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Summary

On 24 January, Somalia's Federal Parliament approved the 'Adoption Procedure for Constitutional Amendment' in a joint session of the House of the People and the Upper House. The five-page procedure consists of eight articles. Articles three, four, and five detail the three phases of the constitutional review and ratification process. The Independent Constitutional Review and Implementation Commission (ICRIC) uses the National Consultative Council (NCC) political agreements in its revisions of chapters of the constitution. In phase one the revisions will be presented to parliament and ten other offices. In phase two, the parliament deliberates on the substance of the revisions and changes. And finally, in phase three, the parliament will review the final incorporated version and endorse it with the required two-thirds majority. The process offers a level of participation and input for the parliament, other government institutions, and civil society. However, some politicians opposed the procedure and how it was voted on in the parliament. This brief analyses the Adoption Procedure for the Constitutional Amendment and the actors who opposed it. It explores ways that civil society can contribute to and influence the constitutional review process and concludes with several policy considerations. These include the suggestions that the Parliamentary Oversight Committee (OC) and ICRIC engage multiple stakeholders; that the federal government engages and involves other political stakeholders; and that civil society engages policymakers and citizens in the constitutional review process.

About Somali Public Agenda

Somali Public Agenda a non-profit that works to advance the understanding and improvement of governance and public services in Somalia.

About Somali Dialogue Platform

The Somali Dialogue Platform (Wadahadalada Somaaliyeed) is a programme, implemented by the Rift Valley Institute, that works to facilitate agreement amongst Somalis on contentious political issues.

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The Constitutional Amendment Procedure: Analysis of the Process and the Role and Participation of the Civil Society

Introduction

On 24 January, Parliament approved the Adoption Procedure for Constitutional Amendment in a joint session of the House of the People and the Upper House. The Adoption Procedure had previously gone through a first and second reading in Parliament in 2023. The Adoption Procedure consists of eight articles that outline the constitutional review and ratification process.

The voting process of the Adoption Procedure was not straightforward and politicians and former presidents warned against approving this before a broader agreement on some of the contentious political issues. Chaos erupted in Parliament before the vote as some MPs did not want it to proceed. The Speaker of the House of the People, who chaired the joint session, stated that 184 members of the House of the People and 36 members of the Upper House were in attendance. With tensions running high, the Speaker asked for a vote: One-hundred-and-eighty members (65 percent) of the House of the People, and 21 members (39 percent) of the Upper House voted to approve of the Adoption Procedure.¹ The Parliamentary discussion on the first four chapters of the Constitution started on 12 February.

The Parliamentary Oversight Committee (OC), which consists of five members of the House of the People and five members of the Upper House, and the five-member Constitutional Review and Implementation Commission (ICRIC) are the key institutions steering the constitutional review. These bodies will incorporate into the Constitution elements of the NCC political agreements, as well as the options and suggestions previously documented during the ninth and tenth parliaments. Most significantly, the first four revised chapters of the Constitution incorporate two key political agreements, the NCC May 2023 election agreement, and the Baidoa National Security Council (NSC) June 2018 agreement on natural resource sharing.

Five NCC agreements therefore serve as the key reference point for the constitutional review, which has previously been crippled by a lack of political agreement on contentious issues. However, crucially, these were reached without Puntland and some key contentious issues remain unresolved. The NCC agreements include:

- (1) The allocation of powers, agreed in December 2022 in Mogadishu; 2
- (2) The judicial model, agreed in December 2022 in Mogadishu;
- (3) Fiscal federalism, agreed in March 2023 in Baidoa;
- (4) The National Security Architecture, agreed in March 2023 in Baidoa; and
- (5) Elections, agreed in May 2023 in Mogadishu.

¹ You can watch a short video on how the voting happened here: <https://www.youtube.com/watch?si=TBQfZArQJXXNlPj&v=yIkVLI1ejuo&feature=youtu.be>

² The status of Mogadishu and the recently established SSC Khatumo, which falls under the sphere of executive powers were not yet agreed upon. The NCC would need to agree on these power-related matters for it to be included in chapter five of the constitution that arranges powers.

The state of the constitutional review process

The constitutional review started more than a decade ago in 2012. The Parliamentary Oversight Committee and ICRIC, along with the Ministry of Constitutional Affairs, have been working on the constitutional review with limited success. The main barrier was that FGS and FMS leaders could not agree on the contentious political issues.

President Hassan Sheikh, elected in May 2022 after a protracted electoral process, made the finalization of the Constitution one of his key government priorities. The government appointed five new members to ICRIC in March 2023, who then elected Burhan Adan Omar as its Chair. Burhan Adan has a strong legal background (he was the former Dean of the Faculty of Law at Puntland State University) and also benefits from his previous membership of the Parliamentary Oversight Committee (2016-2022). These developments indicate that there is renewed political impetus and technical capacity to conclude the protracted constitutional process. Both chambers of Parliament will play the most crucial role in this process.

Analysis of the constitutional review procedure

The Adoption Procedure consists of eight articles:

- (1) The first article explains the functions and authority of the Parliamentary Oversight Committee.
- (2) The second article illustrates the process of convening joint sessions of the House of the People and Upper House to discuss constitutional matters.
- (3) Article three explains the first phase of the process and the procedure to distribute the proposed amendments (the latter made by ICRIC based on the NCC agreements).
- (4) The fourth article details the second phase, which is the constitutional debate in Parliament and the submission of written feedback by 10 groups of stakeholders.
- (5) The fifth article illustrates the third phase, which includes a Parliamentary debate of the revised amendments submitted by the Oversight Committee and ICRIC based on phase two, the opportunity for MPs to propose new modifications and the voting process for Parliament to approve each batch of chapters (which concludes the Parliamentary process).
- (6) The sixth article explains the ratification process after the parliamentary voting.
- (7) The seventh article outlines the public referendum as the final endorsement of the Constitution.
- (8) The eighth article briefly articulates that this procedure would be effective once Parliament approves it.

Article 1 discusses the coordination and engagement role of the Parliamentary Oversight Committee in the constitutional amendment process. It states that the Oversight Committee is responsible for (i) preparing proposals for the revisions of the Constitution; (ii) conducting public awareness and engagement on the proposed amendments of the Constitution; (iii) consulting with members of Parliament;

and (iv) engaging state-level legislators to submit their views on the constitutional review and incorporating these views in the revisions. Once ICRIC incorporates the feedback of different stakeholders, the Oversight Committee has the role of submitting the proposed revisions to the Speakers of the two chambers of Parliament. The Oversight Committee connects ICRIC work to Parliament; it also engages the public and shares its feedback with ICRIC for consideration.

Article 2 explains the joint sessions of Parliament. It states that the joint House of the People and Upper House sessions can only happen when 50+1 percent of each chamber are in attendance, that is at least 138 members of the House of the People and 28 members of the Upper House – 163 MPs in total. The Speakers of the two chambers, together with the Parliamentary Oversight Committee, have the role of preparing the timetable for the joint sessions on the constitutional amendments; it has already produced the schedule of the discussions of the first four chapters (14 February to 23 March).

Articles three, four, and five are the most important articles that detail a three-phased procedure and voting of the Constitution.

Phase 1 (Article 3): Before the beginning of phase one, ICRIC used the NCC political agreements to review the Constitution and submitted the revisions to the Oversight Committee. The Oversight Committee and ICRIC will do the same for the remaining eleven chapters. In phase one, the Oversight Committee and ICRIC submit the revised chapters to the two Speakers of Parliament, and these are then distributed to the members of Parliament in a joint session. In phase one, there is no discussion on the substance of the revisions made in the chapters submitted.

Furthermore, the Oversight Committee, together with the Speakers of the two chambers of Parliament, also submit the same revised drafts to 10 stakeholders, namely: (1) the Presidency; (2) the Council of Ministers; (3) the Chief Justice; (4) the Constitutional Court; (5) FMS executives; (6) FMS parliaments; (7) the Benadir Regional Administration; (8) SSC Khatumo Administration; (9) religious sheikhs; and (10) civil society. These offices and actors are invited to submit written feedback on the chapters within 30 days. ICRIC would then, using its own discretion, incorporate (or not) the feedback into a new revisited set of amendments to submit to Parliament for debate and approval in phase three. This period of receiving feedback outside of Parliament runs parallel to the Parliamentary debate in phase two.

Phase 2 (Article 4): The Constitutional debate starts in Parliament in the second phase of the amendment process. Since 14 February, Parliament has started debating of the first four chapters. Each MP has ten minutes to present his/her views on the revisions made to the chapters. The Oversight Committee and ICRIC members should be present in the joint parliament session to answer questions from parliamentarians. Once the debate ends, and MPs have had their chance to express their views, the Speakers of Parliament will announce that the second phase has ended. To officially conclude the second phase of each

chapter, the Speakers need to have 50+1 percent of present Parliamentarians vote to close the discussion, although this does not mean an endorsement of the chapter. The Oversight Committee is required to make sure that ICRIC took minutes, audio, and videos of the questions and remarks of the parliamentarians.

The feedback and remarks of the MPs, together with the written feedback of the other stakeholders, should be incorporated into the final version of the Constitution before the Parliamentary voting in phase three.

Phase 3 (Article 5): The third phase of the constitutional amendment process is the voting and endorsement of the revisions made to the Constitution. The Oversight Committee will submit a final version of the revised chapters to Parliament, incorporating their feedback from phase two as well as the feedback of other key stakeholders. Parliament will have a brief discussion on key amendments made after their feedback.

However, if the revisions made after the parliamentary debate and other stakeholders' input are not agreed upon, objections or motions to revisit the changes can be proposed by either the Oversight Committee or 1/6th of the members of the House of the People (46 MPs) or 1/6th of the Upper House (9 senators). These motions could be put forward if MPs feel that ICRIC and OC did not incorporate their feedback from phase two. However, the Speakers of the Parliament can object to a motion if they decide that it is not in line with the provisions and chapters debated. If the motion proposed receives 50+1 percent support from Parliament, the new proposed amendments will be added to the final version that will be put to Parliament for approval. If the motion does not receive 50+1 percent support, it will be dropped. This space gives further opportunity for MPs to object to the revisions after the second phase if they are not convinced that their views were incorporated.

In this third phase, at least a two-thirds quorum of the members of both houses of Parliament is required. A two-thirds majority vote is needed for the final endorsement of the revisions made to the Constitution. The voting should be via a "show of hands, writing and/or name-calling".³ This voting process was one of the contentious issues regarding the Adoption Procedure and the reasons for the delay in its approval. Some MPs wanted a secret vote for the ratification process. When the Oversight Committee was asked, on 12 February, why they proposed a show of hands (which can be manipulated), they said this was based on existing Parliamentary by-laws. Key stakeholders interviewed for this brief also stated that the procedure allows MPs to request calling the name of the MPs and then voting one-by-one as the term 'name-calling' (*magac u yeeris*) was included in the phrase describing the voting.

Although not clearly articulated in the procedure, sources interviewed for this brief suggested that the two-thirds vote for the first four chapters would mean these would be considered final. Once the voting for the four chapters is concluded, as indicated in Article Six, the President would

then sign the approved version, which will be published in the official gazette. The batches of approved chapters would become the de facto and operational Constitution before the public referendum (article seven) after incorporating the final agreement of the FGS and Somaliland talks. There are also other political issues which have not yet been resolved. A final permanent Constitution therefore remains a far way off.

Opposition to the constitutional amendment process

Although the Adoption Procedure creates opportunities for Parliament, other government offices, and civil society to participate and provide input to the Constitutional review, there is important opposition to the process, primarily from politicians and the Puntland leadership.

First, former presidents and prime ministers, as well as members of Parliament, opposed the procedure. This indicated that key stakeholders were not happy with the process and perceived this as being singlehandedly managed by the incumbent FGS leaders without enough consultation with other stakeholders. In particular, opposition politicians had several meetings with the President on the NCC election agreement and expressed their disapproval of key components of this. They wanted these concerns addressed before commencing the constitutional amendment process.

Second, for the parliamentarians who opposed the Procedure, one key concern was the show of hands for the final two-thirds voting process. Given past experience, particularly how voting by a show of hands has been manipulated, they are not sure of how the voting will be counted and are wary that the Speaker(s) might announce the result without an open and credible vote.

Third, although MPs from Puntland can participate equally in the parliamentary debates, the Puntland President did not sign any of the NCC agreements that would be a base for the ICRIC revisions to the Constitution. The recently re-elected President of Puntland has indicated his intention to renegotiate the previous NCC agreements, to which he was not a part. The current constitutional amendment process leaves very little opportunity for this. This is probably why Puntland's President has proposed convening a parallel national dialogue in Garowe. The principal and crucial challenge would be the implementation of the elections in Puntland as articulated in an amended Constitution if it does not have a political buy-in from Puntland.

Civil society's participation in the process

It is commendable that civil society was included in the list of actors that the Oversight Committee will share the revised chapters of the Constitution with and seek input from. There are several ways the civil society can inform and influence the Constitutional review process.

First, civil society actors could organize public debates and discussions to solicit the views of civil society groups

3 The Somali text is: 'gacan-taag, goraal iyo magac u yeeris'.

and the wider citizenry. They could document the feedback of citizens and intellectuals and submit written recommendations to the Oversight Committee and ICRIC.

Second, civil society actors, particularly research institutions, could produce analytical papers on the revisions proposed and other options that could be considered. These insights could be shared with MPs ahead of the debates to inform their views during the second phase.

Third, there are misunderstandings and confusion over the Adoption Procedure. Civil society actors can explain the process and inform citizens using different communication means. They could also ask citizens to express their views and share these in their feedback to the Oversight Committee and ICRIC. This will empower and inform citizens and could reduce the risk of making the constitutional review debate only limited to the political elite.

However, the 30-day period for feedback is very short and without a large budget of implementation plan, the scope of consultations is likely to be very limited. For example, it is highly unlikely civil society-organized consultations will take place outside of Mogadishu. Perhaps most importantly, the Oversight Committee and ICRIC are not bound to take up any of the recommendations made by the 10 stakeholder groups, and MPs only can make direct proposals in phase three.

Policy considerations

First, the Oversight Committee and ICRIC should make sure that the Adoption Procedure is properly followed and should avoid shortcuts. They should also make sure that they give ample time and create effective channels to receive the views and input of multiple stakeholders beyond Parliament. This will require more time. If the Parliamentary debate ends in late March, the Oversight Committee and ICRIC would have two months to incorporate Parliament, civil society, and other government institutions' feedback before presenting the revised amendments in phase three, as Parliament will go on a two-month recess on 25 March. The Oversight Committee and ICRIC could continue to solicit feedback on the first four chapters during the recess. Equally important is to properly count votes in Parliament and avoid hastily announcing the results.

Second, the FGS should engage Puntland and other political stakeholders who opposed the Amendment Procedure. The FGS should make sure that the views and concerns of opposition actors are listened to and considered. Equally important is that Puntland and opposition actors clarify exactly what their positions and objections are, and a meeting should be arranged to address their concerns. The Constitutional review should be inclusive and should not be seen as an exclusive process that serves the interest of the incumbent FGS leadership.

Third, the NCC should continue its meetings and should agree on the status of Mogadishu and other issues that need political agreements to inform later chapters of the Constitution.

Finally, civil society actors should inform and influence members of Parliament and constitutional review bodies. They should play the role of informing and influencing policymakers and citizens on the process and substance of the amendments and the implications of these. They could do so by producing analytical papers, engaging policymakers, creating space for dialogue, and informing the public using traditional and social media platforms.

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