see *Tables 1 through 6*);
- Illustrate how provisions in the Provisional Federal Constitution may relate to existing arrangements in Somaliland and Puntland; and
- Identify opportunity areas for political accommodation (see *Section 4.2 Challenges and opportunities*) as well as lessons learned from the implementation experiences (see *Section 4.1 Considerations for options development*).

Although the 1960 Constitution is not currently in force, interlocutors often reference and cite the text as useful guidance for future arrangements. The 1960 Constitution also provides a historical perspective in considering the evolution of relations between Somalia and Somaliland.

#### 3.1.1 Political structure and decentralization

##### ■ Provisional Federal Constitution (2012)

The Provisional Federal Constitution establishes Somalia’s status as a federal State. Decentralization is not specified in detail; the text only briefly describes the distribution of responsibilities between the various levels of government. In July 2013 parliament adopted a Local Government Act which begins to define the responsibilities of regional and district governments, however as of December 2013 this bill has not been signed into law.<sup>3</sup>

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<sup>3</sup> Local Government Act (July 2013) (Som).

The Provisional Federal Constitution specifies two levels of government: the federal government level and the ‘federal member state’ level.<sup>4</sup> A federal member state is composed of two or more existing regions; unincorporated regions are administered by the federal government for up to two years or until merged with other regions.<sup>5</sup> The House of the People determines the number and boundaries of the federal member states.<sup>6</sup> The July 2013 Local Government Act does not address issues related to federal member states.

Foreign affairs, national defense, citizenship and immigration, and monetary policy are responsibilities of the federal government.<sup>7</sup> The remaining allocation of powers is to be “*negotiated and agreed upon by the federal government and the federal member states.*”<sup>8</sup>

Several principles pertaining to fiscal decentralization are identified within the Provisional Federal Constitution, to guide the interactions between the various levels of government, calling for (1) resources to be distributed fairly, and (2) the responsibility for revenue collection and other powers to be assigned to level of government where the responsibilities can be most effectively exercised.<sup>9</sup>

## ■ Constitution of the Puntland State of Somalia (2012)

The Constitution of the Puntland State of Somalia (“Puntland Constitution”) defines Puntland as a constituent part of the federal State of Somalia.<sup>10</sup> The constitution outlines governance and other provisions for within Puntland only.

The Puntland Constitution decentralizes authority from the state government to regions and districts within Puntland, providing for an appointed governor at the regional level and directly elected district councils.<sup>11</sup> Each district has some economic and administrative autonomy, as generally enumerated in Article 125 of the Puntland Constitution, but the specific division of powers and duties is determined by law.<sup>12</sup> Although several laws address decentralization of service delivery, these laws have failed to clarify the distribution of responsibilities between state, regional, and district level administrations.<sup>13</sup> As a result, customary practices and clan/kinship structures largely shape governance and service delivery at the local level.<sup>14</sup> Services are delivered in the main by civil society, the private sector, and international organizations.

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4 PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art. 48(1).

5 Ibid. Article 48(2).

6 Ibid. Article 49.

7 Ibid. Article 54.

8 Ibid.

9 Ibid. Articles 50 and 125.

10 CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 4(3).

11 Ibid. Articles 120, 121, and 123.

12 Ibid. Article 120(4) and (5).

13 Government of Puntland, Law No. 7 of 23 August 2006 regulates district administration and the governing councils. The law establishes the interactions between district councils and the Puntland Ministry of the Interior. See Geopolicity, *Study on Sector Functional Assessments Within Education, Health & WASH in Puntland* (April 2012), 9-10, <http://jplg.org/documents/reports%5CSector%20Studies%5CPuntland%20-%20Sector%20Functional%20Assessment%20-%20FINAL%20REPORT%20-%20April%2018%202012.pdf>.

14 Ibid.

Further, there are significant inequalities in public service delivery across regions and districts within Puntland, due to lack of infrastructure and budget shortfalls.<sup>15</sup> Districts have unequal access to revenue sources, which impacts service delivery. Districts are classified by the Puntland Government into three levels: ‘A’, ‘B’, and ‘C’. Most districts in the A and B categories are better able to afford delivery of services through local revenue collection in addition to government transfers. Districts in the C category do not have the same local resources and thus struggle to perform the same level of service delivery as the A and B districts.<sup>16</sup>

## ■ The Constitution of the Republic of Somaliland (2001)

The Constitution of the Republic of Somaliland (“Somaliland Constitution”) recognizes the territory of Somaliland as an independent, sovereign State, separate from the rest of Somalia since 1991.<sup>17</sup> There are no provisions discussing the structural relationship with the Republic of Somalia, except to highlight Somaliland’s independence.

The Somaliland Constitution establishes three levels of government. The central government oversees the entire territory of Somaliland, which is divided into constituent regions that are governed by regional councils. The regions are divided into constituent districts, which are administered by district councils. The regional and district councils have limited responsibilities; the councils can only pass by-laws<sup>18</sup> and do not have policy-making powers.<sup>19</sup> The duties of the regional and district councils are mandated by law.<sup>20</sup>

In the interest of gaining self-sufficiency in service delivery, the constitution allows regional and district governments to directly levy taxes.<sup>21</sup> Larger districts with more capacity (categorized as ‘A’ districts by the Government of Somaliland) are well supported by tax revenues and have effectively generated enough revenue to cover operational costs and provide some public services.<sup>22</sup> In contrast, districts with less capacity (categorized as ‘B’, ‘C’, and ‘D’ districts by the Government of Somaliland) have struggled to collect enough revenue to cover operational costs, reflecting similar challenges faced by the districts in Puntland.<sup>23</sup>

Inter-governmental transfers have not been successful in bridging the revenue gap between districts, making public services in B, C, and D districts extremely challenging.<sup>24</sup> Additionally, resource distribution from the central government has never been predictable making it difficult to develop plans.<sup>25</sup> The allocation of fiscal transfers is weighted towards larger cities that already

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<sup>15</sup> Ibid.vii. This particular study assessed education, health and water, sanitation and hygiene services in Puntland.

<sup>16</sup> Ibid. x.

<sup>17</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 1.

<sup>18</sup> By-laws are secondary laws that cannot conflict with the laws of the country (see CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art.111).

<sup>19</sup> Ibid. Articles 111 and 112.

<sup>20</sup> See Government of Somaliland, Regions and Districts Law 23/2002 (amended in 2007) as discussed in Abdirahman Adan Mohamoud, *Local Governments in Somaliland: Challenges and Opportunities* (Hargeisa: April 2012), 6, <http://jplg.org/documents/reports%5CSector%20Studies%5CPuntland%20-%20Sector%20Functional%20Assessment%20-%20FINAL%20REPORT%20-%20April%2018%202012.pdf>.

<sup>21</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 112(3).

<sup>22</sup> Districts are graded based on Regions and Districts Law 23/2002; however an English version was not available at time of publication.

<sup>23</sup> Mohamoud, *Local Governments in Somaliland*, 6.

<sup>24</sup> Ibid. 9; Geopolicity, *Study on Sector Functional Assessments*, x. (Also see: pg. viii, ix, xii, 63,127, 138).

<sup>25</sup> Mohamoud, *Local Governments in Somaliland*, 9.

have relatively well developed revenue generation abilities.<sup>26</sup> This has left smaller cities and rural areas with a smaller portion of fiscal transfers, perpetuating existing challenges in service delivery.<sup>27</sup>

## ■ Constitution of the Somali Republic (1960)

The 1960 Constitution of the Somali Republic (“1960 Constitution”) came into force following the unification of British and Italian Somali territories and Somalia’s independence.

The 1960 Constitution envisaged a unitary State.<sup>28</sup> The Law on Local Administration and Local Council Elections divided the territory into eight administrative divisions (regions); each administered through the Ministry of the Interior by a governor.<sup>29</sup>

The 1960 Constitution did not provide for any systematic decentralization of functions or responsibilities; the text only gave broad guidance that decentralization should occur where possible.<sup>30</sup> Regardless, the Somali government became increasingly centralized, with trade licenses, legal services, higher education, and civil service recruitment all administered from Mogadishu.<sup>31</sup> Fiscal decentralization measures were determined by legislation, which established provisions for revenue, expenditure, and administration.<sup>32</sup>

Table 1 - Comparing provisions on political structure and decentralization

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Political structure</b>	<ul style="list-style-type: none"> <li>Federal model with two levels (Art 48):               <ol style="list-style-type: none"> <li>federal government</li> <li>federal member state and local</li> </ol> </li> <li>President, Prime Minister &amp; Council of Ministers, Bicameral parliament</li> </ul>	<ul style="list-style-type: none"> <li>Unitary state with administrative sub-national levels (Art 1)</li> <li>President, Prime Minister &amp; Council of Ministers, Unicameral parliament</li> </ul>
<b>Political decentralization</b>	<ul style="list-style-type: none"> <li>Federal member states may determine their own governance structures (Art 120)</li> </ul>	<ul style="list-style-type: none"> <li>No provision in the constitution</li> <li>Eight administrative divisions, administered by an appointed governor</li> </ul>
<b>Administrative decentralization</b>	<ul style="list-style-type: none"> <li>To be determined by legislation (Art 54)</li> </ul>	<ul style="list-style-type: none"> <li>To be determined by legislation (Art 86)</li> <li>Increasingly centralized</li> </ul>

<sup>26</sup> See, Ibid. 9. The two largest cities, Hargeisa and Burao, are allocated approximately half of decentralized fiscal transfers, leaving the other half to be distributed among the other districts of the country.

<sup>27</sup> Ibid.

<sup>28</sup> THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art. 1.

<sup>29</sup> Law on Local Administration and Local Council Elections (Law No. 19/1963) (Som.) in Ioan M. Lewis and James Mayall, *A Study of Decentralised Political Structures for Somalia: A Menu of Options* (London School of Economics and Political Science, August, 1995), 6.

<sup>30</sup> THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art. 86.

<sup>31</sup> Cabdirahman Jimcaale, *Consolidation and Decentralization of Government Institutions* (Hargeysa: Academy for Peace and Development, 2002), 13.

<sup>32</sup> Eugene Cotran, “Legal problems arising out of the formation of the Somali Republic,” *International & Comparative Law Quarterly* 12, no. 3 (July 1963): 1024, <http://www.jstor.org/stable/756301>.

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Fiscal decentralization</b>	<ul style="list-style-type: none"> <li>• To be determined by legislation (Art 50, 122, 125)</li> <li>• Natural resources: to be determined by legislation (Art 44)</li> <li>• Power and the responsibility for revenue collection to be assigned to level of government where most effectively exercised (Art 125)</li> <li>• Fair distribution of resources (Art 50)</li> </ul>	<ul style="list-style-type: none"> <li>• No provision in the constitution</li> </ul>

**Assessing existing arrangements**

Interactions between constitutional frameworks

The Provisional Federal Constitution and the Somaliland Constitution are incompatible due to their differing approaches to the status of Somaliland. The Provisional Federal Constitution envisions Somaliland as a federal member state, while the Somaliland Constitution envisions Somaliland as an independent State. However if Somaliland were to join the Federal Republic, the provisions that describe political structure in the Somaliland Constitution could be compatible with the Provisional Federal Constitution. For example, the Provisional Federal Constitution allows federal member states to choose their own governance structures and does not specify how many levels of government will exist beyond the federal member state level. This would allow Somaliland to retain its political structures as well as its regional and district administrative units.

This hypothetical scenario is offered solely for comparative purposes and to better understand how the provisions in the Somaliland Constitution and other documents may interact in a single-entity configuration. Considering Somaliland as a sovereign, independent State renders such comparison unnecessary and thus there is little comparative analysis provided for that particular outcome.

The Provisional Federal Constitution and the Puntland Constitution are compatible; the Provisional Federal Constitution’s rules on federal member states would allow Puntland to continue with its governance institutions and local administrations. The Puntland Constitution and Provisional Federal Constitution also share similar language about the need for negotiation in determining Puntland’s responsibilities as a federal member state. While the Puntland Constitution establishes itself as a part of Somalia, it also states that until a Federal Constitution is completed and ratified by a popular referendum, Puntland shall have the status of an independent State.<sup>33</sup> These provisions can be reviewed where Somalis fail to agree on a federal system or instability persists indefinitely in other parts of Somalia.<sup>34</sup>

This comparative analysis also provides some insight into the range of issues that may arise in any governance arrangement. For example, Somaliland and Puntland both faced similar challenges regarding implementation of efficient and effective fiscal decentralization. This further

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<sup>33</sup> Ibid. Articles 4(3) and (4).  
<sup>34</sup> Ibid. Article 4(4).

demonstrates the challenge of designing decentralization mechanisms that are capable of meeting the diverse needs and capacities of constituent entities.

### **Reconciling political interests and perspectives**

A more centralized political structure, as captured in the 1960 Constitution, can achieve a high level of political accommodation, provided that citizens can directly register their preferences and check the central government through an inclusive electoral system and arrangements across other strands. However, poorly-implemented decentralization can also result in poor governance and reduced socio-economic mobility.

The Provisional Federal Constitution allows for much of the allocation of powers and resources to be determined at a later date, which could additionally allow citizens to directly express their preferences. These mandated negotiations between the federal government and federal member states also frame an opportunity for accommodation by allowing the federal member states to advocate for fiscal and competency allocation that fits their needs and capacities.

The Provisional Federal Constitution may provide a framework that can accommodate some Somali interests (particularly those favoring a single-entity model), but the unitary and federal structures presented fall short in accommodating the interests of those who may wish to fully realize a multiple-entity configuration, such as a confederal system or economic community. Select elements of the 1960 Constitution may also be relevant for future agreements.

## **3.1.2 Electoral systems**

### **■ Provisional Constitution (2012)**

Regarding electoral systems, the Provisional Federal Constitution simply states that regulations governing direct elections, political parties, and voting will be determined by a special law enacted by the House of the People of the Federal Parliament (at the time of writing this law had not been passed).<sup>35</sup>

The president of the Federal Republic of Somalia is indirectly elected by a two-thirds majority vote in both houses of the Federal Parliament.<sup>36</sup> The prime minister is appointed by the president and the council of ministers is appointed by the prime minister.<sup>37</sup> Members of parliament are directly elected: all voters within the Federal Republic elect members of the House of the People and voters within each federal member state elect members of the Upper House (the Upper House represents the interests of the federal member states).<sup>38</sup>

Local and state level electoral systems are to be determined by the constitutions of the federal member states.<sup>39</sup>

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<sup>35</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art. 47.

<sup>36</sup> Ibid, Article 89.

<sup>37</sup> Ibid, Articles 90 and 100.

<sup>38</sup> Ibid, Articles 64(1), 71, and 72.

<sup>39</sup> Ibid, Article 120.

## ■ Constitution of the Puntland State of Somalia (2012)

From 1998 to 2008, the *Isimada*, an advisory council of clan elders/chiefs, approved members of parliament based on sub- and sub-sub-clan nominations. In 2008, the Puntland government and the *Isimada* selected an election commission to assist in the appointment of members of parliament and presidential and vice presidential candidates, and to administer future elections.<sup>40</sup> In August 2012, the House of Representatives passed a law governing district elections, which were scheduled to begin in mid-2013 but were subsequently postponed.<sup>41</sup>

The *Isimada* has also played a role in selecting a short-list of candidates for president and vice president, which are then voted on by the House of Representatives. In January 2014 members of parliament voted for a new president and vice president.

The Puntland Constitution establishes a multi-party system. The three political associations who have the highest number of votes in district elections will become the three official political parties in Puntland and participate in parliamentary elections.<sup>42</sup> The selection of the official political parties will take place every second election.<sup>43</sup> The constitution also prohibits parties based on clans and sub-clans.<sup>44</sup>

## ■ The Constitution of the Republic of Somaliland

The Somaliland Constitution mandates that the president and vice president are to be elected jointly via a general election using the first-past-the-post system; this is also reflected in the 2001 Electoral Law.<sup>45</sup> The electoral model for parliament is not defined in the constitution. Instead, the 2005 Election Law (which supersedes the 2001 Electoral Law) stipulates a proportional representation electoral model with open party lists in multi-member districts.<sup>46</sup>

There are no constitutional provisions regarding the election of members for the House of Elders (upper house of parliament or *Guurti*). The current members of the House of Elders were indirectly elected for a six-year term at the Grand Conference of the Somaliland Communities in 1997 and have extended their term three times.<sup>47</sup> Seats that become vacant are filled by a close relative

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<sup>40</sup> Pat Johnson, ed., *The Puntland Experience: A Bottom-up Approach to Peace and State Building* (Interpeace, 2008).

<sup>41</sup> "Somalia: Puntland passes district electoral law," Garowe Online, August 7, 2012, [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Puntland\\_passes\\_district\\_electoral\\_law.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Puntland_passes_district_electoral_law.shtml).

<sup>42</sup> CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 46(3).

<sup>43</sup> Ibid. Article 46(4).

<sup>44</sup> Ibid. Article 46(5).

<sup>45</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 83; The Presidential and Local Elections Law (Law No. 20/2001) (Somaliland) deals with the direct elections of the president and the vice president of the republic every five years, as well as the election every five years of all the local district councils.

<sup>46</sup> House of Representatives Election Law (Law No. 20-2/2005) (Somaliland), art. 10; The Presidential and Local Council Elections Law (Law No. 20/2001), art. 59.5. For details on the rules governing proportional representation in Somaliland, see International Republican Institute, *Parliamentary Election Assessment Report* (September 29, 2005), 10-11.

<sup>47</sup> The last House of Elders Election Bill, which was passed by the House of Representatives on 16 September 2006, proposed, for the first time, direct elections of the Elders. The House of Elders subsequently considered the bill on 23 September 2006 and rejected the bill and extended their mandate an additional four-years. Following the 2010 presidential elections, the House of Elders' mandate was, again, extended until 2012. See "Somaliland parliament gets extension amid opposition and public objection," *Somaliland Press*, September 7, 2010, <http://somalilandpress.com/somaliland-parliament-gets-extension-amid-public-and-political-anger-18098>.

<sup>48</sup> Mohamed Fadal, *Institutionalizing Democracy in Somaliland* (Social Research and Development Institute, 2009).

of the former member, with no formal approval beyond the House of Elders and the president.<sup>48</sup> Only one woman has served in the House of Elders.<sup>49</sup>

The Somaliland Constitution allows only three political parties to register. Parties cannot be based on regionalism or clanism.<sup>50</sup> The law governing political party registration was amended in 2011, and now allows the formation of “political associations.” Political associations compete in local elections, and the emerging top three Somaliland-wide parties are then eligible to compete in the subsequent two presidential and parliamentary elections.<sup>51</sup> At each subsequent local election (every ten years) there is an opportunity for new associations to compete.

The constitution contains a provision to cancel elections for the House of Representatives in emergency circumstances, such as war, internal instability, or severe national disasters.<sup>52</sup> If it is not possible to organize presidential election due to security considerations, the House of Elders can extend the term of the president and vice president.<sup>53</sup> Within the past ten years, these clauses have been utilized to delay both legislative and presidential elections. Women are under-represented in Somaliland’s elected governance structures.

## ■ Constitution of the Somali Republic (1960)

The 1960 Constitution mandated that the president was to be elected by the National Assembly, requiring a two-thirds majority vote in the first and second rounds and an absolute majority vote in subsequent rounds.<sup>54</sup> The prime minister was appointed by the president.<sup>55</sup> Electoral provisions beyond the presidency were to be defined by law.

The 1964 Law on Political Elections created a proportional representation system for parliamentary elections.<sup>56</sup> In the first legislative elections in 1964, twenty-one political parties supported candidates with over nine political parties winning seats in the National Assembly.<sup>57</sup> The following elections in 1969 saw a significant increase in the number of political parties, with sixty-four parties competing for seats in the National Assembly, many of those parties representing clan interests.<sup>58</sup>

The 1960 Constitution also allowed the term of the legislature or president to be changed, but any changes could not pertain to the sitting legislature or president.<sup>59</sup>

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49 Fatuma Jama Eileeye served from 2009 to 2013. Ibrahim Hashi Jama, *Somaliland Electoral Laws* (Somalilandlaw.com, 2009), 6, [http://www.somalilandtimes.net/sl/2009/368/Somaliland\\_Electoral\\_Laws\\_Handbook\\_2008PP.pdf](http://www.somalilandtimes.net/sl/2009/368/Somaliland_Electoral_Laws_Handbook_2008PP.pdf);

and Yusuf M. Hasan, “Somaliland: Only Woman Guurti Member Resigns,” *Somaliland Sun*, March 3, 2013, <http://somalilandsun.com/index.php/politics/2394-somaliland-only-women-guurti-member-resigns>.

50 constitution of the republic of somaliland, May 31, 2001 (Som.), art. 9.

51 The Regulation of Political Associations and Parties Law (Law No. 14/2011) (Som.); “Somaliland Political Parties: Somaliland Political Parties and Associations,” Somalilandlaw.com, accessed November 6, 2013, [http://www.somalilandlaw.com/xeerka\\_xisbiyadda.htm](http://www.somalilandlaw.com/xeerka_xisbiyadda.htm).

52 CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 42(3).

53 Ibid. Article 83(5).

54 THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art. 70.

55 Ibid. Article 78.

56 Law No.4 of 22 January 1964 extended the proportional representation system to both Somalia and Somaliland. Previously, the PR-system was only used in Somalia. Additionally, the law established the framework for all elections from 1964 onward, and importantly the two National Assembly elections held on March 1964 and March 1969. See: Jama, *Somaliland Electoral Laws*, 25.

57 “Elections in Somalia,” African Elections Database, last modified December 30, 2010, <http://africanelections.tripod.com/so.html>;

58 Inter-Parliamentary Union, *Chronicle of Parliamentary Elections*, 62.

59 THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), arts. 52(1), 72.



Table 2 - Comparing provisions on electoral systems

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Presidential election</b>	<ul style="list-style-type: none"> <li>Two-thirds majority vote of both houses of parliament (Art 89)</li> </ul>	<ul style="list-style-type: none"> <li>Multi-round: Two-thirds majority vote of parliament for first and second round; absolute majority for subsequent rounds (Art 70)</li> </ul>
<b>Parliament elections</b>	<ul style="list-style-type: none"> <li>Direct elections; Details to be determined by legislation (Art 64, 72)</li> </ul>	<ul style="list-style-type: none"> <li>Determined by legislation (Art 51): Direct, proportional representation</li> </ul>
<b>Prime Minister selection</b>	<ul style="list-style-type: none"> <li>Appointed by the president (Art 90)</li> </ul>	<ul style="list-style-type: none"> <li>Appointed by the president (Art 78)</li> </ul>
<b>Subnational elections</b>	<ul style="list-style-type: none"> <li>Federal Member States may select their own electoral system (Art 47, 120)</li> </ul>	<ul style="list-style-type: none"> <li>No provisions in the constitution</li> </ul>

## Assessing existing arrangements

### Interactions between constitutional frameworks

Because the Provisional Federal Constitution allows federal member states to determine their own electoral systems, Puntland’s emerging electoral provisions could remain in force. Emerging states would also have the opportunity to determine their own electoral rules. Whether as a sovereign, independent State or a federal member state within the Federal Republic, Somaliland could retain its electoral provisions and elections could continue as scheduled.

Political party laws vary across the existing arrangements. The Provisional Federal Constitution does not discuss the number of political parties permitted, whereas the Puntland Constitution limits participation (following the Somaliland model).<sup>60</sup> These distinctions could have little to no impact, since the federal member states are permitted to define their own state-level institutions, including electoral law. Further, if the Somali federal government were to decide not to limit the number of political parties and instead put in place other qualifications (e.g. requiring broad-based, cross-constituency support), the political parties within the federal member states could be encouraged to form coalition parties to compete at the national level.

### Reconciling political interests and perspectives

The Provisional Federal Constitution, like many constitutions in existence, allows electoral rules to be determined by law. This highlights an opportunity to design an electoral system that effectively translates voter preferences into representation. The election process for members of the Upper House also provides an opportunity to represent member state interests at the national level. These opportunities are impacted by both the electoral model and political party laws, as both shape representativeness. For example, while the proportional representation system should accommodate a variety of interests, political party limitations would likely minimize the number of interests represented.

<sup>60</sup> The Somaliland Constitution also places limits on political parties and thus could also be implicated, if integrated as part of the Federal Republic.

The political party limitations in both Somaliland and Puntland have potential to support the establishment of parties with broad, national support, but the extent of these restrictions may undermine accommodation by preventing smaller, newer parties from participating in the political dialogue. Somaliland's amended law on political associations may create an opening for new interests to be represented, but there is a careful balance between avoiding oversaturation of political associations and ensuring diverse political views and perspectives are adequately represented. Political party restrictions are purportedly rooted in a desire to encourage nationalism, instead of clan-based factionalism, and to avoid the fracturing of Somali society, as resulted in the 1969 National Assembly elections. To promote accommodation, alternative provisions could be employed to allow the restrictions to continue at the subnational level, but to encourage the formation of national political parties that build on cross-state representation and non-clan based interests (e.g. requiring a certain threshold of votes from multiple constituencies for a party to compete for representation in parliament).

### 3.1.3 Executive

#### ■ Provisional Federal Constitution (2012)

The Provisional Federal Constitution provides for a presidency and a council of ministers at the federal government level. Executive power is vested in the council of ministers, which is led by the prime minister and includes deputy prime minister(s), ministers, state ministers, and deputy ministers.<sup>61</sup> The prime minister is the head of the federal government.<sup>62</sup> The president is the head of state and a symbol of national unity.<sup>63</sup>

The House of the People may provide the prime minister and council of ministers with a vote of confidence or no confidence.<sup>64</sup> The president may be impeached for treason or gross violation of the constitution or laws. To complete impeachment proceedings, the Constitutional Court must determine that the case has legal grounds, and the charges must be supported by "...a two-thirds (2/3) majority of the total membership of the two houses of the federal parliament."<sup>65</sup>

The Provisional Federal Constitution does not specify the number of ministers in the Council of ministers, nor the decision making procedures of the council. There are no quotas or guiding principles for the selection of the council of ministers; the only required qualifications are concerned with age and level of education.<sup>66</sup> In November 2012, the federal parliament accepted the prime minister's ten-member cabinet, which included two women. One of the women, Fowzia Yusuf Haji Aden, is Somalia's first female deputy prime minister and is also foreign minister.<sup>67</sup>

There are no provisions guiding the executive structure for the federal member states.

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<sup>61</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art. 97.

<sup>62</sup> Ibid., Article 100.

<sup>63</sup> Ibid., Article 87.

<sup>64</sup> Ibid. Articles 69(2)(d) and 69(2)(e). The Provisional Federal Constitution does not provide any additional details specifying the conditions required for such a vote.

<sup>65</sup> Ibid., Article 92.

<sup>66</sup> Ibid., Article 98.

<sup>67</sup> Hamsa Omar, "Somali Prime Minister Names New Cabinet, Including Two Women," *Bloomberg*, November 5, 2012, <http://www.bloomberg.com/news/2012-11-05/somali-prime-minister-names-new-cabinet-including-two-women.html>.

## ■ Constitution of the Puntland State of Somalia (2012)

The Puntland Constitution establishes a modified parliamentary structure with a president elected by the House of Representatives.<sup>68</sup> The president, in consultation with the vice president, appoints a council of ministers which must be approved by the House of Representatives.<sup>69</sup> With a majority vote, the House of Representatives may pass a vote of no confidence to remove cabinet ministers.<sup>70</sup> Impeachment of the president and vice president for violating the constitution, treason, or incompetence requires a two-thirds majority vote in the House of Representatives.<sup>71</sup>

The president is the head of the government and commander-in-chief of the armed forces in Puntland.<sup>72</sup> The president's powers include a legislative veto, which can be overridden by a two-thirds majority vote in the House of Representatives.<sup>73</sup>

## ■ The Constitution of the Republic of Somaliland (2001)

The Somaliland Constitution vests executive power in a directly elected president.<sup>74</sup> The president is commander-in-chief of the armed forces and is responsible for enacting legislation passed by parliament with the power to send draft legislation back to parliament.<sup>75</sup> However, if a draft law is passed by a two-thirds majority of both houses, then the president is barred from exercising his/her veto power.<sup>76</sup> The president is supported by a vice president and a council of ministers, who are appointed by the president.<sup>77</sup> The appointment of ministers must be approved by the House of Representatives with a majority vote.<sup>78</sup> The appointment of cabinet positions is heavily based on clan dynamics. Maintaining a clan balance has been a driving force behind presidential appointments to cabinet ministries.<sup>79</sup>

The president and vice president may be impeached for treason or violation of the constitution. Impeachment requires a majority vote by the House of Representatives, followed by a two-thirds majority vote by the House of Elders (*Guurti*).<sup>80</sup>

## ■ Constitution of the Somali Republic (1960)

The 1960 constitution featured a dominant presidential model. The president appointed the prime minister, authorized the introduction of draft legislation from the government, and served as commander-in-chief.<sup>81</sup> The president also had a legislative veto that could be overturned by

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<sup>68</sup> CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 56.

<sup>69</sup> *Ibid.*, Article 64(16) and Article 80(5).

<sup>70</sup> *Ibid.*, Article 67.

<sup>71</sup> *Ibid.*, Article 82.

<sup>72</sup> *Ibid.*, Article 80.

<sup>73</sup> *Ibid.*, Articles 72 and 73.

<sup>74</sup> THE CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 82, 90, and 94.

<sup>75</sup> *Ibid.*, Article 77.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, Article 81.

<sup>78</sup> *Ibid.*, Article 94.

<sup>79</sup> Jimcaale, "Consolidation and Decentralization of Government Institutions," 30.

<sup>80</sup> THE CONSTITUTION OF THE REPUBLIC OF SOMALILAND (2001), art. 96.

<sup>81</sup> CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art. 75.

the National Assembly with a two-thirds majority.<sup>82</sup> The president could issue temporary laws and regulations by decree, which was used to establish the Somali National Bank and was later converted to law by the legislature.<sup>83</sup> The National Assembly could impeach the president for treason or “attempts against the constitutional order” by a two-thirds majority.<sup>84</sup>

The prime minister appointed members of the government, which required a vote of confidence from the National Assembly.<sup>85</sup> The prime minister was responsible for directing the general policy of the government.<sup>86</sup> The selection of ministers was a delicate process, balancing merit with clan and regional dynamics. For example, in 1964, the prime minister’s cabinet was rejected due to an imbalance in clan and regional representation.<sup>87</sup> In 1967, the new prime minister added two seats to the cabinet to include adequate representation from every clan.<sup>88</sup>

In practice, the division of executive responsibilities between the president and the prime minister led to challenges in implementing development programs and agreeing on the overall direction of government policies, where the president and prime minister did not share the same ideology.

Table 3 - Comparing provisions on the executive

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Role of President</b>	<ul style="list-style-type: none"> <li>• Head of state; Commander-in-Chief of armed forces; Responsible for enacting legislation, appointing officials and judges, and other actions as recommended by the Council of Ministers or parliament (Art 87, 90)</li> </ul>	<ul style="list-style-type: none"> <li>• Head of state; Commander-in-Chief of armed forces; Responsible for enacting legislation, but maintains veto powers; Can issue temporary laws and decrees (Art 61, 63, 70, 75)</li> </ul>
<b>Role of Prime Minister</b>	<ul style="list-style-type: none"> <li>• Head of federal government; Responsible for appointing and dismissing members of the Council of Ministers (Art 100)</li> </ul>	<ul style="list-style-type: none"> <li>• Responsible for directing general government policy and coordinating/overseeing Council of Ministers (Art 83)</li> </ul>
<b>Role of Council of Ministers</b>	<ul style="list-style-type: none"> <li>• Responsible for formulating and implementing administrative regulations, policies, and laws; prepare annual budget and other draft laws for presentation to the parliament (Art 99)</li> </ul>	<ul style="list-style-type: none"> <li>• Responsible for directing the affairs within the individual ministries (Art 83)</li> </ul>
<b>Accountability mechanisms</b>	<ul style="list-style-type: none"> <li>• The House of the People must give vote of confidence, and can initiate vote of no confidence, for the prime minister and council of ministers (Art 69)</li> <li>• The president can be impeached by a two-thirds majority in both houses of parliament (Art 92)</li> </ul>	<ul style="list-style-type: none"> <li>• National Assembly must give vote of confidence, and can initiate vote of no confidence for prime minister and council of ministers (Art 82)</li> <li>• The president can be impeached by a two-thirds majority in the National Assembly (Art 76)</li> </ul>

<sup>82</sup> Ibid., Article 61.

<sup>83</sup> Ibid., Articles 63 and 85. Decree Law No.3/1678.

<sup>84</sup> CONSTITUTION OF THE SOMALI REPUBLIC (1960), Article 76

<sup>85</sup> Ibid., Articles 78(3) and 82.

<sup>86</sup> Ibid., Article 83.

<sup>87</sup> Federal Research Division, *Somalia: A Country Study* (Whitefish: Kessinger Publishing, LLC, 2010), 78-79.

<sup>88</sup> Ibid.

## **Assessing existing arrangements**

### **Interactions between constitutional frameworks**

The Provisional Federal Constitution provides federal member states with autonomy in deciding how to organize state level institutions, including the structure and function of their executive branches. Therefore, Somaliland and Puntland could retain their presidencies as expressed in their constitutions.

However, tensions could arise regarding specific responsibilities, such as control of security forces and foreign affairs. Puntland's president is also the commander-in-chief of the armed forces and the Provisional Federal Constitution allows parliament to decide the structure, function, and levels of security forces in the Federal Republic.<sup>89</sup> (For further discussion on security arrangements, see *Section 5.2.2.*)

### **Reconciling political interests and perspectives**

The presidential model is a common feature in the existing arrangements, whether at the national or subnational level. From an accommodation perspective, these provisions could ensure a high level of agreement on the choice of the president (either through a direct or indirect election), after which the president retains substantial decision making powers. In the Provisional Federal Constitution, the 1960 Constitution, and the Puntland Constitution, the president is indirectly elected by parliament. With this type of selection process, representativeness within parliament is necessary to facilitate accommodation.

The existing arrangements also provide mechanisms to ensure the president adequately respects and responds to constituent interests, empowering the legislature with authority to check the executive (e.g. votes of confidence, power to override a presidential veto, impeachment powers). The challenge resides in organizing the support required to implement these mechanisms; the existing provisions mostly require a two-thirds majority support from parliament.

The Provisional Federal Constitution also leaves open the process for selecting the prime minister and council of ministers. This could provide an opportunity to appoint ministers across constituencies. While the 4.5 formula remains highly contested as a reliable method for meaningful representation and conflict resolution, alternative means of clan representation could be explored.<sup>90</sup> Experiences resulting from the 1960 Constitution and the Somaliland Constitution highlight the importance of clan balance in the appointment of officials in the executive branch.

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<sup>89</sup> Somaliland's constitution also gives its president commander-in-chief powers, and thus could also face tension with the Provisional Constitution, if incorporated as a federal member state.

<sup>90</sup> In 2000, the Transitional Federal Government established the 4.5 formula as a means to promote equitable clan representation in the government. The four main clans (Hawiye, Darood, Dir, and Rahaweyn) would be equally represented, with the remaining "0.5" to accommodate other minority groups. However, this method is highly contested as a reliable method for meaningful representation and conflict resolution. See International Crisis Group, *Somalia: The Transitional Government on Life Support*, Africa Report No. 170, (February 21, 2011), 3.

### 3.1.4 Legislative Branch

#### ■ Provisional Federal Constitution (2012)

The current Federal Parliament was selected by 825 elders representing their communities. The Provisional Federal Constitution mandates a bicameral legislature, including the House of the People and the Upper House.<sup>91</sup> The House of the People includes 275 members directly elected by the people of the Federal Republic.<sup>92</sup> The Upper House can have up to 54 members directly elected by the people of the federal member states.<sup>93</sup> All federal member states should have an equal number of representatives in the Upper House.<sup>94</sup> The Provisional Federal Constitution does not reserve any seats for women or minorities in either house of parliament.

Every member of parliament is to be guided by the best interests of the nation as a whole. However, members of the House of the People are to give special consideration to the interests of the constituencies which elected them.<sup>95</sup> Members of the Upper House are to consider the interests of the federal member state they represent and are responsible for safeguarding the federal system.<sup>96</sup> The House of the People can be dissolved if it cannot approve the council of ministers and the government's proposed program of work.<sup>97</sup> The Upper House cannot be dissolved.<sup>98</sup>

Both houses of the Federal Parliament can initiate draft legislation, but only the House of the People has the authority to reject draft legislation and drop the draft law.<sup>99</sup> Additionally, only the House of the People may send draft legislation to the President for enactment.<sup>100</sup> The House of the People is also responsible for nearly all of the enactment legislation, including establishing regulations for political parties, elections, independent commissions and the number and boundaries of federal member states.

In the Upper House, decisions should typically be made by a majority vote of the total membership of the house, where each member has one vote.<sup>101</sup> The Provisional Federal Constitution does not provide for decision making procedures in the House of the People.

As a transitional provision, the Upper House will not convene until all federal member states have been established. Until that time, the House of the People will perform the duties and functions of the Upper House.<sup>102</sup>

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<sup>91</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art. 55.

<sup>92</sup> Ibid. Article 64.

<sup>93</sup> Ibid. Article 72.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid. Article 64.

<sup>96</sup> Ibid. Article 72.

<sup>97</sup> Ibid. Article 67.

<sup>98</sup> Ibid. Article 78.

<sup>99</sup> Ibid. Article 81.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid. Article 76.

<sup>102</sup> Ibid. Article 138(2).

## ■ Constitution of the Puntland State of Somalia (2012)

The Puntland Constitution provides for a directly elected 66-member unicameral House of Representatives.<sup>103</sup> The House of Representatives exercises legislative authority, this includes approving and rejecting draft legislation and reviewing/amending the laws of Puntland.<sup>104</sup> The House of Representatives also approves the annual government budget, new districts or regions proposed by the government, declaration of a state of war/peace treaties, foreign borrowing, and international agreements.<sup>105</sup> Additionally, the House of Representatives elects the president and vice president of Puntland as well as other high level officials and approves members of the Council of Ministers.<sup>106</sup>

## ■ The Constitution of the Republic of Somaliland (2001)

The Somaliland bicameral legislature includes the House of Representatives and the House of Elders (*Guurti*). Members of the House of Representatives represent the population as a whole, while the House of Elders has special responsibilities relating to religion, culture, tradition, and security.<sup>107</sup>

The houses may sit separately but must hold joint sessions with respect to certain matters, including international organizations, states of war, natural disasters, and emergency laws.<sup>108</sup> The House of Elders has special responsibility to provide assistance to the government, in consultation with other traditional leaders, on religion, security, defense, culture, and the economy.<sup>109</sup>

In the legislative process, nearly all bills are sent from the House of Representatives to the House of Elders for review. If the House of Elders rejects a bill, the House of Representatives may override the decision and send the bill directly to the president for signature.<sup>110</sup> However, where the House of Elders rejects the bill by a two-thirds majority, the House of Representatives must also re-pass the bill by a two-thirds majority before sending it to the president.<sup>111</sup>

There are no provisions, in the constitution or elsewhere, reserving seats for women nor any requirements for women's participation. At the 2008 parliamentary elections no women were elected, and in the 2012 district elections only ten women were elected to district councils.

## ■ Constitution of the Somali Republic (1960)

The 1960 Constitution vested legislative authority in a unicameral legislature called the National Assembly. This body included directly elected members, as well as all former presidents.<sup>112</sup> With a unicameral structure, draft legislation only had to pass through the National Assembly by a ma-

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<sup>103</sup> CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 60.

<sup>104</sup> Ibid., Article 64(1).

<sup>105</sup> See Article 64 for full list of responsibilities.

<sup>106</sup> Ibid., Article 64.

<sup>107</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), arts. 39, 57, 59.

<sup>108</sup> Ibid. Article 38.

<sup>109</sup> Ibid. Articles 61(4).

<sup>110</sup> Ibid. Articles 78(b) and (c).

<sup>111</sup> Ibid. Article 78(5).

<sup>112</sup> THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art.51.

majority vote, before going to the president for signature.<sup>113</sup> The National Assembly could overrule a presidential legislative veto with a two-thirds vote.<sup>114</sup>

The allocation of seats in the National Assembly did not seek to ensure equitable representation of the regions or clans beyond providing for elections. Following independence in 1960, women were largely excluded from elected and civil service positions.<sup>115</sup>

Table 4 - Comparing provisions on the legislative branch

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Structure of legislature</b>	<ul style="list-style-type: none"> <li>• Bicameral (Art 55)               <ol style="list-style-type: none"> <li>(1) House of the People: Members to give special consideration to the interests of the constituencies which elected them (Art 64)</li> <li>(2) Upper House: Members to consider the interests of the federal member state they represent as well as safeguarding of the federal system (Art 72); All federal member states should have an equal number of representatives in the Upper House (Art 72)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Unicameral (Art 51)</li> </ul>
<b>Legislative process</b>	<ul style="list-style-type: none"> <li>• Draft legislation can be introduced in either house, but only the House of the People has authority to reject draft laws or send draft laws to the president for enactment. (Art 82, 83)</li> </ul>	<ul style="list-style-type: none"> <li>• Draft legislation passed by the Assembly is sent to the president for enactment; the president can send a law back to the assembly for reconsideration (Art 61)</li> <li>• The Assembly can override the president's legislative veto with a two-thirds vote (Art 61)</li> </ul>
<b>Decision making process</b>	<ul style="list-style-type: none"> <li>• House of the People: Vote of confidence (or no confidence) requires majority vote; otherwise no provisions (Art 69)</li> <li>• Upper House: Majority vote (each member has one vote) (Art 76)</li> <li>• Election of the president and amending the constitution requires a two-thirds majority vote from both houses (Art 89, 132)</li> </ul>	<ul style="list-style-type: none"> <li>• Majority vote for most provisions (Art 55)</li> <li>• Constitutional amendment requires majority vote on first ballot, and two-thirds majority vote on the second ballot (Art 104)</li> </ul>

<sup>113</sup> Ibid. Articles 55 and 61.

<sup>114</sup> Ibid. Article 61.

<sup>115</sup> Safia Aidid, "Haweenku Wa Garab (Women are a Force): Women and the Somali Nationalist Movement, 1943-1960," *Bildhaan* 10 (2010):116-117, <http://digitalcommons.macalester.edu/bildhaan/vol10/iss1/10>.



## Assessing existing arrangements

### Interactions between constitutional frameworks

The bicameral legislature in the Provisional Federal Constitution features an Upper House, which includes representatives from all federal member states. The Provisional Federal Constitution does not specify how emerging states not yet recognized as federal member states and other unincorporated regions will be represented in the Upper House.

As highlighted in the executive strand, the Provisional Federal Constitution allows federal member states to organize state level institutions, which includes the legislative branch. Thus, the Puntland legislature could continue to operate as mandated by the Puntland Constitution. Some tension could arise over responsibilities and autonomy, as the Provisional Federal Constitution only lists a handful of federal-level responsibilities and does not discuss the division of responsibilities between the federal government and federal member states; nor how much autonomy will be exercised by the federal member state legislatures.

### Reconciling political interests and perspectives

The Provisional Federal Constitution and the Somaliland Constitution call for bicameral legislatures, which can help to broaden the representation of interests and spread decision making influence across groups. For example, the Provisional Federal Constitution strengthens representation of federal member state interests through the inclusion of the Upper House and the role it plays in the legislative process. The Somaliland Constitution does the same with the House of Elders (*Guurti*) by promoting the interests of religious and traditional leaders. The unicameral legislature in the 1960 Constitution does not provide for the same accommodation of interests.

None of the existing arrangements provide specific mechanisms for encouraging the representation of minority groups or women. Since independence, women have been under-represented in legislative bodies as well as executive offices.<sup>116</sup> The Provisional Federal Constitution seeks to improve on this historical record by including broad language, calling for the representation of “all communities” and specifically representation of women in all institutions, yet does not provide any tangible mechanisms to support the inclusion of under-represented groups.

## 3.1.5 Public Participation

### ■ Provisional Federal Constitution (2012)

Under the Provisional Federal Constitution, every citizen has the right to take part in public affairs. This includes the right to form political parties and participate in the activities of political parties.<sup>117</sup> Voters may also express their views “in a free, direct and secret manner” via referendums.<sup>118</sup> Provisions for participation by referendum are primarily in the context of amending the constitution and ratifying the final constitution.

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<sup>116</sup> In November 2012, the Somali Prime Minister selected two women to serve on the 10-member cabinet: Minister of Foreign Affairs and Deputy Prime Minister Fowzia Yusuf Haji Adan and Minister of Human Development and Public Services Dr. Maryam Qasim. See Omar, “Somali Prime Minister Names New Cabinet, Including Two Women.”

<sup>117</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art.22.

<sup>118</sup> Ibid. Article 141.

The Provisional Federal Constitution also provides opportunities for large groups of citizens to influence the legislative and constitutional amendment process:

- 10,000 or more registered voters may bring a case to the Constitutional Court to challenge an enacted law that they believe contradicts the Constitution.<sup>119</sup>
- A petition "...signed by at least 40,000 citizens may initiate the [constitution] amendment process."<sup>120</sup>

The Provisional Constitution also encourages the inclusion of women in all national institutions, including the three branches and independent commissions. However, no specific mechanisms for achieving this inclusion are discussed.<sup>121</sup>

## ■ Constitution of the Puntland State of Somalia (2012)

The public participation mechanisms listed in the Puntland Constitution focus on the legislative process.

- Draft legislation may be introduced by 5,000 or more citizens who are eligible to vote.<sup>122</sup> Citizens cannot submit draft legislation on taxation, government expenditures, national defense or internal security.<sup>123</sup>
- Plenary sessions of parliament are open to the public, unless a closed session is supported by a majority of members.<sup>124</sup>
- All laws are published in an official bulletin, per orders from the president, and are available to the public.<sup>125</sup>

Citizens also have the right to petition the president, parliament, cabinet, or any other official and such officials are required to respond within 30 days.<sup>126</sup> The public may also propose amendments to the constitution, with the support of 5,000 citizens eligible to vote.<sup>127</sup> Amendments to select constitutional articles, including the founding principles, require a referendum.<sup>128</sup> A public referendum on the constitution has not yet taken place.<sup>129</sup>

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<sup>119</sup> Ibid. Article 86.

<sup>120</sup> Ibid. Article 132(3). The provision explicitly states "40,000 citizens" and does not specify whether those citizens must have voting rights.

<sup>121</sup> Ibid. Article 3(5).

<sup>122</sup> CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 68.

<sup>123</sup> Ibid. Article 69(3).

<sup>124</sup> Ibid. Article 63(5).

<sup>125</sup> Ibid. Article 71(2).

<sup>126</sup> Ibid. Article 42.

<sup>127</sup> Ibid. Article 139(1).

<sup>128</sup> Ibid. Article 139(5).

<sup>129</sup> A constitutional referendum has been held regarding the Puntland Constitution. However, voting was done by selected members of the public on 18 April 2012 and was not opened to the general voting public. Delegates included representative elders selected by local leaders across Puntland, diaspora members, and government representatives. "SOMALIA: Puntland Constitution Approved," 49 *Africa Research Bulletin: Political, Social and Cultural Series* no. 4 (2012), doi: 10.1111/j.1467-825X.2012.04427.x; "A Historic Moment: Puntland's Constitution Now Ratified," *Interpeace*, April 20, 2012, <http://www.interpeace.org/2011-08-08-15-19-20/latest-news/52-2012/282-a-historic-moment-puntland-s-constitution-now-ratified>; and "Somalia: Puntland State Constitution Adopted," *Ga-rowe Online*, April 18, 2012, <http://allafrica.com/stories/201204181369.html>.

## ■ The Constitution of the Republic of Somaliland (2001)

Provisions for public participation in the Somaliland Constitution also center around the legislative process.

- Sessions of the House of Representatives and the House of Elders (*Guurti*) are open to the public, but can be closed as needed.<sup>130</sup>
- With the support of 5,000 citizens (who are eligible to vote), the public can submit draft legislation to the House of Representatives.<sup>131</sup>
- All laws that are passed by parliament and enacted by the president are published in the Official Journal by the president.<sup>132</sup>

The constitution also calls for the development of a referendum law and a committee to organize referendums.<sup>133</sup> The constitution also mandates that a referendum is required for the dissolution of the House of Representatives.<sup>134</sup> As of February 2013, the only referendum law enacted was to govern the adoption of the constitution.<sup>135</sup> In 2001, citizens participated in a referendum to enact the constitution, with 97% of voters supporting.<sup>136</sup>

## ■ Constitution of the Somali Republic (1960)

The 1960 Constitution provided very limited means of public participation. Members of the public had the right to petition the president, the National Assembly, and/or the government; any petition not manifestly unfounded had to be examined by the petitioned institution.<sup>137</sup> However, the 1960 Constitution did not elaborate on the mechanisms and conditionalities for reviewing and responding to those petitions.

The 1960 Constitution included one provision regarding referendums, to ratify the constitution.<sup>138</sup> The referendum took place in June 1961, and of the few who voted in the north (Somaliland), less than half supported the constitution, while voters in the south strongly supported the constitution.<sup>139</sup>

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<sup>130</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), arts. 45, 71.

<sup>131</sup> Ibid. Article 74.

<sup>132</sup> Ibid. Article 75.

<sup>133</sup> Ibid. Article 125.

<sup>134</sup> Ibid. Article 56.

<sup>135</sup> Jama, *Somaliland Electoral Laws*, 13-15.

<sup>136</sup> Initiative & Referendum Institute, *Final Report of the Initiative & Referendum Institute's Election Monitoring Team* (Washington: Citizen Lawmaker Press, July 27, 2001), 22, <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Final%20Somaliland%20Report%207-24-01%20combined.pdf>.

<sup>137</sup> THE CONSTITUTION OF THE SOMALI REPUBLIC, July 1, 1960 (Som.), art. 10.

<sup>138</sup> Ibid. Transitional and Final Provisions III.

<sup>139</sup> I.M. Lewis, *Understanding Somalia and Somaliland* (New York: Columbia University Press, 2008).

Table 5 - Comparing provisions on public participation

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Mechanisms for public participation</b>	<ul style="list-style-type: none"> <li>• Every citizen has the right to form political parties (Art 22)</li> <li>• Referenda (Art 141)</li> <li>• 10,000+ registered voters can challenge the constitutionality of a law (Art 86)</li> <li>• 40,000+ registered voters can initiate a constitutional amendment (Art 132)</li> </ul>	<ul style="list-style-type: none"> <li>• Right to petition the president, National Assembly, or government, and have the petition examined (Art 10)</li> <li>• Referenda for enacting the constitution (Transitional and Final Provisions III)</li> </ul>
<b>Diversity mechanisms</b>	<ul style="list-style-type: none"> <li>• Participation of women in all government institutions (Art 3)</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>

NB: No petitions have been successfully presented since 1991 to any of the Somali authorities.

## Assessing existing arrangements

### Interactions between constitutional frameworks

Public participation mechanisms across levels of government are not necessarily mutually exclusive. For example, separate referendums could occur at both the national level and within each of the federal member states. Also, provisions for public participation in the legislative process at the federal member state level would not necessarily interfere with mechanisms at the national level.

Alternatively, provisions for participation can have wide ranging effects across levels of governance. In Somaliland, the House of Elders (*Guurti*) supports public participation at the local levels through engagement of community leaders and clan/kinship units.

### Reconciling political interests and perspectives

The Provisional Federal Constitution, Puntland Constitution, and Somaliland Constitution outline several mechanisms in which members of the public can register their concerns and voice their interests outside the electoral cycle. Referendums are a useful tool for engaging the public on specific substantive issues, such as constitutional amendments. The ability to petition elected officials, as included in the Somaliland and Puntland constitutions, also provides another opportunity for substantive input by the public.

Several of the existing arrangements also highlight opportunities for large groups of citizens to engage the legislative or constitutional amendment process. For example, the Provisional Federal Constitution contains provisions which enable the public to challenge the constitutionality of any enacted law, but this requires the support of at least 10,000 citizens. The Constitution does not provide any further clarity regarding qualifications to challenge laws besides citizenship. These provisions create an opening for public participation, but the required level of support may make such actions unrealistic.

### 3.1.6 Traditional and customary arrangements

#### ■ Provisional Federal Constitution (2012)

The Provisional Federal Constitution includes one article discussing the role of traditional leaders and how traditional law (*xeer*) will fit into the formal governance structure. The article states that the presidents of the federal member states and high ranking officials will meet regularly to discuss a list of issues, including relations with traditional leaders and the protection and development of traditional law, amongst other topics.<sup>140</sup> Traditional elders and leaders are also to be included as members of the Truth and Reconciliation Commission.<sup>141</sup>

#### ■ Constitution of the Puntland State of Somalia (2012)

The Puntland Constitution also seeks to involve traditional leaders by giving them special responsibility to deal with conflicts between clans or sub-clans; the constitution calls on these leaders to advise or mediate a peaceful solution.<sup>142</sup> Decisions by traditional authorities are also formally recognized and must be registered in the Magistrate Courts.<sup>143</sup> Further recognizing the valuable role played by traditional authorities, the Puntland government organized a conference of traditional leaders in 2009 to revise, unite, and standardize Somali customary law (*xeer*). This conference also functioned to establish a networking body of traditional leaders.<sup>144</sup>

The Puntland Constitution also promotes the formal incorporation of customary law, requiring the judiciary to recognize dispute resolution based on traditional norms.<sup>145</sup> The constitution also recognizes traditional laws as long as the laws do not contravene Sharia and the laws of Puntland.<sup>146</sup>

#### ■ The Constitution of the Republic of Somaliland (2001)

Although it has never been appointed, the Somaliland Constitution establishes an Ulema Council, responsible for making formal decisions on religious disagreements and determining whether matters are contrary to Sharia.<sup>147</sup> The members of the Ulema Council cannot be associated with any political party or special religious group and are nominated by a committee chosen by the House of Elders (*Guurti*), in consultation with the government.<sup>148</sup>

The House of Elders creates a substantial, yet sometimes controversial, role for traditional authorities in the governance of Somaliland. The House of Elders has mediated solutions to deadlocks, but it has also created crises by deciding to extend its own term and the president's term.<sup>149</sup> Furthermore, whether the House of Elders should be directly or indirectly elected continues to cause tension. Traditional elders have had a defining role in the development of Somaliland insti-

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<sup>140</sup> Ibid. Article 52.

<sup>141</sup> Ibid. Article 111.

<sup>142</sup> Ibid. Article 108(4).

<sup>143</sup> Ibid. Article 108(6).

<sup>144</sup> "Puntland Traditional Leaders Conference: Declaration" (UNDP Somalia, February 11, 2009), [http://www.so.undp.org/index2.php?option=com\\_docman&task=doc\\_view&gid=152&Itemid=35](http://www.so.undp.org/index2.php?option=com_docman&task=doc_view&gid=152&Itemid=35).

<sup>145</sup> CONSTITUTION OF PUNTLAND STATE OF SOMALIA, Dec. 2009 (Som.), art. 89(9).

<sup>146</sup> Ibid. Articles 89(9) and 108.

<sup>147</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 115.

<sup>148</sup> Ibid. Articles 118 and 119.

<sup>149</sup> Ibid. Article 83(5). The House of Elders extended their mandate an additional four-years in September 2006. Following the 2010 presidential elections, the House of Elders' mandate was, again, extended until 2012.

tutions and the maintenance of peace. Elders played a significant role in developing systems for a peaceful transfer of power from military to civilian rule in 1993. The role of traditional clan elders in developing political solutions and peace agreements has contributed to a mostly stable and secure region of Somaliland since 1997.<sup>150</sup>

The House of Elders also consults with other traditional leaders on religion, security, defense, culture, economy, and society.<sup>151</sup> Elders play a key role in informal social structures, as principal leaders in community discussions and social mobilization, and are interlinked with the clan structure.<sup>152</sup> Clan elders have been highly resistant to the inclusion of women and have limited women’s access to seats in parliament.<sup>153</sup>

■ **Constitution of the Somali Republic (1960)**

The 1960 Constitution does not include any provisions regarding traditional and customary arrangements.

Table 6 - Comparing provisions on traditional and customary arrangements

	Provisional Federal Constitution (2012)	Constitution of the Somali Republic (1960)
<b>Mechanisms for traditional and customary arrangements</b>	<ul style="list-style-type: none"> <li>• Presidents of federal member states and high ranking officials to discuss relations with traditional leaders and the development of traditional law (Art 52)</li> <li>• Truth and Reconciliation Commission to include traditional elders and leaders (Art 111)</li> </ul>	<ul style="list-style-type: none"> <li>• No applicable provisions.</li> </ul>

**Assessing existing arrangements**

Interactions between constitutional frameworks

Similar to the public participation strand, mechanisms across levels of government regarding traditional and customary arrangements are not mutually exclusive. A legislative or advisory body that includes religious and/or traditional authorities could exist at the national level, the federal member state level, or both.

As the Provisional Federal Constitution includes few provisions on traditional and customary arrangements, the potential for conflict between constitutional texts remains limited. The Provisional Federal Constitution, however, does not elaborate the selection process for traditional leaders included in Article 52. Conflict could result where the selection process identified by the government does not correspond to the selection process identified by federal member states.

<sup>150</sup> Mark Bradbury, Adan Yusuf Abokor, and Haroon Ahmed Yusuf, "Somaliland: Choosing Politics over Violence," *Review of African Political Economy* 30, no. 97 (2003): 455-478, <http://www.jstor.org/stable/4006988>.

<sup>151</sup> CONSTITUTION OF THE REPUBLIC OF SOMALILAND, May 31, 2001 (Som.), art. 61(4).

<sup>152</sup> Mark Bradbury, *Becoming Somaliland* (Bloomington: Indiana University Press, 2008), 16-17.

<sup>153</sup> International Republican Institute, *Parliamentary Election Assessment Report*, 14. In the 2005 parliamentary elections, clan leaders commanded considerable control over the candidate nomination process. As a result, 7 out of 246 nominated candidates were women.

### Reconciling political interests and perspectives

The Somaliland and Puntland constitutions create formal institutions within the government to represent the interests of religious and traditional authorities. Although contentious, the direct or indirect election of these representatives could ensure wide inclusion of interests and help to mitigate the domination of any one interpretation of Islamic or customary law. The Provisional Federal Constitution does not discuss any formal institutions, but could promote such accommodation and inclusion via the creation of institutions through legislation.

The Provisional Federal Constitution also calls on the federal government to promote the culture and local dialects of minority groups.<sup>154</sup> This provision supports the promotion of political accommodation, although the text does not specify any tangible mechanisms to ensure those interests are promoted and protected.

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<sup>154</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), art. 31.





## 4. Exploring opportunities for political accommodation

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This section synthesizes (1) the understanding gained from assessing existing arrangements and the implementation of those arrangements, (2) the interests and perspectives presented in consultations with Somali stakeholders, and (3) the sample technical arrangements drawn from case study research. Integrating the information gathered from these sources helps to frame political accommodation squarely in the Somali context. As such, the content of this section previews the building blocks that will be used to develop the option categories in the following section.

The ‘considerations’ highlight the contextual needs and challenges that currently exist in Somalia, emphasizing specific facts that must be kept in mind when reflecting on the viability and desirability of the option categories. The ‘opportunity areas’ briefly discuss feasible technical mechanisms and approaches to fostering political accommodation in Somalia across each of the six strands. The case study research subsequently helps to shape the overall contours and specific technical mechanisms featured in the opportunity areas, as well as the option categories in Section 5.

### 4.1 Considerations for option development

Prior to assessing the categories of options, it is important to acknowledge the Somali context in which these governance arrangements are framed. The considerations included in this section are a distillation of expressed needs, perspectives, and aspirations, which manifest themselves as political interests. These interests help construct a Somali-specific lens through which to assess the option categories and may highlight certain target areas that require additional focus.

For example, institutional development in Somalia currently lacks uniformity. Somaliland has achieved relative stability for a number of years and has successfully run a series of electoral cycles. Puntland is in a process of transition that can realistically be anticipated to result in elections in the near future. Efforts to establish new administrations are at different stages, the Jubba Interim Administration has been established until 2015, while the process to form a federal member state in the central regions was initiated in May 2013.

The following areas highlight some additional key considerations that characterize this environment and are critical to achieving political accommodation.

#### 4.1.1 Cultural considerations

- Somalis share a common religious and cultural background and linguistically Somali is dominant, although a significant number of people also speak af-May.
- Historically, conflict has revolved around clan divisions and the control and distribution of resources. These conflicts exist today at every level within society. Communities fight over local resources, such as pasture and water, and wider disputes take place around control of seaports, supply roads, and income generating assets.

- Decades of abuse and conflict have instilled a culture of mistrust and intrigue.
- Many Somalis define their identity first based on clan, sub-clan, region, religion, ethnicity and subsequently by nationality.
- Representation, local dialogue, and community security are principally provided through traditional structures. Local elders and Sharia courts resolve the majority of local-level disputes, ranging from family law, localized conflicts, and inheritance. Many regional disputes remain unresolved. The coexistence of traditional legal systems with formal legal systems will require careful design to ensure functional rule of law. Lessons can be drawn from experiences in both Somaliland and Puntland.

#### 4.1.2 Political considerations

- The drive towards federalism or separatism by certain groups has been motivated by a legacy of abusive central governance.
- The public's understanding of federalism is limited; some groups claim that federalism is an externally-driven conspiracy to weaken the Somali nation.
- New 'states' are currently being formed in an ad hoc process, guided only by ambiguous provisions in the Provisional Federal Constitution, not an agreed policy framework.
- The control and management of security systems (military, police, militias, etc.) remains a central issue. The Provisional Federal Constitution provides brief guidance, but does not specify how those forces will interact, how responsibilities will be divided, and how security arrangements may differ between existing and emerging states. The constitution also does not discuss if/how the new security regime will incorporate former militias.

#### 4.1.3 Socio-economic considerations

- Somalia is one of the poorest countries in the world.<sup>155</sup> Some regions and communities of Somalia are significantly poorer than others.
- The control and distribution of resources remains a driver of conflict, meaning agreement on revenue sharing will become increasingly important, particularly if commercial quantities of oil and other natural resources are discovered. The nomadic economy revolves around livestock. Management of rangelands and water resources are central to mitigating conflict. Somalia may benefit from examining how other countries have managed similar challenges.
- The principle areas of irrigation have experienced migrations and land occupations.<sup>156</sup> These issues remain unresolved and are likely to grow with the return of commercial farming.
- After twenty years of conflict, most commerce occurs outside the formal market. Lack of regulation has also allowed activities such as the export of charcoal, exploitation of marine

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<sup>155</sup> Based on an estimated 2010 Human Development Index, Somalia is ranked 165th out of 170 countries. See United Nations Development Programme Somalia, *Somalia Human Development Report 2012* (United Nations Development Programme Somalia, 2012), 27, <http://hdr.undp.org/en/content/2012-somalia-human-development-report>.

<sup>156</sup> Somalia Conflict Early Warning Early Response Unit, *From the bottom up: Southern Regions - Perspectives through conflict analysis and key political actors' mapping of Gedo, Middle Juba, Lower Juba, and Lower Shabelle* (Somalia Conflict Early Warning Early Response Unit, September 2013).

resources, illegal printing of currency, human and drug trafficking, unregulated use of khat, sale of counterfeit drugs, and piracy. Informal cartels exist in almost in every economic sector.

- Many Somalis benefit from remittances sent by family and friends in the diaspora.

#### **4.1.4 Communities needing special attention**

- Alienation of minorities, such as the ‘Bantu’ communities, and the failure to protect the rights of individuals are among the drivers of conflict.
- Somali governance is dominated by a male elite, which excludes women, youth, and minorities.
- Minority communities lacking strong geographical concentration may remain under-represented in democratic electoral processes without special consideration.
- Somalia’s ‘lost generation’ (those born after 1991) have had very limited access to education and little experience of governance. The majority of Somali youth have grown up in a society affected by chronic conflict. The full implication of these conditions is yet to be understood.
- Conflict and humanitarian crises have displaced millions of Somalis creating large refugee populations in surrounding countries, and a large number of internally displaced people across the territory as well as a vocal diaspora community around the world.
- Significant numbers of people suffer from psychological trauma as a result of long term conflict.

#### **4.1.5 Spoilers**

- One of the most significant obstacles to peace is the non-State armed groups that continue to oppose the Federal Government.
- Other spoilers are less vocal but equally disruptive. Wealthy pirate consortiums, arms traders, drug smugglers, refugee smugglers, and corrupt government officials, warlords and some former politicians do not want to see a return to accountable governance and rule of law.

#### **4.1.6 International dimension**

- Somali history reflects significant regional and international influences. This was manifested by conflicts in northern Kenya (the ‘Shifita’ Wars of the 1960s and 1970s) and Ethiopia (the Ogaden War of 1976-8).
- As a contested State in a strategic position during the Cold War, Somalia received massive arms shipments from both sides.
- Stability in Somalia remains a concern for neighboring States. All three neighbors have troops in Somalia as of December 2013. The Intergovernmental Authority on Development (IGAD) and the African Union (AU) have significant interests in Somalia reflected in political missions and military deployments.
- Currently, international donors are providing the majority of funding for social services, institutional support, and security operations.

- Terrorism, piracy, trade, and the overspill of conflict in Somalia have had significant social and economic implications globally, making stability of the country important to the international community.
- Two decades of conflict have forced many Somali people to seek refuge abroad. This has created one of the most widely dispersed diaspora communities in the world.

#### **4.1.7 Demographic considerations**

- The distribution of clans within a geographic region, in combination with the electoral system chosen, has potential to affect the representation of interests within the states, and subsequently representation at the national level (See *Box 1 - State Boundaries and Representation*).
- Determining internal administrative boundaries requires consideration of both the population and clan distribution within each proposed political unit to minimize the likelihood of inequitable dominance of certain clans. However, there is a lack of reliable data on clan and population distribution in Somalia, particularly in the south-central regions.
- Questions of right to residence and resources are central concerns for many communities. Will non-residents or non-indigenous communities have the right to work and own property in different parts of the territory? Where can different communities vote and who benefits from resources in a particular area. Resolving these questions in a manner that promotes inclusivity could go a long way to building support for any proposed settlement.

## 4.2 Challenges and Opportunities

The passing of the Provisional Federal Constitution, the election of a new government, and the opening of talks between Somalia and Somaliland have initiated important processes for governance reform. Within these processes, there are important entry points for building political accommodation, such as:

- Continued negotiation around the constitution-making process and building national ownership of the outcome (e.g. a national referendum).
- Legislation pertaining to political parties and the electoral systems, for national, member state, and local government elections.
- The negotiation process for determining a decentralization policy framework, local government responsibilities, and related implementation arrangements aimed at creating local and member state administrations.
- The structuring and organization of new commissions mandated with managing electoral processes, demarcation of boundaries, and continued reconciliation.

The following section highlights additional areas across the six strands that may present as opportunities to achieve more effective accommodation of political interests and perspectives.

### 4.2.1 Political structure and decentralization

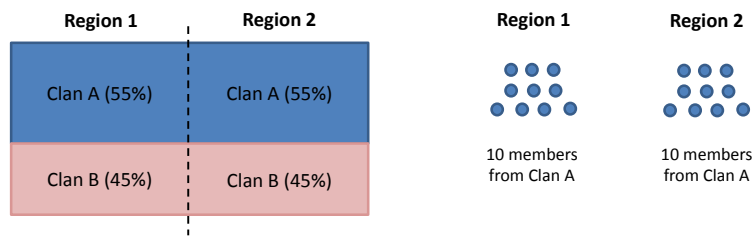
Somalis have historically faced significant challenges in establishing a governance system that is efficient, responsive, and accommodating. This legacy of poor governance has fueled demands for federalism and separatism by certain groups. Yet, federalism and/or separatism are not the only options available. The following opportunity areas illustrate approaches that may help to reconcile these diverse interests:

- Selecting governance arrangements that can foster decentralization or devolution of authority, including arrangements that promote the allocation of responsibilities to fit capacity and opinions across diverse constituent units.
- Balancing of executive power at the national and local levels with realistic accountability mechanisms in the legislature or other institutions, whether in a presidential, parliamentary, or hybrid model.
- Exploring different types of subnational units in a federal system (e.g. states or regions) which may better accommodate different levels of capacity between existing entities.
- Implementing transparent and effective fiscal decentralization to address the diverse resource-related needs in different parts of the country.
- Creating clear provisions for the generation and distribution of revenues from principle sources, including seaports, airports, primary infrastructure, and natural resources.

Population distribution, geographic arrangements, and electoral systems link together in such a way that can have a dramatic effect on representativeness and accommodation.

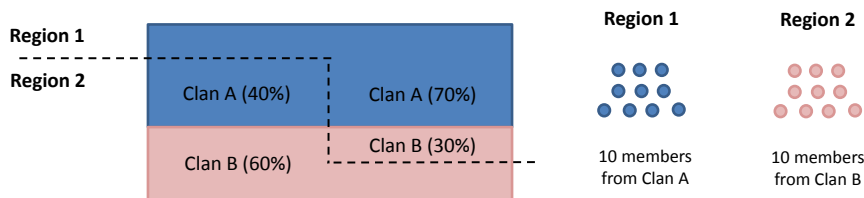
Consider a case where Clan A and Clan B occupy territory in adjacent regions and Clan A has 55% representation in both regions. Assuming that Clan A embraces a unified set of interests (i.e. constituents within Clan A would vote for a Clan A representative), under a majoritarian electoral system, Clan A would control both regions and represent both regions in a regional house of parliament. For example, if the regional house of parliament included 10 representatives from each region, then both regions would be represented by 10 members from Clan A.

**EXAMPLE 1 – Clan A with majority in both regions**



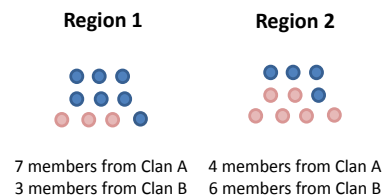
If the boundaries were drawn differently, Clan A may hold a 70% majority in one region, while Clan B holds a 60% majority in the other region. Assuming that each clan holds a distinct set of interests (i.e., Clan B constituents would vote for a Clan B representative, and the same for Clan A), in a majoritarian system, Clan B would receive greater representation as compared to Example 1 above. In the regional house of parliament, Region 1 would be represented by 10 members from Clan A, and Region 2 would be represented by 10 members from Clan B.

**EXAMPLE 2 – Clan A and B with majorities in each region**



Alternatively, under a proportional electoral system, representatives from both Clan A and Clan B would be included in the regional legislatures as well as the national parliament. In the regional house of parliament, Region 1 would be represented by 7 members from Clan A and 3 members from Clan B; Region 2 would be represented by 4 members from Clan A and 6 members from Clan B.

This approach may better promote political accommodation by providing the various constituencies formal representation in, and therefore access to, governance institutions. This premise rests on the notion that each Clan has identifiable and shared interests. In practice, clans and other constituent groups often harbor very diverse and nuanced interests.



## 4.2.2 Electoral systems

The outcome of elections in the 1960s and the subsequent military coup had a profound impact on how electoral systems are considered in Somalia. Support for the equitable representation of interests is counterbalanced by a desire to avoid practices that might instigate clan-based factionalism and conflict. Therefore, electoral mechanisms can support the creation of broad coalitions and may also promote the representation of minority interests. With these factors in mind, key opportunity areas for promoting political accommodation through the electoral system and its administration may include:

- Incorporating rounds of voting for executive elections at both the national and state level, by including two-round or 'run-off' provisions.
- Experimenting with multi-seat and single-seat geographical constituencies, in a proportional representation or mixed system (see *Box 2 - Electoral systems and representation*).
- Exploring the use of thresholds to manage the number of seats awarded to political parties in legislative elections.
- Interlinking elections across levels of government, where state elections can complement federal electoral processes.
- Drafting political party law to ensure political party registration promotes diverse interests and that parties have adequate opportunities to be represented in elections (see *Section 5.2.1 Political party laws*).
- Considering the use of quotas or other mechanisms to promote representation of women and other under-represented groups (e.g. ethnic minorities).
- Balancing indirect elections or appointments with elections, particularly in the executive and other institutions where there are a number of appointed officials, to ensure that voter interests are adequately represented.

Choosing an electoral system can affect the way voter preferences are reflected in the distribution of seats in parliament.

Consider elections to an assembly of 200 seats:

- 60% or 120 seats are elected through a majoritarian system (e.g. single-seat geographical constituencies).
- 40% or 80 seats are elected through proportional representation lists.

In a parallel system, the two electoral methods are employed separately.

In a linked system, the two electoral methods are employed together; one method is used for the first distribution of seats and the other method is used to even out distribution per the overall percentage of votes received.

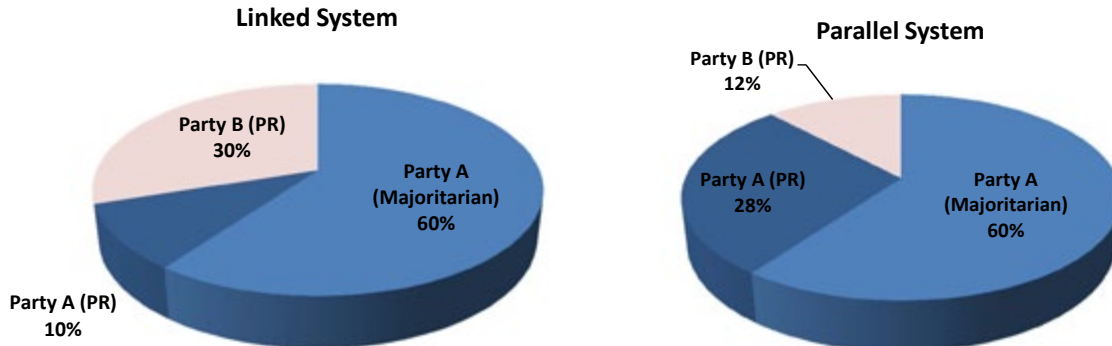
**Example:** If Party A receives 70% of all votes, in both majoritarian and proportional contests

**PARALLEL SYSTEM:** Party A will receive all 120 of the majoritarian seats and roughly 70% or 56 of the proportional representation seats.

**Party A gets 176 of the 200 seats (88%).**

**LINKED SYSTEM:** Party A will receive all 120 of the single-seat geographical constituency seats. This equals 60% of the total 200 seats and so entitles Party A to no more than 20 of the 80 proportional seats.

**Party A gets 140 of the 200 seats (70%).**



### 4.2.3 Executive

The executive branch can play an important role in reconciliation. The selection of cabinet ministers reflects a delicate balance of representing interests without exacerbating existing tensions. As experienced in the 1960s and more recently within the Transitional Federal Government, if the president and prime minister do not subscribe to the same government program, deadlock is a likely result. These opportunity areas highlight mechanisms to achieve not only efficiency, but also accommodation of political interests and accountability:



- Exploring alternative executive configurations, such as an Executive or Federal Council to provide regional representation in the executive.
- Establishing checks and balances for decision making within the central executive.
- Incorporating a more formal role for traditional authorities in peacebuilding.
- Implementing government policies to ensure transparency in policy development, legislation development, and government activities.
- Creating special measures to promote representativeness of minorities and women; movement toward democratic governance and majoritarian systems risks under-representation of already marginalized groups in executive and legislative bodies.
- Exploring accountability mechanisms to check the executive while ensuring efficiency is not compromised, specifically in a presidential/parliamentary hybrid system.
- Determining the appropriate number of ministers to ensure equitable representation of clan interests.

#### 4.2.4 Legislative branch

The legislative branch is the principle means through which the public is represented in the government. The Somali people have had mixed experiences with functional legislative bodies; Somaliland and Puntland have demonstrated some success, whereas the legislative body under the Transitional Federal Charter was less effective. Historically, Somali legislative bodies have also struggled with representation of women as well as ethnic and other minorities. The following opportunity areas seek to build on these experiences, by focusing on elements that better promote accommodation:

- Exploring the use of quotas, reserved seats, or other mechanisms to ensure that traditionally under-represented groups (e.g. ethnic minorities, the socially disadvantaged, and women) participate in a meaningful manner.
- Ensuring members of parliament regularly travel to their local constituencies so that constituent interests are understood and expressed by their representatives.
- Implementing public interaction mechanisms which require members of parliament to engage the public, such as the ‘listening campaign’ launched in South Africa or the Constituency Development Fund in Kenya (see *Section 4.2.5 Public Participation for further details*).
- Incorporating appointed or indirectly elected prominent and respected personalities (e.g. elders, religious clerics, civil society activists, etc.) into the formal legislative process.
- Enabling transparent decision making mechanisms through structured public interactions (e.g. town hall meetings, radio broadcasts of parliamentary proceedings, public access to parliamentary sessions, and publication of decisions through interactive media).
- Ensuring representation of member state interests in the legislative process, such as providing the Upper House with greater decision making power on legislation that specifically impacts the constituent states.

## 4.2.5 Public participation

Currently, the primary means of public participation in Somalia is through traditional clan structures. Constituents in Somaliland have participated in elections, but populations outside Somaliland have had few opportunities to engage with formal governance structures. The 2012 selection of National Constituent Assembly members and members of parliament for Somalia utilized the clan structure, allowing clan elders to represent their constituents' interests. The breadth of available public participation mechanisms is significant; the following opportunity areas represent possible approaches, in addition to those mentioned in the existing arrangements analysis in *Section 3.1*:

- Interlinking local community groups with formal governance structures (e.g. education, development, or peace and security committees).
- Developing policy and legislation in a participatory manner, with circulation of white papers and promotion of public engagement through to the final enactment of legislation.
- Promoting continued and structured interactive civic education, so that all Somalis can understand and participate in the new legal framework.
- Creating and enforcing functional systems of public accountability to promote the rule of law.
- Implementing systematic processes for reconciliation, including transitional justice and conflict resolution initiatives, conducted in an open manner.

## 4.2.6 Traditional and customary arrangements

The Somali people have a strong history of self-governance. Many of the past achievements have been facilitated by a strong belief in Islam and deep respect for the traditional clan culture, as reflected by continued adherence to Sharia law and customary law (*xeer*). Some may fear that the formal inclusion of traditional leadership structures is backward looking and an impediment to development. However if well designed systems are in place, as has been demonstrated by Botswana, Malaysia, and the United Kingdom, this need not be the case. The Somali context offers opportunities for greater inclusion of traditional structures beyond those currently prescribed, such as:

- Interlinking the formal justice system with traditional and religious courts, either in a parallel or incorporated structure.
- Creating advisory councils that include traditional and religious leaders for both executive and legislative bodies, and recognizing the role traditional authorities have played in establishing and maintaining stability and peace.
- Exploring alternative mechanisms to incorporate traditional and religious leadership into the formal governance system at the national and local levels, such as Somaliland's House of Elders (*Guurti*) or Puntland's Ulema Council.
- Partnering with traditional leaders in the administration of local governance, for example through licensed chiefs.

### 4.3 Comparative case studies

To derive option categories for political accommodation, it is also helpful to identify and consider a range of technical components across the six strands. Other country contexts can be a useful source for these technical components and may provide valuable insight into how specific components may unfold in practice. The case studies are not intended as necessary or analogous components; these countries simply provide examples which may be adapted for use in the Somali context.

- **Single entity with international personality:**<sup>157</sup> Indonesia; United Kingdom; Ghana; Argentina; Iraq; Malaysia; State Union of Serbia-Montenegro (2003-2006); United Arab Emirates (UAE); Bougainville associated with Papua New Guinea; New Caledonia associated with France.
- **Multiple entities:** Egypt and Sudan Integration (1982); Benelux Union; European Union; East African Community

These case studies represent an array of configurations, ranging from a unitary state to an economic/political union of independent States. This broad selection of configurations highlights how diverse entities have dealt with issues of accommodation, offering practical examples to inform how the option categories might function.

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<sup>157</sup> The single entity arrangements highlight a wide range of options, including a federal republic as envisioned by the Provisional Federal Constitution, as well as options that provide constituent entities within a single State even greater autonomy and opportunity for self-governance.

## Experiences from other contexts

In addition to the specific case studies highlighted above, survey evidence from other comparative cases suggests the following conclusions about successful political accommodation:

**(1) Political structure and decentralization:** For decentralization to support political accommodation rather than fragility, a stable central government is required to mediate between levels of government, with mechanisms for political accommodation built into central institutions. Additionally, economics and institutional viability need to be considered.

**(2) Electoral systems:** Both mixed and pure proportional representation systems can enhance representation of constituent interests, which a 'first-past-the-post' system could marginalize. Strictly proportional systems can produce weak / compromised governance, as was shown in the 1960s with the dramatic increase of political parties.

**(3) Executive and (4) legislative branch:** Where arrangements for the legislature and executive enshrine representation of diverse interests, countries generally experience greater stability, compared with those in which structures have failed to incorporate representation of diverse communities.

**(5) Public participation:** Participation builds stability and facilitates inclusion of otherwise marginalized groups in policy processes.

**(6) Traditional and customary arrangements:** Political systems which build effective linkages with traditional authorities in post-conflict transitions can facilitate more effective and stable long-term governance arrangements.

Sources: OECD DAC, *Supporting Statebuilding in Situations of Fragility and Conflict*, DAC Guidelines and Reference Series, (Paris: OECD Publishing, 2011); Brendan O'Leary, *Building Inclusive States*, Background Paper for the Human Development Report 2004 (New York: UNDP, 2004); Sue Ingram, *Statebuilding: Key concepts and operational implications in two fragile states: the case of Liberia and Sierra Leone* (Geneva; New York: World Bank and UNDP, 2010); John-Mary Kauzya, *Decentralization: Prospects for Peace, Democracy and Development*, (New York: United Nations Department of Economic and Social Affairs, 2005).

## 5. Option categories

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This section builds on the considerations and opportunity areas identified in Section 4, moving beyond analysis of political accommodation at the individual ‘strand’ level, and presents categories of options which interlink all six strands into coherent governance arrangements. The development and refinement of these options has been undertaken based on:

- Incorporation of interests and perspectives shared by Somali interlocutors, which have been formulated into a series of considerations (*Section 4.1*).
- Identification of opportunity areas for accommodation, based on analysis of existing arrangements and contextual considerations (*Section 4.2*).
- Use of technical components from a range of case studies (*Section 4.3*).

The purpose of these option categories is not to recommend specific arrangements, but rather to show how mechanisms within the six strands can be grouped to construct a variety of governance systems, from single to multiple entity configurations. These categories are designed to inform, catalyze, and feed into dialogue on future governance arrangements between Somalia and Somaliland, and within Somalia.

### 5.1 Options for political accommodation

These option categories presented demonstrate a) how complementary technical building blocks across strands may interact, and b) how prospects for political accommodation through particular options might be assessed. The arrangements outlined do not necessarily exclude one from another and hybrid models can be developed to suit the specific political interests to be accommodated. A wide range of other combinations of options are conceivable, including phased options (or the incorporation of multiple options over time), and each will have different merits and disadvantages for political accommodation.

Box 3 – Six option categories for political accommodation

**Option category A – Unitary State with devolution**

Case study examples: Ghana; Indonesia; United Kingdom

**Option category B – Federation of member states**

Case study examples: Argentina; Iraq; Malaysia

**Option category C – Highly decentralized state union**

Case study examples: State Union of Serbia-Montenegro (2003-2006); United Arab Emirates

**Option category D – Free association**

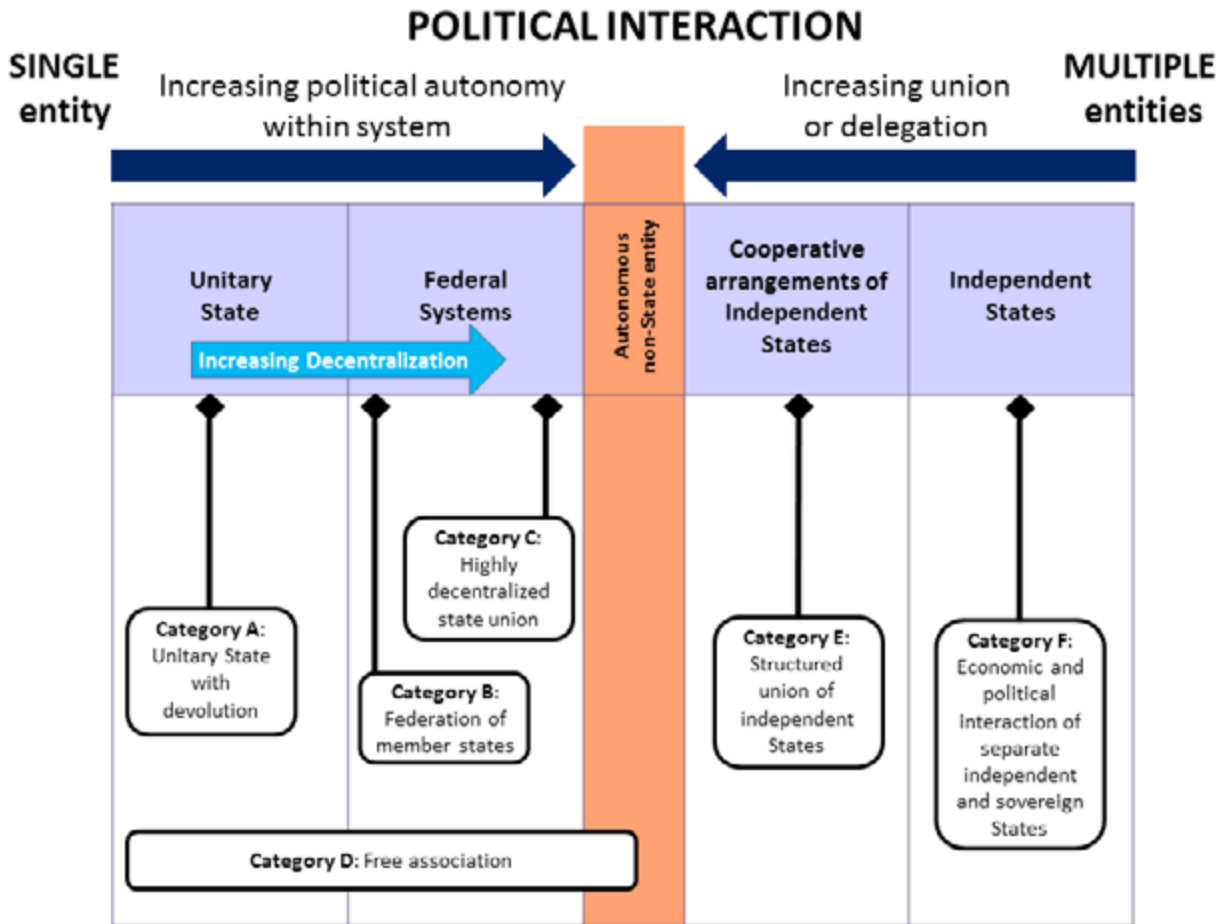
Case study examples: Bougainville associated with Papua New Guinea; New Caledonia associated with France

**Option category E – Structured union of independent States**

Case study examples: Egypt and Sudan Integration Charter; Benelux Union; European Union; East African Community

**Option category F – Economic and political interaction of separate independent and sovereign States**

Figure 3 – Six option categories for political accommodation



### 5.1.1 Option category A – Unitary State with devolution

Option category A features a unitary system where authority is decentralized to the constituent entities through a system of devolution.<sup>158</sup> Most sovereign powers remain at the national level, with administrative responsibilities transferred to the constituent states through legislation. Division of responsibilities through legislation (as compared to division of responsibilities via the constitution) allows parliament to retrieve or alter subnational responsibilities as desired (see *Drawbacks of option category A*). With this type of decentralization, responsibilities can be assigned to constituent units asymmetrically, catering to the different needs, interests, and levels of governance capacity in Somaliland, Puntland, and other emerging states.

This option category includes two nuanced models (the option as described above and one variation); the models are distinguished by their different approaches to revenue collection and fiscal allocation.

<sup>158</sup> Devolution is a form of administrative decentralization where a subnational-level government has responsibility, authority, and accountability over specific policy areas.

**Political accommodation at the subnational level:** At the subnational level, this option category shares some similarities with the federal model illustrated in option category B. In both option categories, citizens elect constituent state and local government representatives, in addition to the national president and members of national parliament. This allows for the representation of interests at all levels of government. Subnational political accommodation in option category A largely depends on the delegation of responsibilities by the central government; with a more centralized system, constituent states and local governments may not have the responsibilities to autonomously introduce political accommodation strategies without support from the central government.

Under this option category, existing regions can stand alone as a constituent entity and are not bound by the two region requirement (as mandated by the Provisional Federal Constitution).

### **Interplay between strands**

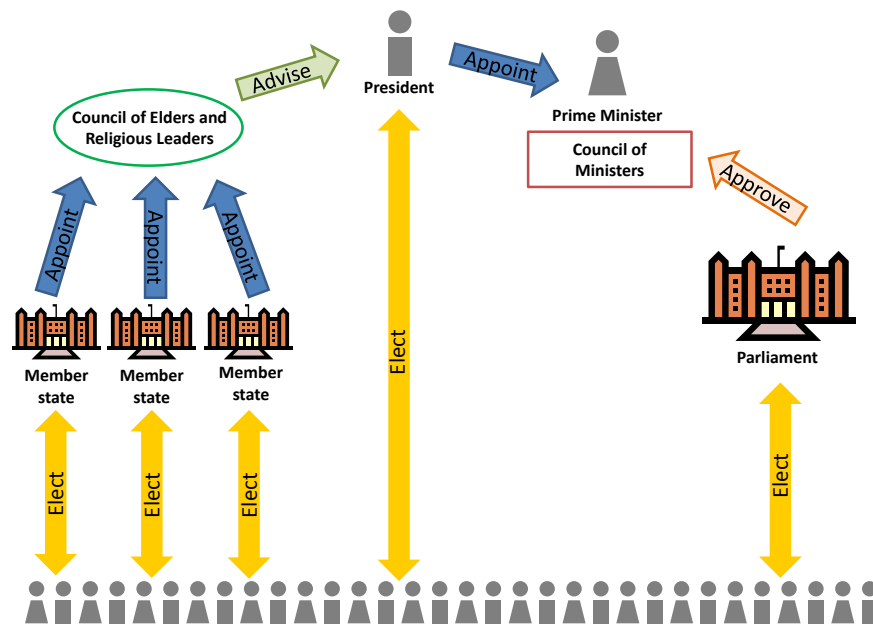
The selection of mechanisms in one strand often interrelates closely with selections across other strands. The degree of political accommodation each option can achieve depends on the coherence of those choices.

For example, in option category A, (1) *political structure and decentralization* and (2) *electoral systems* are distinctly interconnected. A decentralized unitary system can achieve a high level of political accommodation, provided that citizens can directly register their preferences and check the central government through an inclusive electoral system. Further, the direct election of constituent state institutions, in addition to directly elected national representatives, provides an opportunity to enhance accountability and responsiveness.

### Attributes of Option Category A

<b>1. Political structure and decentralization</b>	Decentralized unitary State; central government maintains responsibility over revenue collection and allocation
<b>2. Electoral systems</b>	Directly elected president and parliament with qualified majorities and thresholds in a mixed proportional representation/ majoritarian system.
<b>3. Executive</b>	President appoints prime minister and cabinet; executive authority is vested in the president.
<b>4. Legislative branch</b>	Directly elected unicameral parliament with seats reserved for minority groups and women.
<b>5. Public participation</b>	Right to recall members of parliament; mandatory visits by members of parliament to their constituencies; referendums on constitutional amendments.
<b>6. Traditional and customary arrangements</b>	Council of Elders and Religious Leaders appointed by constituent states; plays an advisory role to the president on select draft legislation.

Figure 4 - Option category A: Unitary State with devolution



### Variation on option category A

The variation developed for this option category presents a more decentralized approach to fiscal management, which can play a key role in shaping autonomy at the subnational level.

**Political structure and decentralization:**

- Authority to raise revenue at the subnational level; locally raised revenue remains within the subnational state's control.
- Direct transfers from the central government to subnational states, providing greater compensation to poorer, less self-sufficient regions.



Benefits of option category A	Drawbacks of option category A
<p><b>Simplicity and representation may promote responsiveness</b></p> <p>A devolved unitary system can simplify decision making and service delivery by reducing the need for detailed negotiation between the levels of government. With a representative electoral system, a unitary structure can be representative, inclusive and, through its simplicity of structure, responsive to interests.</p> <p><b>Potential for greater economic efficiency and unity</b></p> <p>A highly centralized fiscal management system, with the bulk of revenues collected and distributed by the central government, can facilitate efficiency. Policies at the national level can ensure that funds are effectively allocated to the constituent states with the most need. Additional policies could be implemented to promote oversight of expenditures by the central government. (Option category A could alternatively feature a less centralized system, as highlighted in the variation.)</p> <p><b>Freedoms of movement promoted</b></p> <p>The unitary structure creates a dominant central government which can facilitate and ensure the movement of goods and peoples throughout the country. Other option categories that provide greater autonomy to constituent entities can result in incongruent policies on the movements of goods and peoples.</p>	<p><b>Highly centralized control over autonomy</b></p> <p>As compared to subsequent option categories, a devolved unitary system may inadequately accommodate constituencies that desire a less centralized government, with greater protections for autonomy. Decentralization through legislation may offer less stringent protection to constituent states. For greater protection of subnational interests, this option may include higher legislative thresholds, such as requiring a larger majority in parliament or a referendum vote.</p> <p><b>Perceived reduction in importance of constituent state governance structures</b></p> <p>Limiting the responsibilities of the constituent states may create the perception that governance at the constituent state level is less important, or that positions in local administrations are less desirable. This could be detrimental to the efficiency, capacity, and quality of responsiveness to constituent state and local constituencies.</p> <p><b>Inefficiencies and administrative challenges</b></p> <p>Increasing centralization can lead to inefficient outcomes, as the central government is not necessarily well-positioned to make all policy decisions. For example, if service delivery is not adequately decentralized, the central government may dictate policies without full consideration of constituent needs. Also, asymmetric devolution becomes more challenging to implement effectively with a greater number of constituent units requiring various levels of responsibilities.</p>

## International case studies for option category A

### Ghana

- Fiscal decentralization: Subnational districts have authority to raise revenue and exercise discretion over those funds.<sup>159</sup> The central government provides districts with block transfers to address remaining fiscal need; subnational authorities exercise limited discretion over funds received through block transfers.<sup>160</sup>

### Indonesia

- Political structure and asymmetric devolution: The central government devolves responsibilities to subnational regions, with specific provisions for two regions with special autonomy status. Aceh and Papua exercise a greater degree of fiscal and administrative autonomy as compared to other regions, including a greater share of income from their natural resources and more autonomy over their internal affairs.<sup>161</sup>
- Fiscal centralization: Regional governments are fiscally dependent upon the central government; the central government controls revenue collection and allocation processes.<sup>162</sup>

### United Kingdom

- Political structure: The Parliament of the United Kingdom devolves governance responsibilities asymmetrically to regional administrations called “devolved governments” (Scotland, Wales, and Northern Ireland) via specific legislation for each region.<sup>163</sup> Devolved governments oversee agriculture, education, and environment, while only certain devolved governments administer local governments, housing, and economic development.<sup>164</sup> Regions not given autonomous responsibilities by legislation, like England, are administrated by the central government.
- Fiscal centralization: The central government manages 95% of tax revenue.<sup>165</sup> This includes business taxes, which are collected by local governments and transferred to the central government for reallocation. Transfers from the central government account for over 60% of total local government funds; local governments (distinct from devolved governments) raise the remainder of funds via property taxes and other fees.<sup>166</sup> The central government distributes financial resources to the devolved governments on a proportional system based primarily on population.<sup>167</sup> Scotland has special powers allowing the Scottish government to vary the rate of income tax in Scotland.

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<sup>159</sup> MINISTRY OF LOCAL GOVERNMENT, RURAL DEVELOPMENT AND ENVIRONMENT, INTERGOVERNMENTAL FISCAL DECENTRALISATION FRAMEWORK, 2008, at 15 (Ghana).

<sup>160</sup> Local Government Act (Act No. 462/1993) art. 87(2) (Ghana).

<sup>161</sup> See Law on Special Autonomy for the Province of Aceh Special Region as the Province of Nangroe Aceh Darussalam (Law No. 18/2001) (Indon.); Law on Special Autonomy for Papua Province (Law No. 21/2001) (Indon.); Law on Government of Aceh (Law No. 11/2006) (Indon.).

<sup>162</sup> Law Concerning Regional Administration (Law No. 32/2004) art. 148 (Indon.).

<sup>163</sup> Government of Wales Act, 1998, c. 38 (U.K.); Northern Ireland Act, 1998, c. 47 (U.K.); Scotland Act, 1998, c. 46 (U.K.); Government of Wales Act, 2006, c. 32 (U.K.).

<sup>164</sup> Ibid.

<sup>165</sup> Stuart Adam, Anoushka Kenley, and Carl Emmerson, *A Survey of UK Local Government Finance*, Briefing Note no. 74 (London: Institute for Fiscal Studies, January 1, 2007), 14.

<sup>166</sup> DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT, LOCAL GOVERNMENT FINANCIAL STATISTICS ENGLAND, 2012, no. 22, at 32 (U.K.).

<sup>167</sup> Northern Ireland Assembly, Research and Library Services, *A Background Paper on the Barnett Formula*, Research Paper 12/01 (Research and Library Services for the Northern Ireland Assembly, September 2001), 8, [http://archive.niassembly.gov.uk/research\\_papers/research/1201.pdf](http://archive.niassembly.gov.uk/research_papers/research/1201.pdf).

## 5.1.2 Option category B – Federation of member states

Option category B sets out a federal system composed of three or more constituent states, reflecting a structure comparable to the governance arrangements in the 2012 Provisional Federal Constitution and also refers to the constituent states as “federal member states.” This option category also incorporates traditional and religious representatives into the formal governance structure (via the Upper House), which is absent in the existing text.

Like other federal models, responsibilities of the federal member states are protected in the constitution. This option also provides greater autonomy to federal member states in managing their own affairs, including an increased capacity to collect revenue and allocate funds.

The variations presented in this option category illustrate two different approaches to responsibility distribution, as the Provisional Federal Constitution does not provide clear guidance on how negotiations between the central and federal member state governments will proceed. The variation also highlights an alternative approach to federal structure, by providing two types of subnational entities and an ‘opt-in’ clause.

**Political accommodation at the federal member state and local levels:** This option category demands careful consideration of appointment mechanisms for the Upper House to ensure constituent interests *within* the states are adequately represented in the federal institutions. This could include the reservation of seats for women and minority groups, coupled with provisions for consultation with citizens on appointments. Directly elected federal member state executives and legislatures would also help to ensure constituent interests are well represented.

### Interplay between strands

Option category B includes an appointed prime minister and some appointed members of parliament, which highlights interrelated areas across (2) *electoral systems*, (3) *executive*, (4) *legislature*, and (5) *public participation*. Since the prime minister and a proportion of the Upper House are not directly elected, the election of the president and lower house of parliament plays a considerable role in ensuring the representation of different constituencies’ interests.

Public participation mechanisms may help to bolster the accommodation of interests by facilitating constituent input on appointments to the upper house (e.g. through a nomination process). Provisions mandating the selection of the prime minister could also support mutual conciliation, such as limiting the prime ministerial post to a representative of the majority party in the lower house, as used in several other countries.

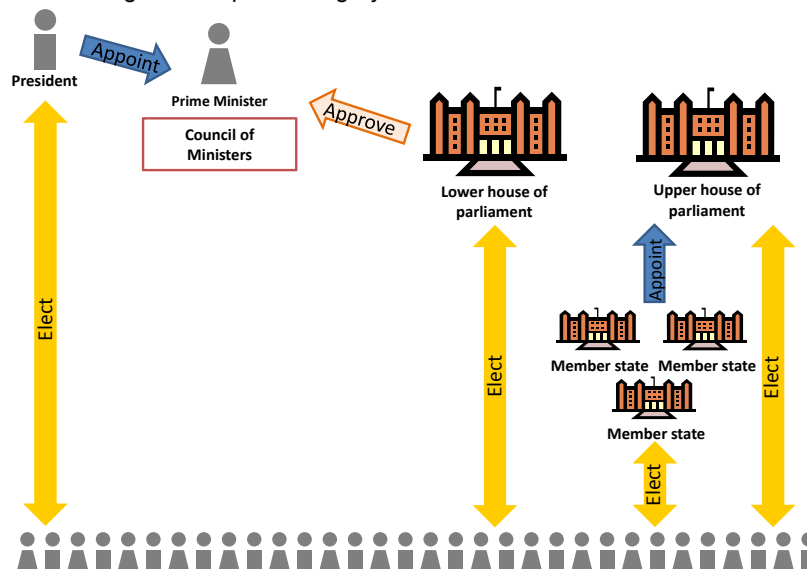
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<sup>167</sup> Northern Ireland Assembly, Research and Library Services, *A Background Paper on the Barnett Formula*, Research Paper 12/01 (Research and Library Services for the Northern Ireland Assembly, September 2001), 8, [http://archive.niassembly.gov.uk/research\\_papers/research/1201.pdf](http://archive.niassembly.gov.uk/research_papers/research/1201.pdf).

### Attributes of Option Category B

<b>1. Political structure and decentralization</b>	Federal model with decentralization prescribed in the constitution. Federal member states negotiate competency division together and all receive the same competencies.
<b>2. Electoral systems</b>	Directly elected president and lower house with a mixed proportional representation/majoritarian system, Upper House selected by member state legislatures.
<b>3. Executive</b>	President appoints prime minister and cabinet; executive authority vested in the Council of Ministers.
<b>4. Legislative branch</b>	Bicameral parliament, including a directly elected lower house and an upper house with both appointed and directly elected members (including elders, religious leaders, prominent personalities).
<b>5. Public participation</b>	Mechanisms to be mandated in the constitution, including participation in legislative process.
<b>6. Traditional and customary arrangements</b>	Upper house of parliament provides representation of elders and religious leaders.

Figure 5 - Option category B: Federation of member states



### Variation on option category B

The variation on this option builds on the existing provisions in the 2012 Provisional Federal Constitution. Specifically, providing greater diversity in (1) competency distribution across subnational units and (2) the types of subnational units.

#### Political structure and decentralization:

- Federal member states negotiate competency division individually, resulting in an asymmetrical system where federal member states have different responsibilities based on governance capacity.
- Regions, not yet satisfying the requirements for federal member state status, may continue to exist as regions (yet with less autonomy than federal member states). Regions may at any time 'opt-in' and become federal member states, pursuant to fulfilling a set of clearly defined requirements.

Benefits of option category B	Drawbacks of option category B
<p><b>Close parliamentary oversight of the prime ministerial structure</b></p> <p>The prime minister and council of ministers are checked in several ways by the lower house of parliament. The lower house must initially provide a vote of confidence for the prime minister and council of ministers, and may additionally carry out a vote of no confidence as needed. This oversight mechanism helps to accommodate interests by allowing directly elected representatives to check appointed officials.</p> <p><b>Clear protection of federal member state responsibilities and autonomy</b></p> <p>Like other federal models, the constitution protects the responsibilities and status of federal member states. Typically, constitutional amendments require larger majorities in parliament and often a public referendum, which are more vigorous than responsibility protections in devolved systems (see option category A). Codifying the status of federal member states in the constitution also protects the autonomy of federal member states, particularly where federal member states and regions are separate units (see variation on option category B).</p> <p><b>Traditional and religious leadership formally accommodated</b></p> <p>Members of the upper house include elders and religious leaders, as well as elected senators. Compared to other option categories, this option category provides traditional authorities with formal decision making power in the legislative process, as opposed to providing only an advisory role.</p>	<p><b>Public participation in Upper House is watered down via state assemblies and executives</b></p> <p>The Upper House facilitates accommodation by including both elected and appointed members from diverse constituencies. However, appointments may negatively impact mutual conciliation. Without formal accountability mechanisms (e.g. direct elections), appointees may have little incentive to fully represent their constituencies.</p> <p><b>Rigid system which may not accommodate Somali diversity</b></p> <p>This symmetrical federal model, where all federal member states have the same responsibilities, could be problematic given the different levels of governance capacity across Somalia's constituent entities. Emerging administrations do not share the same capacities and experience of the more established governments in Somaliland and Puntland. This could be mitigated with constitutional language allowing responsibilities to be delegated back to the federal government (as in Argentina), or by a system of asymmetric decentralization.</p> <p><b>Internal divisions within and among federal states</b></p> <p>Under this arrangement, peace and stability are highly dependent on the functionality and interaction of federal member states. This model requires federal member states to cooperate with each other and with the federal government. Moreover, the Provisional Federal Constitution assumes that the formation of federal member states will result in cohesive units able to clearly communicate and set priorities among diverse constituencies.</p>

## International case studies for option category B

### Argentina

- Symmetrical responsibility distribution with delegation: The federal government exercises exclusive authority over a limited number of responsibilities, including trade, foreign affairs, and defense. The remaining responsibilities are shared or exclusively allocated to the provinces and local governments.<sup>168</sup> Therefore, the provinces constitutionally hold all of the same responsibilities; although, some delegate responsibilities back to the federal government.
- Fiscal decentralization: By law, provinces manage service delivery and maintain considerable responsibility over direct taxation.<sup>169</sup> In practice, provinces manage service delivery, yet delegate much of their taxation powers back to the federal government; the federal government then transfers the collected revenue back to the provinces.<sup>170</sup>

### Iraq

- Asymmetrical political structure and 'opt-in' provision: Iraq consists of 18 provinces that function as administrative divisions of the central government and one federal region, Kurdistan, which holds semi-autonomous status (i.e. administrative autonomy and control over internal security forces). As accorded by the constitution, one or more provinces may 'opt-in' and form a federal region via referendum.<sup>171</sup>

### Malaysia

- Political structure: Malaysia is composed of 13 states and three federal territories. The federal territories are directly administered by the federal government, but the states have responsibilities assigned by the constitution.<sup>172</sup> The 1957 Constitution specifically states that sovereign States may be admitted into the federation by the parliament; two separate states (Sabah and Sarawak) joined the federation under this clause in 1963.<sup>173</sup>
- Asymmetrical responsibilities distribution: Sabah and Sarawak exercise greater autonomy over their internal affairs and control additional responsibilities in comparison to other federal states (e.g. native law and custom, ports, harbors, railway, etc.).<sup>174</sup> These arrangements were established through negotiations when Sabah and Sarawak joined the federation.<sup>175</sup>

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<sup>168</sup> Arts. 75, 121, CONSTITUCIÓN NACIONAL [CONST. NAC.] Aug. 22, 1994 (Arg.).

<sup>169</sup> Daniel Artana et. al., *Sub-National Revenue Mobilization in Latin American and Caribbean Countries: The Case of Argentina*, Working Paper Series, No. IDB-WP-297 (Inter-American Development Bank, March 2012), 8.

<sup>170</sup> Ibid. 2; and Mariano Tommasi, Sebastian Saiegh, and Pablo Sanguinetti, "Fiscal Federalism in Argentina: Policies, Politics, and Institutional Reform," *Economía* 1, no. 2 (Spring 2001), <http://www.jstor.org/stable/20065407>.

Provinces and municipalities account for half of all government expenditures, yet collect only one-fifth of the revenue.

<sup>171</sup> Art. 119, DOUSTOUR JOURHOURIAT AL-IRAQ [THE CONSTITUTION OF THE REPUBLIC OF IRAQ] OF 2005, Oct. 15, 2005.

<sup>172</sup> FEDERAL CONSTITUTION, Aug. 31, 1957, sched. 9, list II (Malay.).

<sup>173</sup> Ibid. Article 2.

<sup>174</sup> Ibid. Schedule 9 List IIa.

<sup>175</sup> Gordon P. Means, "Malaysia (The Federation of Malaysia)," in *Handbook of Federal Countries*, ed. Ann L. Griffiths (Montreal: McGill-Queen's University Press, June 2005), 185.

### 5.1.3 Option Category C: Highly decentralized state union

Option category C reflects a highly-decentralized federal system with two or more constituent states. This option category provides limited responsibilities to the state union government (e.g. foreign affairs, defense, economics, intra-union affairs), while constituent states exercise autonomy over their internal affairs. Similar to other federal systems, the state union constitution enshrines the division of responsibilities. This option represents the most decentralized single-entity with international personality.

The variations within the option category highlight different structural approaches. As illustrated below, the constituent states within the state union could include only Somalia and Somaliland, with Puntland and emerging administrations functioning as units within the Somalia constituent state. Alternatively, Puntland and emerging administrations may consider participating as constituent states themselves; in this scenario, the constituent states within the state union include Somaliland, Puntland, and emerging administrations.

**Political accommodation at the constituent state level:** While the state union government structure is mandated by the constitution, the constituent states have full autonomy over the structure and function of their internal institutions. As such, this arrangement provides great opportunities for accommodation *within* each constituent state and could reflect some of the provisions outlined in option category A or B. Political accommodation within the constituent states has increased significance in this option category, as internal constituent state arrangements will heavily influence accommodation within the larger state union (see *Interplay between strands*).

#### Interplay between strands

In option category C, interlinkages between (1) *political structure and decentralization*, (3) *electoral systems*, and (5) *public participation* are key for achieving political accommodation.

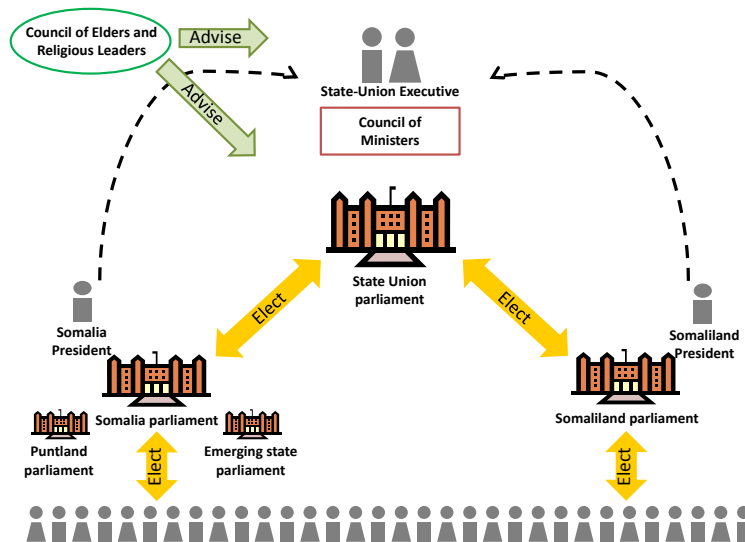
Members of the state union parliament are indirectly elected by the constituent state parliaments. Therefore, representation of interests at the constituent state level is essential for achieving accommodation. To help facilitate this process, quotas or qualified electoral mechanisms may be useful in selecting members for the state union assembly. Similar implications exist for the state union executive, which is made up of executives from the constituent states.

Public participation may also compliment political accommodation efforts within the constituent states and assist in representing the diverse interests of state constituencies. Robust participation mechanisms can supplement formal election processes by providing the public additional avenues to access the state union government.

### Attributes of Option Category C

<b>1. Political structure and decentralization</b>	Highly decentralized union of two constituent states (Somalia and Somaliland); with autonomy given to constituent states over self-governance.
<b>2. Electoral systems</b>	Indirect election of members of state union parliament; constituent states determine their own internal electoral processes.
<b>3. Executive</b>	Rotating presidency/vice presidency between executives of the two constituent states; the Somalia executive retains veto power.
<b>4. Legislative branch</b>	Unicameral parliament (indirectly elected by constituent state legislatures); decisions made by parallel consent/qualified majority.
<b>5. Public participation</b>	Referendums (requiring qualified majority); mechanisms to petition state union government; public participation within constituent states.
<b>6. Traditional and customary arrangements</b>	Council of Elders and religious leaders appointed by constituent states to advise state union government on select issues.

Figure 6 - Option category C: Highly decentralized state union



### Variation on option category C

The substantial variation in this category centers on the composition of constituent states. The option above envisions Punland and emerging administrations as units within the Somalia state; whereas, this variant envisions Punland and emerging administrations as separate constituent states.

**Political structure and decentralization:**

- Highly decentralized state union of two or more constituent states

**Electoral system:**

- Members of the state union parliament are directly elected by constituencies within the constituent states

**Traditional and customary arrangements:**

- Executive council made up of executives from constituent states; Somaliland and Punland executives retain veto power



Benefits of option category C	Drawbacks of option category C
<p><b>Highly decentralized system can respond to the needs of emerging administrations</b></p> <p>The structure of this option category enables Somalia to provide emerging administrations with the support needed to cultivate their political/economic development, while providing Somaliland, or Puntland, more autonomy than any other single-entity arrangement.</p> <p><b>Variations provide flexibility for constituent entities to take different forms in the state union</b></p> <p>Although Puntland has expressed a desire to remain part of a Federal Republic, this option category and variation provides Puntland an opportunity to further refine their position and interests. Puntland could be incorporated as an entity within the Somalia constituent state, or could stand on its own as a constituent state.</p> <p><b>Greater autonomy and flexibility in internal governance arrangements</b></p> <p>With such a highly decentralized system, each constituent state can pursue the governance arrangements that best accommodate their constituents' interests. Constituent states could incorporate features similar to a devolved, unitary state or a more federal model. The state union would maintain single international personality, representing the diverse interests of the constituent states.</p>	<p><b>Complex structure results in higher costs</b></p> <p>This arrangement requires at least three levels of governance, resulting in higher financial and organizational costs than other single-entity arrangements. Every additional level of government requires funding and oversight, and expands the number of governmental entities to oversee and coordinate in policy implementation and service delivery.</p> <p><b>Potential for deadlock and ineffective governance</b></p> <p>Establishing a state union with more than two constituent states could be detrimental to efficiency. Under the parallel consent system, majorities must be established within each constituent state constituency to pass legislation. Therefore, a growing number of constituent states creates an increasingly difficult legislative process.</p> <p><b>Accommodation efforts within constituent states is necessary</b></p> <p>Political accommodation efforts at the state union level are highly dependent on accommodation efforts within each constituent state, particularly where members of the state union parliament are indirectly elected. If certain political interests are not represented within the constituent states, they will subsequently be excluded at the state union level as well.</p>

## International case studies for option category C

State Union of Serbia-Montenegro (2003-2006) was formed by two constituent states: the Republic of Montenegro and the Republic of Serbia.

- Responsibility distribution: The central government had authority to determine policy and create legislation regarding foreign affairs, defense, economics, intra-union interactions, and human rights. However, the central authorities relied on the constituent state administrations for implementation. Constituent states retained authority to establish international relations through treaties and agreements, as long as they did not interfere with the affairs of the other constituent state nor the state union.<sup>176</sup>
- Fiscal management: Constituent states were responsible for their own revenue collection and provided funds for the administration of the state union government.<sup>177</sup> The state union government did not have powers of taxation or revenue collection.
- Legislation: Parallel consent was required in order to pass legislation; the legislative assembly needed an overall majority and a majority within the representatives of each constituent state.<sup>178</sup>
- Security: The Supreme Command Council oversaw the state union armed forces and defense strategy, which included three members – the presidents of the State Union, Serbia, and Montenegro. Council decisions were made by consensus.<sup>179</sup>

United Arab Emirates is a federation of seven states (or emirates).

- Executive: Executive authority is shared between the Supreme Council of Rulers, a president/vice president, and a prime minister/council of ministers (in order of diminishing authority). The Supreme Council of Rulers includes the rulers of the seven emirates. Decisions are made by majority vote and the rulers of Abu Dhabi and Dubai possess veto powers.<sup>180</sup>
- Selection/election of legislators: The legislative branch is a unicameral body composed of 40 members; the UAE Constitution allows each emirate to determine how their representatives will be selected.<sup>181</sup> Currently, the emirate rulers select 20 members and the remaining members are selected by an appointed electoral college.<sup>182</sup>
- Autonomy of constituent states: The political structures within each emirate are determined autonomously. As a result, the emirates have different governance arrangements, ranging from executive councils to single representatives.<sup>183</sup>

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<sup>176</sup> CONSTITUTIONAL CHARTER OF THE STATE UNION OF SERBIA AND MONTENEGRO, Feb. 4, 2003, art. 15

<sup>177</sup> Ibid. Article 18.

<sup>178</sup> Ibid. Article 23.

<sup>179</sup> Ibid. Article 56.

<sup>180</sup> CONSTITUTION OF THE UNITED ARAB EMIRATES, Dec. 2, 1971, arts. 46, 49.

<sup>181</sup> Ibid. Articles 68 and 69. Allocation of seats - Abu Dhabi 8, Dubai 8, Sharjah 6, Ras al-Khaimah 6, Ajman 4, Fujairah 4, Umm al-Quwain 4.

<sup>182</sup> Economist Intelligence Unit, *Country Profile 2008: United Arab Emirates* (London: Economist Intelligence Unit, 2008), 7.

<sup>183</sup> Christopher M. Davidson, *The United Arab Emirates: A Study in Survival* (Boulder: Lynne Rienner Publishers, 2005), 198.

### 5.1.4 Option Category D: Free association

Free association can serve to accommodate political interests where sovereignty is disputed, as a middle ground between independence and integration.<sup>184</sup> While independence and integration allow relatively little variation, free association can provide significant variability in the relationship between a principal, sovereign State and an associated state, which can lead to wide-ranging degrees of autonomy. **Free association is not necessarily a stand-alone governance option; it could be integrated into arrangements under any of the option categories.**

Negotiations between the principal State and associated state determine the level of autonomy and specific responsibilities that constitute a free association arrangement. Typically, these arrangements include the following attributes:

- A **locally elected legislative authority** with some independent legal authority that should not be subject to veto by the principal State unless it exceeds the local legislature's responsibility as defined in a constituent document.<sup>185</sup>
- A **locally selected chief executive** who may have responsibility for the administration of local, as well as national laws.<sup>186</sup>
- An **independent local judiciary** with full responsibility for interpreting local laws.<sup>187</sup>
- In most cases, **defense and foreign policy** remain in the hands of the principal State.

In short, free association allows for significant autonomy while leaving some responsibilities with the principal State. Such an arrangement requires cooperation between the principal State and associated state, particularly in coordinating which responsibilities remain with the principal State, transfer to the associated state, or are shared between the entities.

Free association agreements also include explicit or implicit provisions for the possible subsequent independence of the associated state. Associated states may also enter into economic and other agreements, as long as those agreements do not hamper its relations with the principal State or otherwise interfere with the principal State's foreign relations.

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<sup>184</sup> The notion of free association was established by the United Nations General Assembly Resolution 1541 (XV) Principle VI. Although the idea of free association emerged from decolonization efforts, arrangements incorporating free association-like provisions do not require formal recognition by the United Nations.

<sup>185</sup> Samuel J. Spector, "Negotiating Free Association between Western Sahara and Morocco: A Comparative Legal Analysis of Formulas for Self-Determination," *International Negotiation* 16 (2011): 115, doi: 10.1163/157180611X553890.

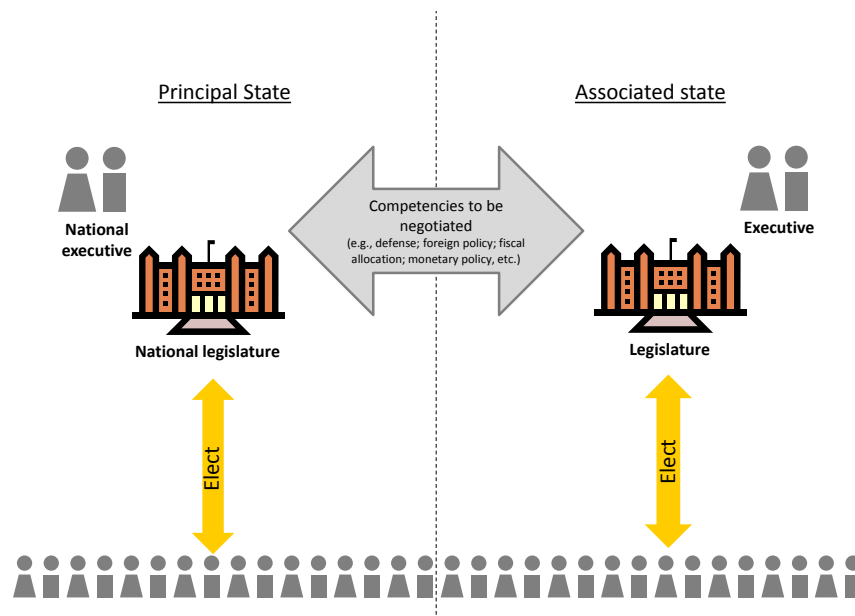
<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

## Attributes of Option Category D

<b>1. Political structure and decentralization</b>	To be determined by the principal State and associated state
<b>2. Electoral systems</b>	To be determined by the principal State and associated state
<b>3. Executive</b>	To be determined by the principal State and associated state
<b>4. Legislative branch</b>	To be determined by the principal State and associated state
<b>5. Public participation</b>	To be determined by the principal State and associated state
<b>6. Traditional and customary arrangements</b>	To be determined by the principal State and associated state

Figure 7 - Option category D: Free association



## Common attributes of Free Association

While free association arrangements can take many forms, the following are common attributes:

- **Decentralization:** Principal State maintains responsibility for defense and foreign policy.
- **Legislative branch:** Associated state possesses its own legislature with independent legislative authority as determined by agreement between the principal State and associated state. The legislature should not be subject to veto by the principal State unless it exceeds assigned responsibilities as defined in the agreement.
- **Executive:** Associated state has an executive who is responsible for the administration of laws within the associated state.

Source: Samuel J. Spector, "Negotiating Free Association between Western Sahara and Morocco: A Comparative Legal Analysis of Formulas for Self-Determination," *International Negotiation* 16 (2011), 115.

Benefits of option category D	Drawbacks of option category D
<p><b>Significant autonomy for associated states</b></p> <p>Under a free association arrangement, the principal State’s government has very little capacity to exercise authority over the associated state. This division of responsibilities can be enshrined in the constitution and thereby protected from revision, requiring support from constituencies in the associated state.</p> <p><b>Sovereignty remains a possibility for an associated state</b></p> <p>Many associated arrangements include delayed mechanisms for achieving sovereignty (i.e. a vote on independence is postponed for several years or until specific benchmarks are achieved). This may be a useful mechanism in the Somali context, as it allows time to establish stability and develop Somali institutions, before addressing the sovereignty question.</p> <p><b>Flexibility and efficiency</b></p> <p>The free association model is highly flexible and can be adapted to meet diverse needs. The division of responsibilities can take any form and may produce efficient cost-sharing results. For example, it may be beneficial to the associated state and principal State to share costs associated to security and armed forces</p>	<p><b>Abundant associations weaken central governance</b></p> <p>If several subnational entities pursue the free association option, it may unduly weaken the principal State, particularly if the associated states possess major sources of revenue (e.g. natural resources, commercial trade). In the worst case scenario, the principal State could become underfunded and otherwise irrelevant.</p> <p><b>Delayed sovereignty may not materialize</b></p> <p>By delaying sovereignty, an associated state risks the possibility that a referendum for independence may be significantly delayed or may not materialize due to political or other constraints.</p> <p><b>Less emphasis on power sharing; assumed shared interests</b></p> <p>While free association provides an associated state with greater autonomy, there is less emphasis on power sharing mechanisms as compared to some of the other options (e.g. no shared or rotating executive as in option category C). This could result in less influence overall, as related to principal State responsibilities, such as defense and foreign affairs.</p>

## International case studies for option category D

### Bougainville associated with Papua New Guinea (arrangements established in 2001)<sup>188</sup>

- Responsibility distribution: The Papua New Guinea government maintains authority over defense, security, foreign relations, and issues concerning management of the national economy.<sup>189</sup> Otherwise, the national government can transfer responsibilities to the Bougainville government, or establish a sharing arrangement.<sup>190</sup>
- Option for sovereignty: Bougainville may hold a referendum for independence 10 to 15 years following the establishment of their autonomous government.<sup>191</sup>

### New Caledonia associated with France (arrangements established in 1998)<sup>192</sup>

- Responsibility distribution: France retains the power to regulate New Caledonia's external relations, financial matters, law enforcement, and secondary and higher education.<sup>193</sup> Over a period of 15-20 years, France will transfer governance responsibilities to New Caledonia. Once legislative powers have been transferred, France may not reclaim them.<sup>194</sup>

## 5.1.5 Option category E – Structured union of independent States

This option category E exhibits a structured union, a form of confederation, of two or more independent and sovereign States ('member States'). Distinct from a state union arrangement (see *option category C*), each member State in this structured union possesses international personality. The 'structured' union refers to the existence of formal institutions and arrangements to facilitate political and economic interaction between the independent States. In addition to providing representation of independent member States, this option also includes representation of states *within* the Federal Republic in both the Executive Council and Advisory Council.

To respect the sovereignty of member States and autonomy of states within the Federal Republic, decisions made by the Advisory Council are not binding. Decisions must be considered and ratified by the member State and state legislatures, at which time the Executive Council begins to monitor implementation of ratified provisions, with enforcement predominantly managed by the member States.

The variations on option category E rely on differences in (1) binding decision making authority and (2) membership. In the model below, the structured union government provides a more consultative arrangement that includes representatives from only sovereign member States, whereas

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<sup>188</sup> The Bougainville Peace Agreement provides for the establishment of the Autonomous Bougainville Government, a disarmament program, and a future referendum on full independence.

<sup>189</sup> Anthony Regan, *Bougainville/Papua New Guinea* (Kreddha Autonomy Mapping Project, January 2008).

<sup>190</sup> Ibid. The Papua New Guinea Constitution details responsibilities available for transfer, see CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA, Sept. 16, 1975, art. 209 (2).

<sup>191</sup> Spector, "Negotiating Free Association," 123.

<sup>192</sup> The Noumea Accord (1998) establishes the free association frameworks between New Caledonia and France. Accord sur la Nouvelle-Calédonie signé à Nouméa le 5 mai 1998 [Noumea Accord], Fr.-New Caledonia, May 5, 1998.

<sup>193</sup> Nic MacLellan, "Political Chronicles: The Noumea Accord and Decolonisation in New Caledonia," *The Journal of Pacific History* 34, no. 3 (1999), doi:10.1080/00223349908572908.

<sup>194</sup> Noumea Accord, Articles 3.1 and 3.2; Spector, "Negotiating Free Association," 122.

in the variation, the supranational body has the ability to issue binding decisions and members of the Assembly represent member States as well as constituent states of Somalia.

**Political accommodation at the member State and constituent state levels:** Although decisions made by the Consultative Assembly are not binding, representation of interests within the Executive Council and Advisory Council remains important. The appointment process for members of these Councils could include provisions to ensure diverse interests within the constituent units are considered. Further opportunities for political accommodation exist within the member State and state legislatures that ratify Advisory Council decisions, including those featured in the electoral systems and governance structures in option categories A, B, and C.

### **Interplay between strands**

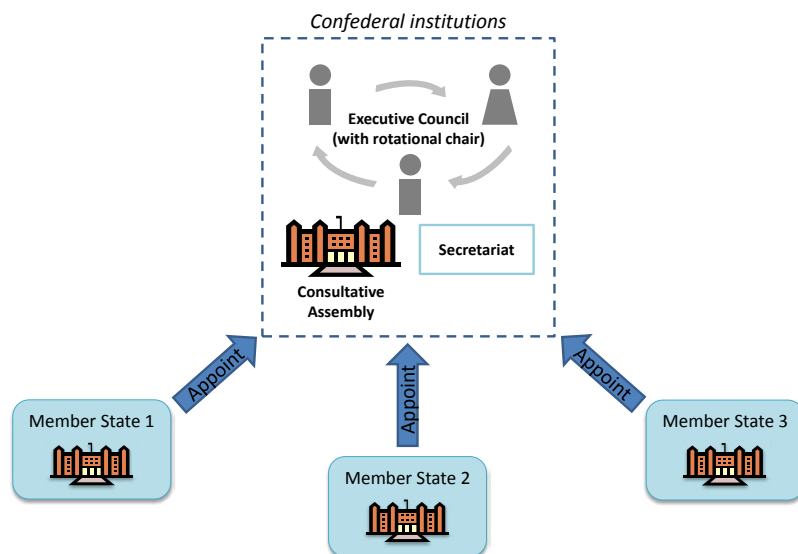
Because all of the representatives in this option are appointed, there is important interplay between (1) *political structure and decentralization*, and (5) *public participation*. The provisions within these strands can impact the ability of a confederal system to promote mutual conciliation.

In order to have representation of constituent interests at the supranational level, those interests must be represented within the member States and the constituent units. Without adequate representation and accountability mechanisms, certain interests may become marginalized. Public participation provides an additional opportunity for accommodation. Where advocacy for constituent interests is inadequate, public participation may help to compensate for the lack of representation. Providing citizens with the ability to engage members of the Executive Council and the Advisory Council or appeal directly to their legislatures may also help to promote representation and accountability.

### Attributes of Option Category E

<b>1. Political structure and decentralization</b>	Confederal model with representation from member States; decisions made by the Consultative Assembly are not binding.
<b>2. Electoral systems</b>	Members of the Executive Council and Consultative Assembly are elected by member States (member States to determine electoral processes).
<b>3. Executive</b>	Executive Council with rotating chair includes one representative from each member State.
<b>4. Legislative branch</b>	Consultative Assembly includes representatives from each member State; seats allocated by population.
<b>5. Public participation</b>	Mechanisms to engage representatives in the Executive Council and Consultative Assembly members.
<b>6. Traditional and customary arrangements</b>	Appointed cultural advisory committee and cultural conferences with a focus on developing Somali culture and identity.

Figure 8 - Option category E: Structured union of independent States



### Variation on option category E

The key focus of the variation on this option category resides in decision making authority. The supra-national body in the model above produces only consultative legislation, whereas the variation creates a highly structured arrangement with binding authority.

**Political structure and decentralization:**

- Confederal model with representation from sovereign States with international personality as well as constituent entities within the Federal Republic of Somalia; decisions made by the supra-national parliament are binding on all member States



Benefits of option category E	Drawbacks of option category E
<p><b>Improved interaction between entities and beyond</b></p> <p>This arrangement could lay the foundations for improved interaction between Somali governments (which currently are not working together formally) and establish structured relations between Somalia, Somaliland, and others. Creating a structure that provides independence and promotes interaction may result in greater cooperation.</p> <p><b>Flexibility while maintaining independence</b></p> <p>A confederal model provides a wide range of options for political accommodation while maintaining a vision of Somali partnership and, potentially, future unity. The formal structure may help to cultivate cooperation, while still maintaining the independence and priority setting ability of the separate Somali governments. Whereas, in single-entity arrangements, the separate Somali entities are dependent on each other in developing a coherent national policy.</p> <p><b>Promotes economic and cultural unity</b></p> <p>This option category helps to ensure the Somali people are able to trade throughout the territories of the confederation and build close cultural and sporting linkages. The formal institutions can help to develop coherent policy to govern relations across constituent entities; thereby acknowledging the interconnections and shared history of the Somali people.</p>	<p><b>Complicated governance structure</b></p> <p>As highlighted in option category C, multi-tiered governance structures can result in high costs. Additionally, adding a confederal structure may complicate public engagement, as constituents may not fully understand which level of government controls which functions. For example, this arrangement could include district governance, regional administrations, and a state level government within a federal State, plus the confederal structures.</p> <p><b>Coherence within the Federal Republic</b></p> <p>Participation of representatives from states within the Federal Republic may create inconsistencies between policy at the federal government level and state level, particularly where decisions by the Consultative Assembly may be adopted in some states and not others. Considerations on coherence within the Federal Republic may help to reduce inconsistencies.</p> <p><b>Escalation into armed conflict</b></p> <p>This multiple-entity arrangement would create a set of independent Somali States, with their own foreign and security arrangements. If interests within each member State are not accommodated, this arrangement could deteriorate into open international conflict. Special attention to security provisions may be necessary in the Consultative Assembly.</p>

## International case studies for option category E

**Egypt and Sudan: Integration Charter (1982)** sought to formalize economic and political interactions between the two member States.

- **Political structure:** The Supreme Council oversaw and implemented policies promoting integration; its members included the presidents of Egypt and Sudan, as well as four members appointed by each president.<sup>195</sup> The parliament included 20 appointed representatives from each member State's legislature and 10 members appointed by each president.<sup>196</sup> The parliament primarily ratified decisions made by the Supreme Council, with decisions and recommendations decided by an absolute majority vote.<sup>197</sup>
- **Four freedoms:** The Charter sought to abolish any barriers to economic and financial interaction, and thus promoted: (1) the freedom of movement of persons and capital; (2) the freedom to exchange goods; (3) the freedom of residence, work, and engagement in economic activities; and (4) the freedom of transport and use of ports and civilian airports.<sup>198</sup>

**The Benelux Union** is a highly integrated alliance of three member States (Belgium, the Netherlands, and Luxembourg). The main areas of cooperation are economy, sustainability, and justice/home affairs.

- **Decision making power:** The Committee of Ministers is the main decision making body of the Union. The Committee includes one ministerial-level representative from each member State and decisions are made by unanimity.<sup>199</sup> The Committee may issue binding decisions regarding implementation of the founding treaty only. Otherwise, the Committee issues non-binding agreements that must be ratified by member States to be enforced.<sup>200</sup>
- **Legislature:** The Benelux Parliament advises the Committee of Ministers and member State governments on economic cooperation and other areas of common interest. Official recommendations are decided by a two-thirds majority vote.<sup>201</sup> Member State parliaments internally select their representatives in the Interparliamentary Consultative Council.<sup>202</sup>

**European Union (EU)** is an extensively coordinated economic and political union that includes 27 member States. The EU's competencies include economic and monetary affairs, trade, and employment.

- **Political structure:** The European Council sets the overall direction of the Union and consists of the heads of state of the member States and the President of the Commission.<sup>203</sup> The European Parliament directly represents the interests of the EU's citizens; representation

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<sup>195</sup> Egypt and Sudan Charter of Integration, Egypt-Sudan, Part II, Sec. I, Arts. 5, 6, 9, Oct. 12, 198s, 307 U.N.T.S. 1331..

<sup>196</sup> Ibid. Part II, Section II, Article 15.

<sup>197</sup> Ibid. Part II, Section II, Articles. 20 and 21.

<sup>198</sup> Ibid. Part I, Section IV, Article 1.

<sup>199</sup> Traite portant révision du Traité instituant l'Union Economique Benelux signé le 3 février 1958 [Treaty revising the treaty establishing the Benelux Economic Union signed on 3 February 1958] arts. 7,8, June 17, 2008, 381 U.N.T.S. 5471..

<sup>200</sup> Ibid. Article 6(2).

<sup>201</sup> Convention instituant un Conseil consultatif interparlementaire de Benelux [Convention establishing a Benelux Interparliamentary Consultative Council], Nov. 5, 1955; "Benelux Parliament," Benelux Parliament, accessed November 6, 2013, [http://www.benelux-parlement.eu/en/parlement/parlement\\_intro.asp](http://www.benelux-parlement.eu/en/parlement/parlement_intro.asp).

<sup>202</sup> Ibid.

<sup>203</sup> Consolidated Version of the Treaty on the Functioning of the European Union art. 15, March 10, 2010 O.J. (C83) 47 [hereinafter TFEU].

is roughly based on member state population.<sup>204</sup> The Council represents the governments of individual member States; members of the Council are appointed ad hoc, based on the policy under debate.<sup>205</sup> The European Commission represents the interests of the Union as a whole and includes one representative from each member State, and serves as the Union's civil service.<sup>206</sup>

- Decision making power: There are four legislative procedures for passing laws, but most legislation is decided through a process called 'codecision.' Codecision requires majority consent from both the European Parliament and the Council of the European Union.<sup>207</sup>
- Fiscal management: The EU's main sources of funding are: (1) contributions from the gross national incomes of member countries, (2) import duties on products from outside the EU, and (3) a portion of each member state's value-added tax revenue.<sup>208</sup> The annual budget is drafted by the Commission and must be approved by the Parliament and the Council.<sup>209</sup>

**East African Community (EAC)** is a political and economic union of five member states (Kenya, Uganda, Tanzania, Rwanda, and Burundi). The EAC has established a common market and customs union and emphasizes cooperation in trade, security, transportation, and immigration.<sup>210</sup>

- Political structure: The Summit includes the heads of state from each member state; all decisions are made by consensus.<sup>211</sup> The Summit provides overall direction to the EAC and is assisted by a Council, which includes the Attorney General and ministers from each member State.<sup>212</sup> Council decisions are made by consensus and are binding on all member States.<sup>213</sup> The East Africa Legislative Assembly is made up of 52 members (9 voting members from each member state and 7 ex-officio members); members are indirectly elected by the legislatures of member states.<sup>214</sup>
- Technical support: Sectoral committees include experts in specific sectors who prepare comprehensive implementation programs and oversee their execution within the EAC. The committees meet on an as needed basis.<sup>215</sup>

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<sup>204</sup> Ibid. Article 14.

<sup>205</sup> Ibid. Article 16.

<sup>206</sup> Ibid. Article 17. Other EU institutions include the Court of Justice, the European Central Bank, and the Court of Auditors.

<sup>207</sup> Ibid. Articles 289 and 294.

<sup>208</sup> "Where does the money come from?" European Union, accessed November 6, 2013, [http://europa.eu/about-eu/basic-information/money/revenue-income/index\\_en.htm](http://europa.eu/about-eu/basic-information/money/revenue-income/index_en.htm).

<sup>209</sup> TFEU, Article 314.

<sup>210</sup> Treaty for the Establishment of the East African Community art. 5(1), Nov. 30, 1999, 2144 U.N.T.S. 255.

<sup>211</sup> Ibid. Articles 10, 11(1), and 12(3).

<sup>212</sup> Ibid. Article 13.

<sup>213</sup> Ibid. Article 15 and 16.

<sup>214</sup> Ibid. Article 48.

<sup>215</sup> Ibid. Article 21.

## 5.1.6 Option category F: Economic and political interaction of separate independent and sovereign States

Option category F presents an arrangement between independent, sovereign States to facilitate trade, migration, security, and other cross-border issues. The main interaction between the States is through negotiated treaty arrangements, in which agreements must be ratified by the constituent State governments. This option does not provide for any formal structures beyond high-level meetings between heads of State and relevant ministerial representatives.

The variation on this option can extend to the very extreme of mutual isolation, where the States have no formal dealings and only indirectly interact through international or regional bodies and bi-lateral treaties.

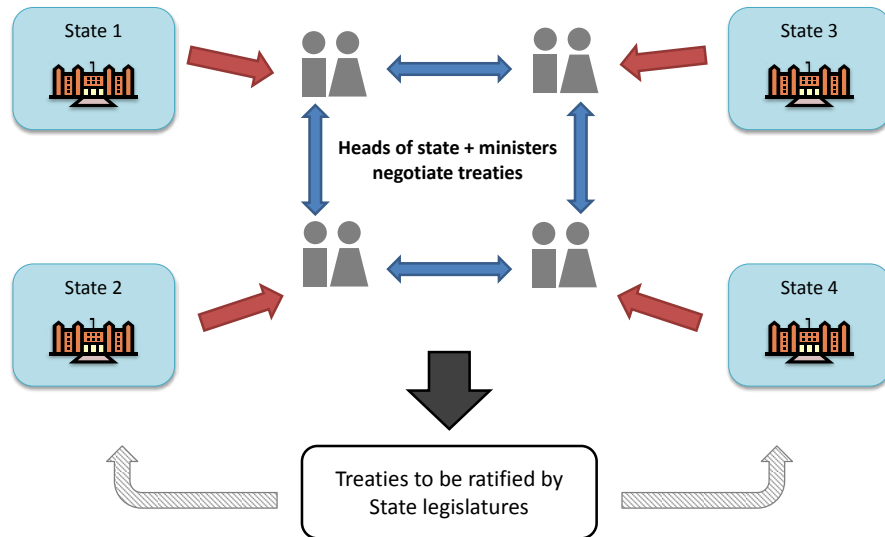
### Interplay between strands

The arrangements in this option require thinking on political accommodation *within* each State, across all six strands. Mechanisms for accommodation could include any of the provisions highlighted in option categories A, B, C, or D, as representation of interests occurs through governance structures at the State level.

Attributes of Option Category F	
<b>1. Political structure and decentralization</b>	Ad hoc convening of heads of state and ministerial representatives to discuss trade, migration, security, and other cross-border issues. Agreements to take the form of binding treaties between States; to be ratified by each State's legislature
<b>2. Electoral systems</b>	Elections of representatives to occur at the State level.
<b>3. Executive</b>	Not applicable
<b>4. Legislative branch</b>	Not applicable
<b>5. Public participation</b>	To be linked with mechanisms at the State level, including publishing of agreements to be considered by State legislatures and ratified treaties.
<b>6. Traditional and customary arrangements</b>	Cultural conferences with a focus on developing Somali culture and identity.

Variation on option category F
The variation for this option category represents the very end of the spectrum for multi-entity configurations, where the sovereign States remain in mutual isolation of each other. This includes absolutely no formal bilateral interaction, only indirect interaction through international organizations (e.g. United Nations and African Union).

Figure 9 - Option category F: Economic and political interaction of separate independent and sovereign States



Benefits of option category F	Drawbacks of option category F
<p><b>Treaties as a basis for future engagement</b></p> <p>This option category could provide the basis for more formal arrangements between the Somali entities. Treaty-based relations will facilitate some cooperation and interaction between the States, which could lead to discussions on further integration and possibly a future single-entity arrangement or more structured multi-entity arrangement.</p> <p><b>Broadening of partnership with IGAD nations and Somali nations</b></p> <p>This treaty-based relationship can include not only Somali entities, but also other IGAD nations, such as Djibouti and others. This could facilitate economic and political development and lead to stronger, more formal ties across entities.</p>	<p><b>Potential for less economic, social, and political cooperation</b></p> <p>By creating such a loose arrangement, this option is placed at the far end of the multiple-entity spectrum. This option provides no formal structures to link the independent States together and could minimize interaction and dialogue between Somali entities, resulting in the division of families, loss of property, and fractured Somali identity.</p> <p><b>Uneven economic growth and development</b></p> <p>Without formal arrangements and mandated resource sharing, economic growth and development may not occur to the same extent across all Somali entities. Provisions for trade and economic interactions would only occur through treaty negotiations and could lack the impetus necessary for adequate sharing of resources, as compared to some of the more structured option categories.</p>

### **5.1.7 Hybrid options and sequencing**

The options for achieving political accommodation outlined in this document are not necessarily exclusive of one another. Hybrid models that join elements from different option categories can be developed to suit specific needs.

In addition to considering hybrid options, phased approaches may also contribute to greater accommodation. This has been anticipated by Puntland, which envisions joining a national federation when peace and stability have been achieved throughout the country. It is also important to ensure that the emerging administrations of southern and central Somalia continue to be brought into the dialogue.

## **5.2 Cross-cutting themes**

The option categories provide a broad overview of governance arrangements and mechanisms that can foster political accommodation. In addition to the six strands, consideration of the following cross-cutting themes may contribute to greater, more comprehensive mutual conciliation. Political party laws, security arrangements, the incorporation of religion, and the formal legal system represent critical thematic areas that deserve additional focus.

### **5.2.1 Political party laws**

Political parties can serve to represent diverse interests, but they can also entrench existing socio-cultural and demographic divides within Somali society, if adequate laws are not drafted and enforced. Rules governing the formation of political parties are typically mandated by legislation, yet are shaped within the same political accommodation discourse as other governance issues in the constitution. Additional thinking on political party formation may help to accommodate diverse interests and prevent conflict in the long-term. Options for the regulation of political parties could include:

- Providing seats in the federal legislature only to those political parties that have national constituent support (e.g. requiring parties to win support across several federal member states in order to gain representation in the House of the People). This approach, or a similar provision promoting inclusive political parties, could help foster nation-building and support the development of a Somali identity.
- Requiring political parties to disavow non-political means of gaining support. This could include mandating a code of conduct and agreements to abstain from corruption, bribery, and violence, coupled with enforceable penalties for violation of political party laws.

### **5.2.2 Security arrangements**

Provisions for security and command of the armed forces are a primary concern in promoting stability and the rule of law. Security issues, in particular, demand a careful balance between promoting unity and protecting constituent interests. The Provisional Federal Constitution provides the principles and general structure that will govern the Somali security forces, yet does

not discuss whether federal member states and other local entities will be permitted to maintain their own militias. Drawing lessons from Somalia's past, allowing local constituencies to maintain militias could threaten stability, if those militias are permitted to act without regard to the collective Somali benefit. Alternatively, security arrangements could include some of the following features:

- Centralizing control of the armed forces, with command held by the federal government. To ensure the adequate representation of federal member state interests, centralized control could be supplemented with mechanisms that require approval from the individual member states or majority support from an upper house of parliament or other representative institution.
- Placing limits on military spending and other checks to ensure no one person or region amasses exclusive control over the armed forces and its budget. Considerations could also be given to having no military following the example of Costa Rica.
- Allowing federal member states to organize local police forces that share responsibilities and cooperate with a federal-level police force. In the United Kingdom, each county, group of counties, or metropolitan area has a separate police force that operates in conjunction with several nation-wide police forces, such as the British Transport Police and the Ministry of Defense Police. It is also worth noting that individual military units are associated with specific regions.

### 5.2.3 Religion

The incorporation of Sharia law into formal governance arrangements retains high importance in Somali culture. All four of the constitutional texts highlighted in this Briefing Paper recognize Sharia law as a foundational part of governance and as a basis for legislation. The Provisional Federal Constitution includes broad language mandating adherence to Sharia law,<sup>216</sup> yet the text does not specify who is responsible for interpreting Sharia and how those decisions will be implemented. Without clear competency division, the federal government and individual federal member states could foster different and competing interpretations. To avoid a conflict of norms, additional exploration of options could include:

- Establishing a council of religious leaders, similar to Somaliland's Ulema Council, that serves to issue interpretive guidance to the executive and legislative branches of the federal government and to resolve disagreements regarding Sharia law.
- Appointing religious leaders at each level of government to coordinate uniform implementation of Sharia law. The appointment process could fall within the executive branch of the federal government, or could rest with the executive within each level of the government.

Incorporating the principles of Islam into the formal governance system also shapes how Sharia law may specifically impact Somali Muslims, particularly as many judicial functions throughout Somalia are currently managed through customary and religious mechanisms. While the Provisional Federal Constitution provides a mandate for the Constitutional Court and national court system, the text does not discuss whether customary and religious practices will be included in

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<sup>216</sup> PROVISIONAL CONSTITUTION, Aug. 1, 2012 (Som.), arts. 2, 3(1).

the formal judicial system or will remain separate and informal. Options for incorporating customary and religious legal mechanisms could be similar to:

- Kenya, Malaysia, United Arab Emirates, and Ethiopia: In these countries, Sharia courts are part of the formal judicial system for Muslim members of society, while secular courts address the same issues for non-Muslims. Ethiopia established a three-tiered Sharia court system that parallels the secular court system.
- Indonesia, Ethiopia, and Puntland: These states and entities recognize traditional norms and customary law as long as they do not contradict other laws in force. In the Puntland constitution, decisions made by traditional leaders are registered with the formal court system.

The incorporation of Sharia law highlights only one of several factors to consider in developing the formal judicial system. To design and successfully implement a new legal system and promote the uniform enforcement of the law also necessarily includes security reform, public engagement, and effective oversight mechanisms.



## 6. Conclusion

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Somalia and Somaliland face the critical task of establishing viable governance arrangements that will foster long-term peace, growth, and build upon a shared Somali culture. The recent history of Somalia and Somaliland has set clan against clan and institutionalized mistrust and conflict. To move away from this destructive past to a more peaceful and prosperous future can only be achieved within systems and processes that take account of the varied interests and objectives of all Somali people. The political accommodation approach offers a means to help design governance systems and processes that can help mutual conciliation. Taking a whole system approach and looking for opportunities for political accommodation across the six strands increases the chance of a successful outcome. Processes and systems that focus only on one aspect of governance, or which fail to take account of the multiple interests of Somali people and communities, have a much more limited chance of bringing sustainable peace.

As this Briefing Paper has found, many of the existing legal frameworks across Somaliland and Somalia, while not yet fully accommodating of different interests, do have the potential to be refined to reflect agreements reached - be they between Somalia and Somaliland or within Somalia. The constitutional frameworks of the Provisional Federal Constitution, the Somaliland Constitution, and the Puntland Constitution allow for adaptation to increase the opportunities for political accommodation within those frameworks, and between the different entities.

Whatever arrangements the Somali people decide to adopt, they need to reflect the history, culture, and traditions of the Somali people. Other contexts offer ideas but to be successful the solutions adopted by the Somali people must be rooted in Somali experience.

A necessary next stage of this process is focused dialogue, informed by the reality of the Somali situation and by ideas from other parts of the world, to find ways to accommodate political interests between Somaliland and Somalia and within and between Somalia's constituent entities, including Puntland and communities in southern and central regions. Regions and central authorities need to agree among themselves a process for the establishment of new entities, and means to resolve territorial disputes between emerging and existing authorities.

The six possible option categories that Somali people and leaders may find useful to consider range from a decentralized unitary State at one end, to separate States interacting through treaties and international organizations at the other. When examining the opportunities for political accommodation within these option categories it is important to remember that accommodation needs to happen not only between Somalia and Somaliland but also within all political units. The option categories demonstrate that there are many ways to accommodate varied, and even competing, interests and that openness to different approaches has helped other societies form strong and responsive political units and arrangements. Long-term stability requires the continuation of dialogue and reconciliation within and between Somalia and Somaliland. The spectrum of option categories presented in this Briefing Paper are designed to offer additional substantive content for this dialogue process, in the expectation that interlocutors from across Somalia and Somaliland can begin to find common ground within those technical components.

As Somali people and leaders consider the future, it is important to remember that governance arrangements gain legitimacy through the support of the people and the reliability of rule of law. In considering a process to refine existing governance frameworks, and to create new ones, Somali leaders will need an approach that is inclusive and iterative. Existing processes between the Federal Government of Somalia and the Government of Somaliland, between Hargeisa and Garowe, or Garowe and Mogadishu, and processes to establish federal member states south of Puntland are all interconnected and will impact on one another. The best means to ensure that this does not result in conflict is to ensure that all processes are accommodating.

This Briefing Paper offers ideas to inform ongoing processes within and between Somalia and Somaliland, it does not offer recommendations but suggests approaches that could lead to a more sustainable peace.

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## About Conflict Dynamics International

Conflict Dynamics is a not-for-profit organization registered in Cambridge, MA, USA. The organization was founded in 2004 to prevent and resolve conflict between and within states, and to alleviate human suffering resulting from conflicts and other crises. Conflict Dynamics works to fulfill its mission through conflict resolution activities, mediation support, and humanitarian policy development, and has a proven track record in providing support to national stakeholders and international supporters in political dialogue processes. Political accommodation in post-conflict societies is a primary focus of this approach.

Conflict Dynamics' approaches to political accommodation have been applied successfully to assist in achieving conciliation of political interests, most recently in the Sudan and in South Sudan.

Since 2009, Conflict Dynamics has established strong working relationships with a broad range of Somali interlocutors (in a neutral and impartial manner), has built up a small but highly effective team, and has developed working partnerships with several other organizations.

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### Conflict Dynamics International

1035 Cambridge Street, Suite 10A  
Cambridge MA 02141  
USA

+1 617 661 1066 Phone  
+1 617 661 1686 Fax

[info@cdint.org](mailto:info@cdint.org)

Paul Simkin, Country Director  
Somali Program  
[psimkin@cdint.org](mailto:psimkin@cdint.org)

Nairobi office:  
+254 706 396 948

[www.cdint.org](http://www.cdint.org)