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# Addressing contentious issues on elections in the constitutional review process

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# Abbreviations

|              |                                                                 |
|--------------|-----------------------------------------------------------------|
| <b>ATMIS</b> | African Transition Mission in Somalia                           |
| <b>EMB</b>   | election management body                                        |
| <b>FGS</b>   | Federal Government of Somalia                                   |
| <b>FMS</b>   | Federal Member State                                            |
| <b>FPTP</b>  | first-past-the-post                                             |
| <b>HoP</b>   | House of the People                                             |
| <b>ICRIC</b> | Independent Constitutional Review and Implementation Commission |
| <b>MP</b>    | member of parliament                                            |
| <b>NCC</b>   | National Consultative Council                                   |
| <b>NIEC</b>  | National Independent Electoral Commission                       |
| <b>OC</b>    | Oversight Committee                                             |
| <b>OPOV</b>  | one-person, one-vote                                            |
| <b>UH</b>    | Upper House                                                     |

# Executive summary

- The Parliamentary Oversight Committee (OC) and the Independent Constitutional Review and Implementation Commission (ICRIC) have submitted the first four chapters of the revised constitution to Somalia's parliament for review and amendment. Chapter 4—containing 15 articles—addresses all election-related issues. Parliamentary debates on the chapter took place in March 2024.
- The electoral model (Article 50) and constituency definition included in Chapter 4 are unclear. The revised version states only that elections will be one-person, one-vote. Article 51 proposes that the federal president and vice president, as well as Federal Member State (FMS) leaders, be directly elected by citizens. Article 52 changes the mandate given to the federal president and parliament from four to five years, and also states that FMS and federal elections are to take place simultaneously. Article 56 proposes that political associations must first compete in local elections, with the two parties that secure the most local council seats then eligible to compete in the state and federal elections. Article 58 states that a single National Independent Elections and Boundaries Commission is to manage all elections. Cabinet members will have responsibility for proposing commission members, who are then subject to approval by parliament.
- A number of political stakeholders have expressed a preference for alternative options to the framework laid out in Chapter 4. Regarding the electoral model, alternatives include proportional representation, closed list and state-based constituency, or first-past-the-post. Regarding the system of government, alternatives include the South African model, modifying the hybrid model or maintaining the current system of government. Regarding political parties, alternatives include a threshold system or separating national and state political parties. Regarding the election management body (EMB), alternatives include separating out national and state elections, or having the National Independent Electoral Commission and FMS EMBs co-manage elections.
- Assuming the constitutional amendment is endorsed, several further tasks must be completed in order to prepare the ground for elections in Somalia. These include amending election-related laws, appointing and gaining approval for EMB members, and registering political parties and voters.
- Somalia's democratisation roadmap faces multiple challenges, including the absence of Puntland's leaders from the constitutional amendment process; resistance on the part of former presidents, prime ministers and MPs; fragile centre–periphery relations; and widespread insecurity. These obstacles could slow the constitutional amendment process, or lead to changes in the proposed constitutional review framework and electoral arrangements.
- This policy paper recommends that the OC and ICRIC incorporate suggestions from the parliamentary debates into their final draft proposition; MPs ensure their suggestions reflect their constituents' views; space is given for leading civil society actors to add input; and key stakeholders work to bring Puntland back into the constitutional amendment process.

# Introduction

On 27 May 2023, Somalia's National Consultative Council (NCC) agreed on elections at both a federal and state level.<sup>1</sup> Unified local council elections were envisaged to start at district-level elections across all Federal Member States (FMSs) in June 2024, and state-level parliamentary and presidential elections in November 2024. Political parties, as per the agreement, would contest the June 2024 district elections, with the two parties gaining the most number of council seats then recognised as Somalia's two national parties. Key components of the agreements were not, however, implemented, as doing so would necessitate significant changes in the current provisional federal constitution.

Moreover, parliament drafted the Adoption Procedure for Constitutional Amendment, submitting it in early September 2023 for joint House of the People (HoP) and Upper House (UH) review and readings. Articles 3, 4 and 5 of the amendment—approved by parliament on 24 January 2024—detail a three-phased procedure for amending and voting on the provisional federal constitution, with each article illustrating one of these three phases.<sup>2</sup>

The first four chapters of the provisional federal constitution were submitted to parliament on 12 February 2024. As per the agreed schedule, the discussion and subsequent two-third majority voting in joint parliamentary sessions were to be concluded by 23 March, with parliament then entering a two-month recess on 25 March. Once the first four chapters of the provisional constitution are finalised, five further chapters will undergo the same process, and after that the final six chapters.<sup>3</sup>

In terms of the first phase, the parliamentary debate timeline was scheduled as follows:

- Chapter 1: 14–19 February 2024
- Chapter 2: 21 February–4 March 2024
- Chapter 3: 6–11 March 2024
- Chapter 4: 13–23 March 2024

The Parliamentary Oversight Committee (OC) and Independent Constitutional Review and Implementation Commission (ICRIC) will be granted time to incorporate feedback from both parliament and other stakeholders during the recess, before proceeding to the third and final phase of the constitutional amendment process.

Chapter 1 of the constitution concerns the declaration of the Federal Republic of Somalia and consists of nine articles. Chapter 2 sets out the fundamental rights and duties the citizens, and consists of 32 articles. Chapter 3 relates to land, property and the environment, and consists of six articles. Chapter 5 stipulates executive powers and addresses the status of Mogadishu. Because the settlement of Mogadishu's status has implications for Somalia's state-building and federal politics, a political agreement (e.g. at NCC level) is likely required before parliament reviews Chapter 5.

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1 The NCC is a platform for the executive leaders of the Federal Government of Somalia, Federal Member States and Benadir Regional Administration.

2 For a detailed analysis of the constitutional amendment process, see: <https://somalipublicagenda.org/the-constitutional-amendment-procedure-analysis-of-the-process-and-the-role-and-participation-of-the-civil-society/>.

3 Interview, member of the Independent Constitutional Review and Implementation Commission, February 2024; The formal debate on Chapter 4 concluded as planned on 23 March.

The deferral of Mogadishu's status means the first three chapters will not have to address any overly contentious political issues. This is not the case for Chapter 4, however, which is by far the most contentious of the first four chapters. As such, it is Chapter 4's content and articles—which address election-related issues—that are the primary focus of this policy paper.

ICRIC has already submitted revised versions of the first four chapters to the OC. Chapter 4 consists of 15 articles, divided into four titles (sections). According to the debate schedule, MPs were to begin discussing the four sections on, respectively, 13, 28, 20 and 23 March.<sup>4</sup> In actual fact, the Chapter 4 discussions commenced on 11 March due to the Chapter 3 debates finishing earlier than anticipated. If necessary, the procedure allows for extra days to be added before discussions are concluded.

The ICRIC proposal for Chapter 4 is based on the 27 May 2023 NCC election agreement. Puntland was not part of that agreement, while some politicians opposed core elements within it, particularly in terms of having two political parties and a pure presidential system. Thus, the parliamentary discussions may result in changes being made to some of the proposals in the ICRIC-submitted version.

Against this background, this policy paper aims to contribute to a better informed, inclusive and realistic discussion of Somalia's future elections. In providing an analysis of the provisional federal constitution's revised Chapter 4, it offers insights that parliamentarians and other stakeholders can make use of in debates concerning the constitutional review process and the core components of the NCC election agreement. The paper explores possible options regarding the system of government, the electoral model, political parties and the election management body (EMB). Beyond this, it analyses the technical aspects and challenges of implementing the proposed electoral roadmap once it is agreed upon and voted for in parliament.

The paper is based on the revised version of Chapter 4 submitted by the OC and ICRIC to parliament on 12 February 2024. In addition, Somali Public Agenda (SPA) conducted a number of interviews with politicians and intellectuals in order to reflect their views on the proposed election arrangements.

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<sup>4</sup> On 12 February 2024, when the revised four chapters were shared with parliament in a joint HoP and UH session, many MPs suggested the schedule was too tight and that they might need more time to for discussions. OC members stated that MPs could continue debating the articles on the following day if more time were needed. Other MPs suggested continuing the debate into the evening, while still others asked MPs to arrive at the parliament hall on time at 9am in order to maximise the time available for discussions.

# The essence of the revised election chapter

Chapter 4 of the revised OC/ICRIC version of the provisional federal constitution addresses all election-related questions. It consists of 15 articles, divided into four sections/titles: Title One sets out core election principles; Title Two outlines the electoral model and electoral offices; Title Three describes the political parties; and Title Four concerns the electoral management body.<sup>5</sup> All but one of the 15 articles are new to the constitution. One article was deleted, while 45 new paragraphs were introduced. The chapter also introduced two new sections, namely Title Three and Title Four. According to the explanations given, ICRC/OC divided the NCC election agreement into three parts: 1) components directly included in the constitution; 2) components leading to the drafting of new laws or amending of existing laws; and 3) components relating to the development of policies and political agreements.

## Title One: General Principles and Representation of the People

The first title of Chapter 4 consists of a single article (Article 48) detailing the powers of the people. The article contains four paragraphs. Article 48 pronounces that the representation of the people at different levels should be based on open competition, should be inclusive and each citizen should have equal access to get elected or elect their representatives. It also articulates that the representation model should be one that would not lead to violence from election competitions and election results. Finally, the article illustrates that the federal government is responsible for making sure that each Federal Member State (FMS) implements democratic electoral processes that are aligned with the Constitution and other federal laws.

What Article 48 does not make clear is the role of clan power-sharing and how electoral processes will be inclusive and ensure representation. Somalia has maintained a clan power-sharing arrangement since 2000, when the first Transitional National Government was established in Djibouti following the collapse of the military regime in 1991. Although clan power-sharing was never mentioned in the transitional charters and provisionally adopted 2012 federal constitution, the 4.5 criteria<sup>6</sup> was nevertheless applied to the selection of federal MPs, as well as the appointment of cabinet members (in more recent years, the federal government has applied a 5.0 criteria for the selection of cabinet members).<sup>7</sup> Given it would be difficult to maintain a 4.5 balance in a one-person, one-vote (OPOV) election process, further explanation is required on what representation would look like in openly contested electoral processes at a local, state and federal level. Moreover, Article 48 makes no mention of

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5 Chapter 4 of the current Provisional Constitution only includes two general principles: 46(1) on popular sovereignty and 46(2) on open public representation with simple rules. Moreover, the entirety of Title Two says only that laws enacted by the HoP shall define the National Independent Electoral Commission and any regulations concerning elections (Article 47).

6 4.5 is a power-sharing arrangement where four main clans namely Hawiye, Daarood, Dir and Digil & Mirifle get equal representation on the parliament while group of smaller clans get half (0.5) of the representation of the four clans.

7 For more on 4.5, see: Somali Public Agenda/Somali Dialogue Platform, 'The role of 4.5 in democratization and governance in Somalia: Implications and considerations for the way forward', Rift Valley Institute, May 2023. <https://somalipublicagenda.org/the-role-of-4-5-in-democratization-and-governance-in-somalia/>.

whether such questions concerning inclusion will be elaborated in related legislation, such as the laws on elections and political parties.

## Title Two: Elections

The second title consists of five articles (articles 49–53) that address questions concerning election principles, the electoral model, electoral offices and office tenures. Article 49 discusses general election principles, stating that elections be fair, just, and a secret vote; that they ensure the political rights of citizens; that electoral laws and processes be easily understandable to citizens; that electoral law guarantees all eligible voters can vote; that elections be independently managed; and that all citizens, particularly women and people with disabilities, be given representation in elections. Although free, open elections can be seen as somewhat incompatible with quotas, greater inclusion could be ensured through quotas applied to political party lists.

Article 50 elaborates on the electoral model, stating that elections should be based on OPOV and managed by parliamentary legislation (the elections law). The article avoids spelling out the electoral model agreed on by the NCC, which was proportional representation, closed list and single national constituency. Instead, it states that details of the electoral model and constituency definition will be set out in the electoral law, which is scheduled for revision in parliament in order to ensure alignment with Chapter 4 (pending parliamentary approval). Thus, the OC/ICRIC made a conscious decision to omit key information from the NCC election agreement. Clarifying the electoral model as part of the constitutional amendment process would help facilitate the forthcoming revision of the existing electoral law, ensuring it is suitably aligned with the constitution.

Article 51 lists five public offices that citizens will directly elect the representatives of:

- **The two houses of the Somali federal parliament:** This consists of the 275 members of the HoP and the 54 members of the UH. While citizens across the country would elect members of the HoP, citizens of each FMS would elect the UH members representing their state.
- **The presidency and vice presidency of the Federal Republic of Somalia:** Both the president and vice president would be directly elected by the country's citizens.
- **FMS leaders and deputies:** State-level heads and deputy heads would be elected by citizens in the relevant FMS.
- **FMS parliaments:** Eligible voters in each FMS would elect state legislators for their respective parliaments.
- **Local councils, mayors and deputy mayors:** Local council candidates would be elected by citizens at a district level.

While elections to these five offices are not new, there are two key changes contained in Article 51. The first concerns the electoral process for the president and vice president of the Federal Republic of Somalia. Based on the NCC May 2023 election agreement, this represents not only a change of electoral process, but a change in the system of government (moving away from a hybrid system to a pure presidential system). The change has proven to be extremely contentious and provoked heated debate in parliament, with some stakeholders opposed to the proposed system of government. The second notable change concerns the change in title of FMS heads from



‘president’ to ‘leader’ (*hogaamiye*). This is not based on the NCC agreement, but rather a previous 2016 proposal by the two constitutional review bodies.

Article 52 limits the term in office of elected representatives to five years. It also states that elections for all federal and state leaders are to be conducted simultaneously, with local-level elections held ahead of state-level and national elections. The article contains two main changes. First, it increases the terms for federal MPs and the president from four to five years, although it does not clarify whether they will be eligible for re-election beyond a single term. Second, by stipulating that all federal and state elections are to be held at the same time, it changes the NCC-agreed FMS election timelines, particularly the harmonised FMS elections in November 2024. It remains unclear how this harmonisation of federal and FMS elections would happen.

### **Title Three: Political Parties**

The third title consists of three key articles (articles 54–56) setting out the role of political parties in elections; requirements concerning the registration of political associations; and competition between political parties in elections. Article 54 states that political parties will play a pivotal role in the pillars of Somalia’s democratisation, with the requirements expected of political parties then articulated in Article 55. Specifically, the latter article lists seven conditions: 1) advance and strengthen the country’s unity; 2) respect the country’s laws; 3) stand for the defence of human rights; 4) abide by democratisation and good governance principles; 5) ensure inclusivity, with membership to encompass all segments of the society, particularly minorities and people with disabilities; 6) provide special consideration for women; and 7) submit to the registration process.

Article 56 outlines how political parties are to compete in local, state and federal elections. All political associations registered by the Elections and Boundaries Commission will in the first instance participate in local council elections. Following this, and provided they meet the conditions defined in the political parties law, the two political associations that win the most local council seats then become the two political parties allowed to compete for HoP and UH seats; the federal presidency and vice presidency; and seats and leadership positions in the relevant FMS parliament.<sup>8</sup> All this is in line with the process agreed on by NCC members in May 2023.

Limiting the number of permitted political parties to two represents another contentious issue. While the OC/ICRIC used the NCC election agreement as a reference, some political leaders have already spoken out against the limit.

### **Title Four: Election Management**

The fourth title is the most detailed section in Chapter 4 and consists of six articles (articles 57–62). Article 57 specifies the establishment of a National Independent Elections and Boundaries Commission, an EMB responsible for supervising national, state and local elections in Somalia. This implies dissolving the existing state-level electoral bodies in Puntland and Galmudug. It would also have implications for the current Independent Boundaries and

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<sup>8</sup> It is envisaged that the political parties law will be revised in order to align with the amendments to the constitution. Thus, the terms of the current political parties law will not apply to future elections. For more on the content of the current political parties law, see: Farhan Isak Yusuf and Mahad Wasuge, ‘Getting the party started: re-instituting political parties in Somalia’, Somali Public Agenda, September 2019. <https://somalipublicagenda.org/getting-the-party-started-re-instituting-political-parties-in-somalia/>.

Federalism Commission, as the new body would also deal with boundary issues.

Article 58 clarifies the specific roles of the new EMB. The commission's core mandate would include managing elections across the three tiers of government; registering voters; registering political parties and candidates; delimiting election boundaries and preparing polling stations; preparing the election code of conduct; declaring the number of polling centres; and preparing and managing voting facilities. The National Independent Elections and Boundaries Commission, as defined in Article 59, will consist of 15 members. These are to be proposed by the Council of Ministers after consultation, then approved by parliament, following which the president will officially appoint them by presidential decree. The chosen members will in turn elect their chair and deputy chair, with these appointments subject to presidential approval.

While the number of commission members aligns with the NCC election agreement, the process for appointing members differs. The NCC agreed that the FMS and Benadir Regional Administration heads would each appoint two members, while the Federal Government of Somalia (FGS) would appoint three. By contrast, the proposed article does not allow FMS heads to appoint commission members. This change has probably been introduced in an attempt to counter one of the key challenges, which was Puntland's absence from the NCC agreement—specifically, that Puntland would not be able to appoint two members to the commission. Moreover, the proposed process enables the federal parliament to vet and endorse commission members, which was not in the NCC agreement. The wider question raised by the arrangements outlined above is whether a single national election body offers a viable means of managing all district, state and national elections.

Article 60 lays out the requirements for becoming a member of the National Independent Elections and Boundaries Commission. Members should be Somali citizens; be at least 40 years old; possess a degree from a recognised university; and have at least ten years' experience in management. The article also disqualifies anyone who is a member of a political party; who has been sentenced to five or more years imprisonment; or who has held a government position at the federal or state level within the previous six months. As per Article 61, commission members have a non-renewable mandate of six years.

There are two drawbacks to the selection criteria detailed above. First, it rules out potential members who, despite being qualified, happen to be younger than 40. This is particularly onerous given that over 70 per cent of Somalia's population is estimated to be under 35. The stipulated membership age is high compared to other key public offices: MPs are only required to be 25 years of age, with those over 30 allowed to become ministers. Second, article 61 states that half the committee members are to be appointed every three years, in line with the EMB establishment act. What remains unclear is how this is to be implemented given that all the initial members will have a six-year mandate.

## Summary of key points arising from Chapter 4 of the provisional federal constitution

- 1. The representation article (Article 48) says nothing about how clans will be represented in future electoral processes.** Moreover, it does not indicate how related laws will detail such matters.
- 2. The electoral model (Article 50) and constituency definitions are unclear.** The revised wording only states that elections will be OPOV, leaving the

details to electoral law. The electoral model and constituency definition are, however, key issues of contention in Somalia. As such, clarification in the constitution would be helpful.

- 3. Article 52 proposes that the FGS president and vice president, as well as FMS leaders, be directly elected by citizens.** This changes the hybrid governance system to a pure presidential system at both a federal and state level.
- 4. Article 52 also proposes changing the current four-year mandate for the federal president and MPs to five years.** It does not, however, clarify whether the president would be eligible for re-election, and if so for how many terms. The proposed change (in Article 52) states that FMS and FGS elections are to take place simultaneously, which contradicts the NCC-agreed FMS harmonised elections set for November 2024.
- 5. On political parties, Article 56 proposes a two-step process whereby political associations compete at local elections, with the two parties that secure the most local council seats then eligible to compete** in subsequent state and federal elections (which in theory would happen at the same time).
- 6. The proposed changes state that a single National Independent Elections and Boundaries Commission, consisting of members not younger than 40 years of age, will manage elections at the local, state and national level.** FGS cabinet members are to put forward nominations, with parliament approving the proposed members.

# Alternative options and preferences

The core articles in Chapter 4 of the provisional federal constitution are based on the 2023 NCC election agreement. Various stakeholders, however, have expressed different preferences regarding the electoral model, system of government, number of political parties, and election management bodies. This section therefore explores some of the preferred options put forward by key stakeholders.

## On the electoral model and constituency definition

Article 50 of the revised Chapter 4 fails to provide clarity on the electoral model and constituency definition, stating only that elections will be based on OPOV. While ICRIC and the OC left elaboration of the electoral model to the envisaged electoral law, the NCC-agreed ‘proportional representation, closed list and single national constituency’ electoral model could be incorporated into Chapter 4. This would ensure the broad electoral model and constituency definition is made clear, while still leaving scope for the forthcoming electoral law to go into further detail. Doing so would help clear the path for the electoral law amendments, avoiding a repeat of 2019, when parliament changed the electoral model set out in the cabinet-endorsed electoral bill.

The NCC’s proposed electoral model and single national constituency offers two main advantages. First, it requires political parties to actively participate in the country’s electoral processes. Second, a single national constituency addresses the limitations faced regarding conducting elections in Somaliland and al-Shabaab-controlled territories. The main drawback is limited public accountability, as citizens must vote for political parties rather than individual candidates.

Alternative proposals preferred by some political stakeholders include the following.

### **Proportional representation, closed list and state-based constituency:**

One alternative proposal is proportional representation, closed list, but with multiple constituencies. These constituencies could be FMS-based, or at least based on two districts within each FMS. In the 2021–2022 indirect elections, parliamentary elections took place in 11 cities, with seats designated for each town. For instance, South West State was allocated 69 seats, with 43 MPs elected in Baidoa and 26 in Barawe. Similar seat allocations could be used for a proportional representation, closed list electoral model. Alternatively, the 69 seats assigned to South West State could be further sub-divided and allocated to three or more districts within the state. Thus, the key difference from the NCC-agreed model would be replacing a single national constituency with multiple devolved constituencies. Several FMSs favour a model along these lines, as confirmed by interviewees from the relevant administrations.

**First-past-the-post (FPTP):** Another alternative is to implement the electoral model defined in the current electoral law: FPTP based on 4.5. The electoral law proposes 275 clan constituencies for each HoP seat. Leaving aside the requirements of the 4.5 constituency definition, FPTP allows candidates to compete for seats in an open list, with the candidate—affiliated to a political party—gaining the highest number of votes winning the seat. This was initially proposed by MPs when the parliamentary speaker appointed an ad hoc committee to review the draft electoral bill in 2019. Proponents of this

electoral model include politicians who wish to maintain clan power-sharing and those who want clarity on clan representation in OPOV elections. It was concerns around clan representation that led to the proposed changes to the proportional representation, closed list electoral model in 2019. The views of the main proponents at the time remain unchanged.

## On the system of government

Article 51 of the revised Chapter 4 lists five public offices that citizens will directly elect representatives to, including the FGS presidency and vice presidency, and the leaderships of the various FMSs. This effectively changes the current hybrid governance system (a president elected by parliament, who then appoints the prime minister) to a pure presidential system at both a federal and state level. Some political stakeholders have, however, expressed support for other systems of government, such as those outlined below.

**The South Africa model:** Under the South African system of government, citizens elect the parliament, which then elects a president from the political party with the most seats in parliament. There is no prime minister—instead, the president acts as both head of state and head of government. Once elected, the president appoints a deputy president from parliament, then selects the members of cabinet. While the deputy president’s responsibilities are not explicitly defined in the South Africa constitution, s/he often serves as acting president when the president is out of the country or ill, leads specific portfolios in the cabinet, and represents the country in international platforms and public engagements. Most cabinet ministers are MPs, as the president can only appoint a limited number of ministers from outside parliament.

The South African model has several merits relevant to addressing the problems faced in Somalia’s hybrid system. First, it allows MPs to elect the president and gain significant representation in the cabinet. This would accord with Somalia’s recent history, which has seen federal MPs dominate cabinet positions. Second, the president becomes the head of state and government, with an appointed deputy president replacing the prime minister position. This is the main concern of those who prefer a move away from the current hybrid system. Third, it will not involve any great change in current practices, whereby the FGS president often acts as head of state and government. The main drawback of the model is that combining the powers of the president and prime minister into a single position elected by MPs would upend the foundational balance between the Daarood and Hawiye leaderships, thus removing the stabilising, consociational arrangement currently in place.

**Modify the hybrid model:** An alternative option would be to modify the current hybrid system in order to allow the president to remove the prime minister without the need for a parliamentary no confidence vote. Under this model, the president would remain head of state and the prime minister head of government, as is the case now.<sup>9</sup> Meanwhile, parliament elects the president, approves the prime minister once appointed, and subsequently endorses the chosen cabinet members. Although the premiership position is maintained, the president would be empowered to dismiss the prime minister if the two cannot work together. This in fact was the arrangement outlined in Somalia’s 1960 constitution and subsequently practiced until the October 1969 military coup.

<sup>9</sup> The president’s responsibilities as currently outlined in Article 90 of the constitution are largely ceremonial. This has not, however, constrained presidents from assuming de facto executive power and relegating the prime minister to a ceremonial function. The main justification given by sitting presidents has been that they are elected while the prime minister is appointed. During their presidential campaigns, candidates offer ministerial and other key positions to fellow politicians and MPs. When appointing the prime minister, the president will often co-manage the selection of cabinet members.

**Maintain the current hybrid system:** Some political stakeholders would prefer to maintain the current hybrid system, believing that in the absence of strong political parties the prime minister can counterbalance the power of the president during an election crisis. Moreover, they believe the prime ministerial position is important when it comes to representing one of Somalia's four major clans. They also fear a presidential system that grants significant executive powers to the president could lead to dictatorship, with the president remaining in power beyond the elected mandate. The current hybrid system has been employed in Somalia for ever since the first transitional government was established in Djibouti in 2000. Essentially a compact between the two main clans—the Hawiye and Daarood—the system is a response to the fragmentation and mistrust prevalent among Somalis. Proponents of maintaining the current system express a lack of confidence in the president not misusing the extensive executive powers granted by the pure presidential system proposed in Article 51 of the revised constitution.

## On political parties

Article 56 of the revised Chapter 4 proposes that political associations first compete at local elections, with the two parties securing the most local council seats then eligible to compete in state and federal elections, which in theory are to take place simultaneously. Many political stakeholders, however, oppose limiting the number of political parties to two, and instead propose alternative options.

**The threshold system:** Some of the politicians interviewed for this paper expressed a preference for putting a system in place that produces a number of official political parties, rather than just two. One such option is introducing a threshold system. This would involve all provisionally registered political parties competing in the local elections (if it is agreed that a single national EMB manages all the elections in Somalia), following which every party receiving 7 per cent of the total vote (or seats) would be recognised as an official political party and allowed to participate in the state-level and national elections. Setting this minimum threshold would potentially lead to smaller political parties falling by the wayside, while producing several official national parties. It would not, however, sufficiently protect inclusivity in key elected offices as part of Somalia's post-conflict state-building. Despite this limitation, it presents a better alternative to the proposed two political parties, as it allows a greater range of parties to participate in electoral processes.

**Separate national and state parties:** Given there are already state-level political parties in Puntland, politicians in other FMSs may harbour aspirations to focus on purely state matters. Some political stakeholders have proposed separating the national and state elections, which would allow for the emergence of state political associations that participate only in state-level elections. Thus, while Somalia as a whole might have two or more national parties, each FMS would potentially have several state-level political parties. These parties could compete with the national parties in local council and state-level parliamentary and presidential elections. Alternatively, the national parties might only contest nationally elected offices such as the HoP, UH and the presidency, leaving the state political parties to compete in state-level elections. This arrangement would necessitate the establishment of state-level EMBs.

## On election management

Article 57 of the revised Chapter 4 states that a single National Independent Elections and Boundaries Commission will manage local-, state- and national-level elections. The commission will consist of 15 members proposed by the cabinet and approved by parliament. Nevertheless, some political stakeholders have pointed to other election management approaches.

**Separate national and state elections:** Under this proposal, the national EMB would only be responsible for managing the national elections. Although it would have a constitutional mandate to implement federal-level parliamentary and presidential elections, state elections would be left solely to state-level EMBs. While this would prevent the harmonisation of national and local elections, the national EMB could still oversee policy and overall election timelines. Each FMS would have its own local and state electoral process, and thus its own EMB and political parties.

**National Independent Electoral Commission (NIEC) and FMS EMBs to co-manage elections:** This approach also involves establishing state-level EMBs, but in contrast to the proposal above would entail a federal-level NIEC co-managing harmonised state-level and national elections with corresponding FMS-level bodies. Doing so would, however, require the establishment of state-level EMBs in Jubaland, South West State and Hirshabelle, as well as the strengthening of the existing electoral bodies in Puntland and Galmudug.

# Parliamentary discussions on elections

March 2024 saw federal MPs debate the 15 articles contained in Chapter 4 of the revised constitution submitted to parliament for review, amendments and endorsement. The plan was for parliament to debate Article 48 (General Principles and Representation of the People) on 13 March, followed by the five articles (articles 49–53) concerning the electoral model and electoral offices on 18 March. On 20 March, discussion would turn to the three articles (articles 54–56) covering the role of political parties in elections. Finally, On 23 March, the six articles (articles 57–62) setting out the role of the national EMB would be deliberated. As previously mentioned, discussions in fact commenced two days ahead of schedule.

The timeline was intended to provide sufficient time for MPs to express their views on the contents of Chapter 4. According to the Adoption Procedure for Constitutional Amendment approved by parliament on 24 January 2024, these discussions form part of the second phase of the constitutional amendment process (as illustrated in Article 4 of the amendment procedure). In this second phase, ICRIC and the OC are tasked with incorporating parliament’s feedback and suggestions into a revised Chapter 4, which will then be presented to parliament for further review before being put to the vote.

The second phase of the constitutional amendment process, particularly the Chapter 4 discussions, has given parliamentarians the opportunity to present alternative views on the electoral model, system of government, number of political parties, and the EMBs. As previously noted, the articles in Chapter 4 are primarily based on the May 2023 NCC election agreement, which was subject to disputes among key political stakeholders.

The parliamentary debate on Chapter 4 offered a good opportunity to influence and amend the proposed articles. Unfortunately, the quality of debate was relatively low due to a number of MPs deciding not to attend the parliamentary sessions. These MPs, backed by former presidents opposed to the constitutional amendments, proceeded to hold a press conference on 18 March 2024 expressing their concerns about the amendment process. Their objections included resistance to switching from a semi-parliamentary system to a presidential system; disquiet that the process went beyond amendment and in fact could be viewed as the introduction of an entirely new constitution; unhappiness that the May 2023 NCC election agreement did not achieve consensus given that Puntland did not attend the meeting; anger that the constitutional amendment process had not incorporated the parliamentary suggestion to secure endorsement of the amendments through a secret vote and, moreover, that the voting process for the amendment procedure was flawed; and concerns that the debate schedule was overly tight.<sup>10</sup>

Opposition by these MPs, particularly concerning Chapter 4, has posed a critical challenge to finalising the amendment process for the first four chapters of the revised constitution. A two-thirds majority vote in both the HoP and UH is needed if the amended chapters are to be adopted. Given this, securing political buy-in by incorporating proposals from other political stakeholders into the Chapter 4 review—including addressing the concerns raised by opposition MPs—before the vote takes place is crucial.

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<sup>10</sup> The press conference can be viewed at: <https://fb.watch/qVcCLQ9eiL/>.



# Legal and administrative tasks ahead

Completing the constitutional amendment process and building the foundations for elections in Somalia will take some time. Having gone into two months of recess on 23 March 2024 following the conclusion of the parliamentary debates over the revised constitution's first four chapters, parliament is scheduled to return to work in late May or early June 2024. At this point, MPs will review the revised drafts of the four chapters—which should have incorporated their feedback and suggestions—before voting on whether to endorse them. At an optimistic estimate, voting could take place sometime in June. Even then, a lot of related work remains in preparing the ground for elections in Somalia.

Relevant election-related laws will require amendments and parliamentary approval. In this respect, three main laws require alignment with Chapter 4 of the revised constitution: 1) the political parties law; 2) the elections law; and 3) the NIEC establishment act. The amendments needed are relatively minor, and so in theory should be straightforward to implement. More specifically, the NIEC establishment act needs to be brought into line with the new EMB arrangements; the political parties law should be adjusted to reflect the number of political parties and registration processes illustrated in Chapter 4; and the electoral model and constituency definition require further clarification in the electoral law. These legal amendments are likely to take at least two months (i.e. July/August or August/September).

Once the election-related laws are amended, members of the EMB—assuming a single EMB is indeed endorsed—need to be appointed in line with the process outlined in the constitution and the revised EMB establishment act. This process, including parliamentary approval of the commission members and the subsequent election of the EMB's chair and deputy chair, will probably take about a month or two. Thus, if all goes as planned, a conservative estimate for when the EMB members will be appointed is September or October 2024.

The EMB then needs to register the various political parties seeking to participate in the elections. The registration process and number of participating political parties will depend on the arrangements agreed upon in the constitutional amendment process. Regardless, the registration of political parties is unlikely to start any earlier than November 2024.

Finally, the EMB must specify the schedules for local council elections and announce the timelines for state-level and national elections. Moreover, it needs to register voters and secure the financial and technical support necessary to undertake local council elections across the country.

Given the various legal, technical and administrative tasks that need to be completed in order to build a robust infrastructure for democratic OPOV elections in Somalia, late 2025 or early 2026 offers a realistic timeline for voting to take place. Voter registration and education will take time, and can only be carried out once the necessary financial resources and human capital are in place. The above estimates are based purely on the legal implications of preparing for the electoral modalities envisaged in the NCC agreement and the proposed constitutional amendments. As such, they do not take account of the political challenges involved—both in terms of stakeholder agreement and securing sufficient funds. It is these challenges that the next section now turns to.

## Key challenges

There are multiple obstacles standing in the way of Somalia's democratisation roadmap, including the fact that the country's political settlement remains fragile; Puntland's leadership is not currently part of the democratisation process; FGS–FMS relations are unpredictable; and the security situation is precarious across many regions.

While parliamentary representatives from Puntland can participate in the constitutional amendment process, Puntland's leadership does not want to continue the constitutional amendment debate without prior negotiation. Recently re-elected Puntland president Said Abdullahi Deni has proposed a national dialogue in Garowe to discuss the contentious political issues, having previously refused to sign the NCC election agreement in May 2023. If the constitutional amendment is passed and the democratisation process advances without Puntland, the resultant elections—particularly the local elections—might therefore have to take place without Puntland's involvement.

In addition, there are several politicians across the rest of Somalia, including former presidents and prime ministers, who oppose the constitutional amendment process. Although only some of are MPs—such as former presidents Sharif Sheikh Ahmed and Mohamed Abdullahi 'Farmajo'—they are all capable of exerting influence on the federal MPs voting on the amendment, having previously opposed key parts of the May 2023 NCC election agreement. While the opposing politicians chose not to express their views on elections as part of the Chapter 4 debate, one forthcoming opportunity they may take advantage of is when it comes time to incorporate parliament's feedback (reflecting opposition views) into the final version of Chapter 4, which will then be voted on in the two houses. If the current version remains or only minor changes are made to the constitutional amendment process, key political stakeholders may continue to oppose the democratisation roadmap—particularly the two political parties limit, the introduction of a pure presidential system, and the reduction of the institutional infrastructure to just a single national EMB. On top of this, an increasing number of MPs have started to publicly oppose the constitutional amendment, potentially posing a major hurdle to its adoption given the two-thirds majority in each chamber required.

More generally, political stability in Somalia continues to be fragile. Currently, relations between the FGS and the four FMSs are relatively stable. If these relationships were to worsen, however, it might create a political crisis that would negatively impact implementation of the country's democratisation process, as each FMS has de facto powers to govern processes within their state boundaries. This includes influencing the operation of nominally independent EMBs and political parties. The conduct of state-level elections therefore requires collaborative coordination between the FGS and FMSs. Moreover, the controversial memorandum of understanding signed by Ethiopia's prime minister with Somaliland's president on January 1<sup>st</sup> 2024 in Addis Ababa has the potential to provoke another political crisis in Somalia and could shift focus away from the democratisation process.

Finally, security presents another critical challenge to elections in Somalia. The African Transition Mission in Somalia (ATMIS) drawdown and the ongoing offensive against al-Shabaab both have implications for the conduct of elections. An uncertain security situation could affect voter registration, the number of districts where elections take place, and the number of citizens participating in elections.

# Policy considerations

As outlined above, March 2024 saw a series of debates take place in joint HoP and UH sessions regarding Chapter 4 of the revised constitution. Nevertheless, there remains room for course correction in the parliamentary debate and endorsement process. With this in mind, the paper presents the following policy considerations for consideration.

First, MPs should take the opportunity to express their differing views on Chapter 4. In doing so, they should prioritise issues of ongoing contention, such as the number of political parties permitted, the envisaged structure of government, and the number and independency of EMBs tasked with supervising elections. The OC and ICRC should take care to document and include MP's suggestions in the final draft of Chapter 4 submitted to parliament following the current recess.

Second, civil society actors should, having engaged in discussion among themselves, submit written feedback expressing their views on the proposals contained in Chapter 4 to the constitutional review bodies.

Third, parliament should consider specifying a six-year, one-term presidency as part of the constitutional amendment process. This would address a key challenge to Somalia's democratisation, whereby the sitting president seeks re-election through an electoral process designed to facilitate their re-election. Numerous countries—such as Mexico, Kyrgyzstan and the Philippines—have adopted a six-year, one-term presidency mode, while others have adopted a five- or even four-year, one-term model.

Fourth, once the core election questions are addressed in the constitutional amendment process, the federal government should prioritise amending the electoral law, EMB establishment act and the political parties law in order to align them with Chapter 4 of the revised constitution. Having done this, the FGS should prioritise establishing the EMB, registering political parties and preparing for elections (e.g. voter registration, election schedule, voter education).

Fifth, elections cannot take place without reliable security. With ATMIS's mandate ending in 2024, the FGS and FMSs should make renewed efforts to improve security and reduce the threat posed by al-Shabaab. This is a prerequisite for credible elections at a district, state and federal level, and will also be a key factor for voter registration and voter turnover.

Finally, efforts must be made to bring Puntland on board with the constitutional amendment process and electoral roadmap. If this is not done, democratisation efforts will be limited to Somalia's south and central regions, or halted altogether, with indirect elections the only viable alternative.

To sum up, collaboration and engagement with other political stakeholders, improving security, and maintaining stable centre–periphery relations are all crucial for organising democratic OPOV elections in Somalia at a local, state and national level.

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## Credits

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