



The Road Ahead to Somalia's 2021 Elections: Prospects & Challenges

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Summary

This is a crucial election year for Somalia as the national parliamentary and presidential elections are scheduled to happen in late 2020 and early 2021. The national electoral law – approved by the two chambers of parliament and signed into law by the president – is currently the basis for the design and implementation of national elections. This governance brief critically analyzes the limitations of the electoral design such as the lack of definition around constituencies, the ambiguity of election to the Upper House, and the clause enabling indeterminate extension. The brief also discusses the operationalization challenges of the elections, such as designating each seat to a geographic location; the election of Somaliland representatives; the women's quota; the rift between the center and the periphery; and insecurity. It puts forward a number of policy considerations to help address these issues.

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.

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Introduction

2020 and 2021 are election years for Somalia. The mandate of the members of the two chambers of parliament (the House of the People and the Upper House) expires in late December 2020; they were inaugurated on 27 December 2016. The term of the President also ends in early February 2021.

Despite Somalia's fragile and post-conflict setting, one distinctive feature of the country's recent political landscape has been peaceful political transition. Since 2012, this has involved selections and indirect elections. In 2012, 135 clan elders handpicked 275 members of parliament. In 2016, an indirect election was agreed where 51 sub-clan electoral college members selected by clan elders (s)lected 275 MPs who in turn – together with 54 senators elected by Federal Member State MPs – elected the president. However imperfect these fairly restricted processes were, they did facilitate the selection of parliamentarians and the peaceful handover of power from an incumbent President (Hassan Sheikh Mohamoud) following his defeat in the election.

The post-2016-17 aspiration was to hold one person one vote parliamentary elections in Somalia in late 2020. This was seen as a priority and entrusted to the incumbent administration to secure. Efforts were made to make this possible, including the provisional registration of political parties, mapping polling centers, revision of the political parties' law by the Council of Ministers and the draft and approval of the electoral law.

The electoral law provides the most important details for the upcoming Somalia elections. When the Proportional Representation – Closed List electoral model was agreed by the leaders of the Federal Government of Somalia and the Federal Member States in Baidoa in June 2018, the Ministry of Interior, Federal Affairs and Reconciliation drafted the bill and submitted it to the cabinet. The Council of Ministers approved the National Electoral Bill in early May 2019 and presented it to the House of the People of Somali Federal Parliament for approval (Wasuge & Moman, 2019). The Speaker of the House of the People appointed a 15-member parliamentary committee to review the bill. After consultations, the committee removed the Proportional Representation – Closed List electoral model and proposed First-Past-The-Post model based on Single Member Plurality. After weeks of parliamentary deliberation on the revised version, the House approved the bill on 28 December 2019. This was followed by the approval of the Upper House on 8 February 2020, and finally the president signed it into law on 20 February of this year. The international community has pressured the two chambers of parliament to expedite the review and approval of the electoral bill.

Unlike the previous political dispensations, the electoral law, which consists of 7 chapters and 58 articles, is currently a binding legal document that guides Somalia's national elections.

Limitations of the election law

Despite the approval and promulgation of the electoral law, the act has a number of limitations. Key substantial issues in the electoral law that require attention are: (i) the First Past The Post (FPTP) electoral model; (ii) the election of senators and the representation of Benadir region in the Upper House, (iii) the voter registration hurdles, and (iv) the looming possibility of extension of the process.

1. The electoral model

Article 10 of the national electoral law states that the electoral model will be a 'Majoritarian System' based on Single Member Plurality (SMP) or First Past The Post. The article also necessitates that each political party should have candidates for at least 50% of the seats of the two chambers of the parliament.

The proposed FPTP model represents a complete shift away from the Proportional Representation Closed List (PR-CL) electoral model previously approved by the

Council of Ministers. When the speaker of the House of the People of Somalia Federal Parliament selected a 15-member ad hoc committee to review the bill, the commission changed the model. Notwithstanding the fact that some regional states opposed the single constituency and preferred state-based constituencies, some politicians supported the PR-CL and believed that it is a good fit for fragile and (post)conflict contexts like Somalia.

The FPTP model has a number of weaknesses. First, although not clearly outlined in the two clauses of article 10 (which explain the model), the adopted FPTP system legalizes the existing 4.5 clan power-sharing formula. This has long been used in Somalia, but hitherto was not written in any government legislation. Article 12 (3) of the national electoral law clearly states that the 275 seats of the Lower House will be based on clan power-sharing. While the seats are reserved for clans, each seat will have a designated location and those eligible voters in the polling locations could vote for their preferred candidates (from that designated clan).

Second, unlike the PR-CL model, the FPTP model leads to direct elections where eligible voters can cast their vote for their preferred candidate in their respective locations. But since the seats are for clans, it is not open for every citizen to compete for the seat (Wasuge & Isak, 2020). In other words, this means that any eligible voter in a particular constituency will be able to vote, but only for candidates who hail from the particular clan that the constituency has been designated to. While an eligible candidate for a seat may be resident in Mogadishu, for instance, the seat of his/her clan could be designated in Hobyo district. This would mean that that person is only eligible to compete for the seat in Hobyo. If each constituency is allocated to a specific clan, then this raises the question whether voters in that constituency who do not hail from that particular clan will participate in the process and cast their votes.

Third, article 10 of the electoral law demands that each political party should have candidates for at least 50% (or 165 candidates) for the parliamentary seats. While this is a crucial requirement for multiparty politics, political parties in Somalia simply do not appear ready to participate in national elections. This is because there has been no registration of eligible voters so far, and conditions for permanent party registration are difficult to meet. Currently, the National Independent Electoral Commission (NIEC) has *provisionally* registered a whopping [76 political parties](#). The revised political parties' bill is still in the House of the People for review and approval. However, article 6 of the political parties' law states that for a party to become permanent, it should have offices and at least 10,000 members of registered voters in 9 of Somalia's pre-1991 18 regions (Isak & Wasuge, 2019). No party has yet fulfilled this requirement. And no eligible voter is yet registered, making this requirement currently impossible to fulfil. This complicates the role of political parties in the upcoming elections. Is it that the current provisionally registered parties will compete for the next election without permanent registration?

Article 12 (9) also prescribes 4% (13 legislators) as the minimum threshold for political parties to be recognized as a party with representation in the parliament. If parties are not registered permanently before the election date, the 4% threshold could become a substitute for permanent registration, meaning parties that secure at least 13 seats in the two chambers of parliament could be recognized as permanent national parties.

2. Election of the Upper House and representation for Benadir

Article 12 of the electoral law explains the election of the two chambers of parliament. While the election of the 275 members of the House of the People is (relatively) clear and based on the 4.5 clan power-sharing formula, the electoral process of the 54 members of the Upper House is blurred. Article 12 (4) states, that the Upper House will be 54 members and will be directly elected by citizens in the Federal Member States. Article 12 (7) stipulates that the election of the two chambers of parliament will happen together and citizens will elect candidates of the two chambers at the same time.

The electoral bill does not explain how the 54 seats of the Upper House will be elected at the same time across the federal member states. Furthermore, it notes that the senators representing Somaliland and its (s)election process will be decided by the parliament. This would mean that a special selection arrangement will be made for the Upper House seats for regions in Somaliland.

Importantly, Benadir region has no representation in the Upper House since its status in a federal Somalia is not yet defined. The current 54 members of the Upper House represent Somaliland (11), Puntland (11), Jubaland (8), South West (8), Galmudug (8), and Hirshabelle (8) states. Article 12 (6) of the national electoral law suggests that the two chambers of parliament will enact a law defining Benadir's representation in the Upper House without proposing a timeline for the enactment of such act. The Provisional Constitution, which is in a review process, states that seats should be allocated based on Somalia's 18 regions, and ensure equality in number at the Federal Member State level (The Federal Republic of Somalia, 2012).

3. Voter registration hurdles

The electoral law, specifically article 16 (4), proposes a unique biometric registration system for voters. The biometric voter registration does not require documentation or literacy on the part of the citizen. It also reflects limitations such as a lack of a census, the absence of a national ID system, and high levels of illiteracy among the population (Wasuge & Moman, 2019).

However, there are a number of challenges to overcome for successful voter registration. First, voter registration requires political stability. In order to register eligible voters across the country, states should be accommodating and welcoming the process. The NIEC stated that they have identified voter registration stations in Benadir and in three Federal Member States except Puntland and Jubaland. With the current strained relationship between Puntland and Jubaland on one side, and the federal government on the other, voter registration continues to face a serious political obstacle.

Second, biometric voter registration is expensive. The NIEC stated in August last year that the biometric voter registration for the 2020/21 national elections will require a budget of \$21 million. Given the limited budget of the federal government for elections, the government will rely on external actors – who may not be willing to pay – to cover the voter registration costs. Third, the insecurity in Somalia limits the voter registration. The security fragility in many parts of southern and central Somalia means that the NIEC will only be able to register voters in primary and accessible towns.

There are also other challenges including the technical capacity of the NIEC team in conducting a successful biometric voter registration within a short period of time. There is also limited understanding and civic knowledge among the majority of Somalia's youthful population on voter registration and elections. Recently, the NIEC commenced a voter sensitization campaign and workshops. These factors are all indicators that the requirements of full biometric voter registration will likely necessitate a technical delay of the elections.

4. Extension possibilities

Less than 10 months remain of the mandate of the current parliament. Article 53 of the national electoral law outlines the circumstances that can delay the elections beyond 26 December 2020. It says that the NIEC should bring forth to the two chambers of parliament the timetable and necessary information for the election in the period specified in article 13 (3). This says that the NIEC has to announce the election 6 months (180 days) before the election day. Article 53 also states that if the NIEC could not hold the election on time or announce that they cannot hold elections, the parliament will make a decision in a joint session. Crucially, if the election has to be delayed, even due to technical problems, the article does not propose a timeline for an extension.

Article 53 of the national electoral law exposes uncertainties. Firstly, if other factors remain constant, technical delays seem inevitable. The law gives the parliament an absolute authority to decide their future mandate. They could extend their term to an indefinite number of months and/or years. Any effort for the parliament to extend their term could create potential problems for Somalia. Secondly, if the electoral process is delayed or not started before the term of the president finishes, this could disrupt state-building efforts and potentially create a political crisis. Thirdly, any extension would disrupt Somalia's political transition trajectory and the incumbent leadership would struggle with a deficit of legitimacy.

Operationalization challenges

Unlike the 2016 indirect elections – where the National Leaders Forum discussed and agreed on the electoral design – the National Electoral Law is the centerpiece that guides the upcoming national elections. However, there are a number of issues that are not made clear in the electoral law but are crucial for the operationalization of the legislation. Chief among these are the identification of constituencies and allocation of seats; women representation; and electoral seats for Somaliland representatives.

One of the key factors for the operationalization of the electoral law is the identification and designation of geographic locations for each seat. This is problematic in a number of ways. First, the 275 members of the House of the People are allocated to clans through the 4.5 system. This means that the seats of each clan should be designated to one or more of the districts in which that clan predominates. This is difficult as some clans are dispersed across many districts along sub-sub-clan lines. If a seat is designated in a given town, it will most probably mean that one sub-clan would have a comparative advantage over other sub-clans competing for the same seat. Second, the decision to designate a seat in a given town requires a consultative process where the NIEC, the Federal Member State, and the allocated clan should agree on the location of the seat. This will likely generate disagreements among the election stakeholders that could delay the electoral process.

Another key operational challenge is designating geographic locations for the members of parliament representing Somaliland. Somaliland has declared itself independent from Somalia, and its Government has always refused to participate in the federal elections. With this current political context, MPs who wish to represent Somaliland in the Somali Parliament would require a special arrangement. If, for instance, these MPs are decided to be elected in Mogadishu, it would mean that people in Benadir districts could vote for them. The

question would be, where would be their constituencies and who should they represent: those who elected them or their clan constituencies in Somaliland? If it is the former, how would this fit into the 4.5 based elections? If it is the latter, what would be the motivation of the eligible voters in Benadir to vote for a candidate that would not represent them in the parliament? Although article 12 of the national electoral law states that the parliament will decide the election process of MPs representing Somaliland, a direct election for these MPs will create further complexity in the operationalization of the electoral law. A similar challenge relates to how MPs from clans residing in al-Shabaab controlled areas will be elected.

Women make up 24% of the current parliament. In 2016, the size of women representation was increased after designating seats for female candidates only (although the proposed 30% quota was not reached). The national electoral law does not guarantee how women would be represented in the parliament. Replicating the designation of seats to women candidates only could at least maintain the current level of female representation in the parliament. The international community is and has been the prime supporter and advocate for this.

While women-designated seats would require negotiation and discussion, there is little deliberation over the representation and inclusion of IDPs (who make more than 2 million of the population) and people with disabilities in the upcoming parliamentary elections.

On 28 February 2020, the two speakers of the parliament appointed a 17-member joint *ad hoc* committee tasked to prepare regulations on seat allocation, a women's quota, the election of Somaliland representatives in the two houses of parliament, and Benadir representation, all within 45 days. Clarification on these matters would be important for the operationalization of the election law. It is not yet, however, clear how the joint committee will find solutions to these complex challenges. The committee has on April 2 2020 halted their consultations due to COVID-19 outbreak in Somalia.

Political and security challenges

Notwithstanding the limitations of the electoral law and the technical and operational challenges, there are various political and security barriers that would significantly influence the facilitation of credible universal suffrage elections in Somalia.

First, there are a number of provisional political parties that would have a key role in the upcoming elections. The electoral model mandates that political parties should have candidates for at least 50% of the parliamentary seats. Despite this vital role, some political parties feel that they were not accommodated and consulted with by the incumbent leadership on key election issues. Some have made coalitions and publicly expressed their dissatisfaction with the incumbent federal government leaders' efforts to conduct credible and transparent elections in Somalia.

Second, Federal Member States are important stakeholders in conducting direct elections in Somalia. The ongoing rift between the federal government and some federal member states (Puntland and Jubaland specifically) is a critical political challenge that would have a significant implication for the forthcoming elections. Puntland and Jubaland have halted the NIEC's work in their respective jurisdictions. With the current frosty relationship between the center and these two periphery states, the prospect of holding direct and credible elections on schedule will be difficult to entertain.

Third, the security situation in Somalia is still fragile. Al-Shabaab poses a serious security threat to the elections. Although they did not derail the whole process, they did target clan elders and members of the electoral colleges in the

context of the 2016's indirect elections. Further, their territorial control and general insecurity would certainly limit the geographical reach, voter registration, and citizens' participation in the elections.

At the time of writing, the global Covid-19 outbreak is causing major disruption and loss of life around the world. Somalia has reported a number of cases and it is currently unclear if or how this global pandemic will affect countries in East Africa in the coming months. If a major outbreak occurs, then it is highly likely that this will affect planning and preparations for Somalia's electoral transition in 2020/2021. This issue is currently beyond the scope of this brief, but please refer to SPA's recent commentary on the state of Somalia's preparedness for this pandemic. Further analysis and commentary will follow as Covid-19 trends in the region develop.



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Policy considerations

1. Passing the electoral law was a step in the right direction. However, legislation is meant to last and the electoral law will shape how democratization in Somalia will be undertaken over many years to come. The First Past The Post electoral model, which incorporates and effectively legitimizes the 4.5 clan power-sharing formula, should only be used for the next political dispensation. The legislators mandated to review the law mixed short-term electoral process design with a long-term democratization agenda. Once the election is held and a government with a new mandate is established, the law should be revised with broad-based consultations with all concerned stakeholders. Proportional Representation – Closed List and other models deemed suitable and applicable to post-conflict situations could be considered in the future.

2. Benadir has no representation in the Upper House. In the short term, until Mogadishu's status is defined in the federal constitution, seats could be allocated to Benadir in the Upper House. The 54 members could be supplemented with 9 additional seats (making 63 in total). Since Mogadishu is a cosmopolitan city, the 9 members could be based on 4.5 (2 from each of the 4 main clans and 1 from the .5 clans). Anyone who has lived in Mogadishu permanently for the last 10 years should be eligible to represent Benadir in the Upper House. The joint *ad hoc* committee could propose such a solution and the two chambers of parliament could deliberate and take such a decision before the end of their mandate and the commencement of the elections.

3. Article 53 gives the parliament the authority to extend its mandate if the NIEC declares that the election cannot be held on time. The parliament should consider a technical extension of less than a year over an extension of a number of years. The latter could create a political crisis and would disrupt Somalia's nascent state-building efforts and recent transition trajectory.

4. As a delicate issue, any term extension must be treated with uttermost prudence rather than short-time political expediency. The incumbent government *should not* decide the extension of their mandate unilaterally beyond under the pretext of article 53 of the law. Instead it should seek concurrence and consensus with the sides of the political spectrum in determining the circumstances that necessitate extension, and set an

appropriate extension length and election model designed specifically for this critical juncture. Their priority must be to avoid pushing the country to the precipice of election-based violence.

5. Women represent about half of Somalia's population. Ensuring their representation in the upcoming parliament must be a collective effort. Politicians should encourage and become a voice for female representation in the next parliament. The 2016 experience shows that women-designated seats could increase or at least maintain the current level of female representation in the next elections.

6. Credible elections are not possible when the center and the periphery are in perpetual conflict. Both levels of government should be conciliatory, and other Somali politicians and international actors should help bring the squabbling politicians to the table. Better coordination of election security and the geographic allocation of parliamentary seats are impossible without a good working relationship between the federal government and all federal member states.

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Election Series: Parliamentary and presidential elections are expected to happen in Somalia in late 2020 and early 2021. At Somali Public Agenda, we have begun a series of commentaries and briefs concerning these elections. Each commentary or brief analyses election-related themes. This is the third brief of this series. SPA welcomes and very much appreciates comments, feedback and ideas relating to Somalia's anticipated elections.