



Governance Brief 15

November 2021

Summary

After about three and half months, the election of the Upper House's 54 members has been completed. However, the electoral process has not been undertaken without flaws. It empowered the presidents of Federal Member States (FMS) to submit a list of candidates for each Senate seat elected in their respective constituencies to the state legislators (and electoral constituency of 46 in the case of Somaliland representatives). For the majority of seats, FMS presidents had complete control over the candidate list and election process, and many candidates were purposefully omitted from the list. Affiliation with a political camp also played a significant role in the outcome of the election. However, women received nearly 26% of votes in the Upper House elections, which was a positive result. This brief examines how the Upper House's 54 members were elected, as well as the critical lessons that can be learned from this and be applied to the upcoming election of the House of the People's 275 members.

About Somali Public Agenda

Somali Public Agenda is a non-profit public policy and administration research organization based in Mogadishu. Its aim is to advance understanding and improvement of public administration and public services in Somalia through evidence-based research and analysis.

www.somalipublicagenda.org

© 2021 Somali Public Agenda

Lessons from Somalia's 2021 Upper House Elections

Introduction

Somalia's Upper House elections were concluded on 13 November 2021. The 54-member chamber represents the Federal Member States at the Somali Federal Parliament. Due to the absence of a direct vote, members of the Upper House were elected by the FMS parliaments, as was the case in 2016. A list of candidates for each seat was submitted to the state parliaments by the state presidents.

The electoral process for the Upper House members was relatively straightforward, at least compared to the procedures for the election of the 275 members of the House of the People, which had not started at the time of writing this brief in any electoral constituencies except two Somaliland seats elected in Mogadishu on November 1, 2021. However, it did take longer than anticipated, as the Senate election was initially planned to conclude within a few days. The first four members of the Senate representing Jubaland were elected in Kismayo on 29 July 2021. The final two Senate members were elected in Dhusamareb on 13 November 2021, a process that took about three and half months.

As the more complex House of the People elections is about to start soon, this brief critically examines the recently conducted Upper House elections in the five Federal Member States along with the Benadir region, which hosted the election of Somaliland's 11-member representatives in the Upper House. It analyzes the electoral processes, the role and influence of FMS Presidents, the women's quota, the election outcome, and lessons for the lower house elections.

The electoral process for the Upper House seats

Parliamentary elections using the One Person, One Vote (OPOV) system were initially envisaged, with the National Independent Electoral Commission (NIEC) spearheading the effort to make them a reality. However, as the end of the four-year constitutional mandate of federal institutions approached in 2020, it became clear that direct elections would be impossible. Most of the Federal Member State (FMS) leaders preferred and/or advocated for another indirect election alternative as this would give them significant powers to influence the makeup of the new parliament.

During the third FGS and FMS leaders meeting in Dhusamareb in August 2020 (in the absence of the Puntland and Jubaland presidents, whose attendance was conditional on the appointment of a Prime Minister before the meeting), the leaders in attendance finally agreed to organize an indirect election, effectively abandoning Villa Somalia's apparently tenacious push for direct elections. The Mogadishu agreement of September 2020 included additional details on the conduct of the Upper House and House of the People elections. The agreement stipulated, among other things, that the electoral process for the Upper House would be identical to that of 2016.

After eight months of political rifts and uncertainties (including attempted two-year extension and armed conflict in Mogadishu), members of the National Consultative Council (NCC) reached and signed an agreement (without the presence of President Farmaajo) in Mogadishu on 27 May 2021. The agreement, which was a harmonized version of the September 17, 2020, and the February 16 2021 Baidoa technical committee agreements, further clarified that the Upper House elections would follow the same process as 2016.

The electoral process for the Upper House consisted of several layers and steps. To begin, the speakers of each of the FMS parliaments appointed the Upper House election committee, which would be responsible for managing the senate elections. Second, FMS presidents appointed candidates to compete for the 54 Upper House seats – Somaliland (11), Puntland (11), Jubaland (8), South West (8), Galmudug (8), and Hirshabelle (8). Thirdly, these names were submitted to the state legislature's Senate election committee, which scheduled and conducted the election.

Somaliland's representatives in the Upper House were appointed and elected uniquely. After a protracted dispute between two camps led by Abdi Hashi, the outgoing Upper House speaker, and Mahdi Guled, the FGS Deputy Prime Minister, it was finally agreed that the two politicians would jointly nominate candidates for each of the 11 Senate seats. They chose candidates for each seat and submitted them to the Prime Minister. Unlike other constituencies where state legislators organized the Senate elections, 46 delegates (23 elders and 23 civil society members from Somaliland) jointly elected the Somaliland seats while the Somaliland State Election Implementation Team (SEIT) managed the process.

As part of the agreed-upon requirements, each candidate was required to be over the age of 25 and pay a non-refundable \$20,000 registration fee (a 50% or \$10,000 waiver for female candidates was agreed upon later). The most important requirement for any politician seeking senate membership, however, was to persuade the FMS presidents to include him or her on the list sent to state legislatures.

Although the electoral process for the Upper House members was designed to be similar to the 2016 process (besides increasing the registration fee of male candidates from \$10,000 in 2016 to \$20,000 to 2021 and female candidates from \$5,000 registration fee in 2016 to \$10,000 in 2021), there were other notable differences. First, unlike in 2016, some Federal Member States opted to organize the election of some seats and delay the election of others. For instance, Jubaland initially organized the election of four seats; Galmudug organized the election of 6 senate seats, while South West organized the election of 5 seats. This process of not electing all members representing the FMS at the Upper House contributed to the election timelines being pushed back. A prime example is that Jubaland elected four Senate seats in late July 2021 while the remaining 4 seats were elected in late October 2021, almost three months later.

Second, how the ad hoc FMS parliamentary committees responsible for Senate elections scheduled the election was not consistent with the 2016 process. Puntland's 11 seats were elected in a single day. The Somaliland SEIT completed the Somaliland Upper House elections in just two days while Galmudug and South West completed the election of six and five senators in a single day respectively. And in Hirshabelle, voting took place primarily in the evenings, and the electoral process was slow. For example, three seats were initially elected, but the parliament later organized one to two seats per day and took weeks to complete the election of eight senate seats representing Hirshabelle. In Hirshabelle, the voting and announcement of the results for one particular seat were canceled due to chaos and disruption caused by some state legislators after the first round of voting concluded and before the result was announced.

Thirdly, except for Hirshabelle, no open contests were held and most of the election results were fait accompli. Only 28 (or 52 Percent) of the 54 seats elected were openly contested. The majority of candidates for the 54 seats were political placeholders ("malxiis" in Somalia's new political lexicon) who withdrew after delivering their speeches. Of the 26 political placeholders who dropped out of the contest, 9 were in Puntland (all political placeholders for nine seats dropped out before voting), 8 in Galmudug (all eight elected senators in Galmudug were uncontested), 6 in Somaliland (approximately half of the seats were contested), 2 in Jubaland, and 1 in Hirshabelle. This demonstrates how the FMS presidents manipulated the process and how the outcome of the majority of Senate seats was predetermined.

FMS presidents' role in the election

The empowerment of FMS presidents to appoint the candidates for the Upper House seats was probably one of the main constraints of the electoral design. FMS presidents significantly manipulated the Senate election in their respective constituencies. Numerous politicians who were qualified and willing to contest were blocked. FMS presidents didn't consider the ambition of many prominent candidates to contest for the seats. This was interpreted as a rebuttal to some FMS presidents' efforts to expand the relatively small political space at the center, and the federal government's tough stance toward regional states since taking office in 2017.

In addition to ruling out the potential contenders, in many cases, the presidents' hand-picked second contenders were not genuine candidates. They were only included to create an appearance of a contest, and in many cases, these political aspirants pulled out of the race before voting began. Worryingly, female candidates were included in some seats as placeholders simply to reduce the registration fees as they were required to pay half (\$10,000) of what male candidates paid.

In the Somaliland elections, the outgoing Upper House speaker was on the candidate list without a contender. This surprised many who questioned whether the speaker could not "contest" with someone even on paper. Before the start of the election for Somaliland's Upper House representatives, the FGS Deputy Prime Minister Mahdi Guled stated in a brief video (released the night before the election) that they had decided to register someone to challenge Abdi Hashi. The same individual

resigned even before voting began. As a result, Abdi Hashi (along with several other senators) was elected by show of hands.

Several presidential candidates publicly condemned the approach by the FMS leadership to manipulate and predetermine the entire Upper House election process and create merely the appearance of a genuine selection. This was viewed as setting a bad precedent for the upcoming House of the People elections.

However, one exception was Hirshabelle. This FMS was the last state formed hastily during the 2016 electoral process and is still struggling with internal problems as a result of the Hirshabelle presidential elections in late 2020, which culminated in the election of Ali Gudlawe as the president of the state (while Jowhar remained the capital city). Nonetheless, the Hirshabelle leadership decided not to “hijack” the process and opened the space for all politicians seeking seats. In contrast to the widely criticized approach taken by the majority of other FMSs in which election results appeared to be known before voting, Hirshabelle's president submitted to the state parliament a list of 33 candidates for its 8 Upper House seats. While the state was widely credited for opening the political space, Hirshabelle's elections also revealed the highest level of cash exchange for votes in comparison to other states. This is partly due to the fact that it was a genuinely open contest.

Preserving the women's quota

One of the positive outcomes of the Upper House elections was the representation of women. 14 (or 26 percent) of the 54 senatorial seats elected thus far are held by women. Of the 14 women elected as senators, three were elected in Puntland, three by Somaliland delegates, two in South West, two in Jubaland, two in Hirshabelle, and two in Galmudug.

The agreement was that women should have 30% representation in total in the bicameral parliament. The Prime Minister, FMS presidents, the electoral bodies, the international community, and the civil society groups all played a role in ensuring the women's quota would remain. The Prime Minister appointed a 13-member advocacy committee that would lobby and work to preserve the 30% female quota at the parliamentary elections. Advocacy and efforts made by some civil society organizations along with international actors were undertaken to preserve the women's quota at the Upper House in each FMS.

Retaining the 24% female representation in the 10th bicameral parliament or increasing it to 30% will require considerable effort during the upcoming House of the People elections. Although the results for the new Upper House contribute to enabling this, female representatives also faced some difficulties during these elections. For instance, in Hirshabelle, one of the two female senators elected initially had male contenders, resulting in the election of that seat being delayed. After deliberations, the male contenders were convinced to drop out of the contest (and according to sources, their registration fees were

refunded back). Similarly, in Somaliland, one seat was contested by a male and a female. The man eventually withdrew from the race. In Jubaland, the two Senate seats won by female senators were among the last four senators elected. Initially, there were indications that only one woman could be elected as a senator in Kismayo, but in the end, two seats were exclusively allocated to female contenders only.

The election outcome and the key determinants

The Upper House elections were not competitive and many factors determined their outcome.

First, the electoral design enabled FMS presidents to have a significant influence on who contested and won the seats. The electoral design mandated that FMS presidents would submit the list of politicians vying for each seat to the parliamentary committee managing the Senate elections. Ideally, it was supposed that presidents receive and submit the names of all those contending for each seat while preserving the women's quota. What happened was that except for Hirshabelle, FMS presidents refused to include in that list politicians who were ready and qualified to contest for the seats. Although the process was similar to 2016, the political atmosphere then was more accommodative and inclusive than in 2021.

Second, political affiliations were a determining factor for who was included in the list and the outcome of the Senate elections. In South West State, vocal politicians who are members of the opposition provisional political parties were excluded from the list. Instead, some young and relatively unknown members competed and were elected as senators. The South West State President is believed to be close to President Farmaajo, and this has been a key factor. In Jubaland, those who may be closer to Villa Somalia did not get any chance to be included in the list given the strained relationship between the center and that FMS over the past few years. In the Somaliland elections, the list of candidates and the outcome were shared between the two political camps led by the outgoing Upper House speaker Abdi Hashi and Deputy Prime Minister Mahdi Guled. In Galmudug, the president's inner circle (locally known as Waayo Arag) had the upper hand and that affiliation was a key factor in the Upper House elections there. And in Puntland, the Puntland President picked close allies including government officials and those who may vote for him if, as many believe, he decides to contest for the federal presidential elections.

Third, in Hirshabelle, the space was open and many candidates were registered to contest for the 8 senate seats elected in Jowhar. However, the key decisive factor of the outcome of the election was financial prowess. The state MPs formed caucuses and focal points to deal with candidates and solicited money in exchange for votes. Representatives from some presidential candidates were also present at the election hall who were paying electronic money in exchange for votes during the second round of the election. Cash was also used by business persons, and the highest bidders registered victories in the Hirshabelle Senate elections.

Lessons for the House of the People elections

As Somalia prepares to elect members of the House of the People, many lessons can be drawn from the Upper House elections to avoid repeating similar mistakes.

To begin, while the Upper House members ideally represent FMS interests in the federal parliament (although FMS presidents have represented themselves in the majority of cases over the last four years), one could argue that their influence and control over the outcome of the Senate members imply that they have backed politicians who would represent their interests in the federal parliament, thereby strengthening the Upper House's role.

However, the House of the People theoretically represents the public even though they are frequently chosen or elected through indirect elections. As a result, the role and influence of FMS presidents should be curbed in the House of the People elections. The condition that FMS presidents submit the list of candidates was the main constraint and made the Senate election more of a selection than a proper competitive election. Therefore, to enhance the competitiveness for the House of the People, the eligibility requirements for candidates and delegates should be reduced and made free of FMS influence through the following means:

- The FMS should not be empowered to choose the two civil society representatives for each seat on the five-member Delegate Selection Committees. A supervisory role would suffice for the FMS.
- Clan elders and the Delegate Selection Committees should be given autonomy in selecting the 101 voting delegates for each House of the People seat. If the FMS leadership is given a significant role in the process, the outcome would be comparable to the flawed Upper House process.
- The requirement for security clearance with associated fees for the candidates (\$750) and voting delegates (\$30) should be reviewed and simplified. Such a requirement can be used as a means to exclude certain candidates from the contest. Additionally, requiring delegates to pay clearance fees to vote will almost certainly encourage corruption.

Second, mechanisms should be established for monitoring and combating corruption and the open exchange of cash during elections. For example, in Hirshabelle, cash exchange was conducted openly. Regardless of the election's flaws, mechanisms to combat corruption and bribery must exist before and during the House of the People elections. Regardless of the election's flaws, anti-corruption measures and code of conduct must exist before and during the elections. The House of the People elections is expected to be more complex and prone to cash exchange than the Upper House elections. Officials from the federal and state election commissions, as well as international and local observers, and the media, should establish strict mechanisms to combat corruption and enforce anti-corruption laws.

Election Series: *This brief is the thirteenth paper of our election series. SPA welcomes and very much appreciates comments, feedback, and ideas relating to Somalia's anticipated federal and state-level elections.*