

# FEDERALISM: A VALID INSTRUMENT FOR RECONCILIATION IN SOMALIA?

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The constitution approved in 2012 represents an opportunity for Somalia to re-establish a central government which has been absent for the last two decades, and reach a stability that its society lacks since the pre-colonial era. The constitution envisages the implementation of a federalist structure for the new Somali state, a solution that is facing a number of issues in the prickly Somali political environment. However, these issues do not seem to be insurmountable; the question is if the Somali Federal Government (SFG) and the other actors involved are approaching the question with proper legal means and good intentions. Now as before, the core of the matter lies both in the relationship among Somali clans as well as in the harmonization of the different sources of authority which can be found *on the ground*. The analysis of federalism in Somalia, as it has been formulated so far, can thus shed light on the progress made towards stability and consequently on the practical possibilities to overcome a political impasse that has lasted over twenty years.

## FEDERALISM IN THE 2012 CONSTITUTION

The configuration of the Somali State as a federalist one has been decided by the National Constituent Assembly, which adopted the Draft Constitution on August 1, 2012.

Article One states unequivocally that "Somalia is a federal, sovereign, and democratic republic founded on inclusive representation of the people and a multiparty system and social justice".

Leafing through the document, one reads that "the Federal Republic of Somalia is founded upon the fundamental principles of power sharing in a federal system" (Art.3) and that shari'a maintains its supremacy on the constitution (Art.4). The subsequent articles of the constitution dedicated to federalism can be found in "Chapter 5: Devolution of the powers of government in the Federal Republic of Somalia" (Articles 48 to 54). In this section, the constitution describes the collaborative spirit that shall be established between the federal government and the federal state government level, and goes on by listing practical issues that need to be approached with a cooperative relationship. Neither the Constitution nor other documents, however, do provide a comprehensive description of all aspects of the federal system: if, on the one hand, the constitution seems to include much of the federal political system's principles, on the other it does not directly deal with some other relevant issues, whose specifications are instead entrusted to the decisions which will be taken by three institutional bodies:

- Federal State Parliaments
- The House of the people (the lower house of the Federal Parliament)
- A National Commission appointed by the House of the people

These bodies have the task of solving questions as urgent and relevant as the definition of the federal boundaries. Nevertheless, two of the three are not really operative at the moment.

Following constitution's regulation, the House of the people has the specific task of defining the territorial extension of federal states, yet before doing that it needs preliminary analyses on the issue which will be conducted by the National Commission. Afterwards, the single federal state parliament can proceed with further division of its own territory into districts. As seen, the National Commission is appointed by the House of the people: article 49 entrusts in fact the Lower House

with the duty of defining:

- responsibilities and powers of the National Commission;
- parameters and conditions that shall be used for the establishment of the federal Member States;
- the number of the commissioners, requirements for the appointment and terms of office.

We can extract two principles here. Firstly, the House of the people has a substantial power over the National Commission it shall establish. The National Commission in fact will carry out a preliminary research that anyway depends on specific parameters and conditions expressed by the Lower house, with no real spaces for autonomous moves. It is important that the Lower House enjoys popular legitimacy all the way through in order for the National Commission, and for the boundaries which commissioners will trace, to obtain legitimacy too.

Secondly, a well-defined hierarchical structure does emerge in this section of the constitution, yet it leaves itself vulnerable to a multilevel political power bargaining, as every level maintains, proportionally, a margin of negotiation and influence on the final boundary organisation: a potential minefield of political conflict, overlapping interests and procrastination.

As for now, the National Commission remains moreover a completely vague body and a source of dangerous speculative thinking. Given the consolidated inter-clan dynamic in Somalia, it is reasonable to expect that the future members of the National Commission, nominated by the Lower house, will be immediately identified in reason of their clan affiliation. Especially if Somalia's clan consistency will be proportionally represented in the final composition of the National Commission, one could wrap up that the traditional society is still holding the reins of political dynamics: this is a dangerous outcome, I will explain later.

Hence, the activities as well as the choices of Commissioners, will be carefully inspected by the Somali population, in pursuance of any sign of hostility or favouritism towards one clan or the other. In other words, there is a high risk of exploitation and politicisation of the National Commission's work, in order to discredit or even undermine the re-conciliatory attempt, when the result is not favourable for everyone.

Similarly, the distribution of resources among Somalia's future states can't be understood as definitive, from what one reads in the constitution. The text underlines how resources allocation and use shall be decided fairly and with equity (Articles 43 and 50), and establishes also areas which are prerogatives (“responsibilities”) of the sole federal government: foreign affairs; national defence; citizenship and immigration; monetary policy. In the absence of other federal laws, the constitution as it is controls but does not check, wish for but does not provide a system of for the guaranteeing of a fair distribution of resources. An issue that has been of a paramount importance in determining previous decades of Somali history, seems now to be underestimated.

## **FEDERALISM AND TRADITION**

Some observations made in the last paragraph pave the way for considerations on the strength of the traditional dynamics in Somalia: a proper analysis of the Somali federalism must in fact take into account both the constitutional architecture as well as the informal distribution of power (or extra-institutional).

Traditional power in Somalia is expressed essentially in the politics of the clans, under the tenets of the tradition known as the “*xeer*” (it translates roughly as *treaty, contract*<sup>1</sup>). For its incidence in human dynamics, the *xeer* is considered the very essence of the Somali community; its social contract<sup>2</sup>. In the past, the regime of Siad Barre (1969-1991) moved towards the direction of abolishing *xeer* and tried to suppress it from Somali daily life<sup>3</sup>. Today, so much for the dictator, the *xeer* has managed to even gain a role of prominence in the jurisdiction of Puntland<sup>4</sup>. Clan affiliation is determined by the male lineage, and it conveys an identity value which goes beyond that deriving from religion or any other ideology: clan in Somalia takes precedence over everything. Not surprisingly, Somali society is thus structured on the fragmentation of groups, in which the distance of genealogies, rather than the geographical location, defines relations among groups. Thus, we shall not presume that clans living in the same region automatically hold stable relations to each other. Clans are likely to retain their blood affiliation even in a federal context.

It is clear that the coexistence of different sources of authority (government; traditional councils) and sources of law (*xeer*; *shari'a*; civil law) lead to the question of how federalism, developed on the basis of Western models, can interact with customary laws, considering that the latter has nothing to do with the Western legal and administrative philosophical tradition. Some elements of risk in the relationship between federalism and traditional power can be thus highlighted. Article 50 affirms that:

"[Legislative] Power is given to the level of government where it is likely to be most effectively exercised"

In the same article, it is also said that "the resolution of disputes through dialogue and reconciliation" is to be included among principles of federalism.

In the absence of specifications, it is not clear if traditional councils can play a role: if not in all federal states, at least within those which include large rural areas, namely where *xeer* is more effective in administering territory and people. Alternatively, there is a need to put in place a division of legislative powers or a kind of principle of subsidiarity, at least in matters in which traditional laws cannot effectively intervene; or, again, in order to standardize rules of a specific subject at the national level. Here, I can touch on the draft interim charter of Jubaland state to understand the kind of role that tradition will cover in Somalia's future states: Article 32 (“The council of traditional elders of Jubaland”) affirms that:

- “1.The Council of traditional elders of the state Government Jubaland shall constitute 30 traditional elders representing the resident clans or such other number agreed on by the cabinet
- 2.Their role shall be to advise the government on:
  - a) religious and cultural affairs
  - b) arbitration of communal disputes.
- 3.The Members of the Council of traditional elders shall be recognized elders of the clans inhabiting Jubaland”

A second risk is the establishment of a *federalism of the clan*, rather than a regional one: a "tribalization" of Somalia on federal basis, the translation of the clan's rivalries at the regional level and the shadow of a conflict reiteration. The current distribution of the clan already lends itself to a phenomenon of this kind, particularly with the presence of Hawiye in Mogadishu, Dir and Isaq in the North, the Digil-Rahanwiin in the southern part and Darod both the centre and to the south. One then just need to have a look at the clan land distribution to realize how Somalia's future map may

look like. Why should the federalism of the clan make its way in Somalia? Because there is need to restore public confidence, and address the painful past, where atrocities have been committed in the name of the clan or, even worse, in the name of the state. Somalia, in the form of institutions or local communities, has not really undertaken these fundamental processes so far, while there is a generalised sense of national identity which could help to achieve their realisation.

The third element of analysis here highly depends on the previous ones. Elders councils are entrusted with the resolution of disputes among clans. After the collapse of the government, there was a great increase in target executions. The inability to pay the *diyah* (compensation) has led in point to a degeneration towards the logic of “an eye for an eye”<sup>5</sup>, bypassing both elders and *xeer*. Thence, peacebuilding in Somalia found its pillar in the clan's dispute settlement. The payment of *diyah* and the application of *xeer* discourage the use of other punishments, and these instruments moreover regulate the access to land and resources: for many Somalis the real reason of the state's fall in the bloody civil war<sup>6</sup>. What (legal) destiny for the *diyah*?

Finally, it shouldn't be forgotten that the state has been strongly perceived by Somalis to be an entity imposed from the outside. According to Menkhaus<sup>7</sup>, the state was seen as “an instrument of accumulation and domination, enriching and empowering those who control it and exploiting and oppressing the rest”. Such a view is the result of 40 years of clan politics, in which Somalia has seen a short and fragile democratic period (1960-69), the subsequent dictatorship of Siad Barre (1969-91) and the chaos of the civil war (1991-). Years in which clan affiliation was deformed into clientelism while the distorted use of the European institutions forming the Somali state paved the way for the dictatorship. The state as contested post-colonial discourse is still a valid, captivating argument for many.

## THE ROLE OF THE OTHER POLITICAL ACTORS

If traditional power introduces some difficulties in the implementation of federalism, the role of other Somali political actors in the transition from conflict to a peaceful coexistence is in many ways yet to be fully discovered. Many actors have not emerged yet, and new claims for the formation of federal states may become reality in next months. I will deal here with the territorial entities existing in current Somalia.

Puntland wishes to be part of a federation: in this sense, it has declared itself autonomous, not independent. Puntland has played a decisive role in assisting Somalia towards the new constitution, hosting two conferences in its capital and supporting the entire Road Map which put an end to the Transitional Federal Government. In virtue of its efforts, Puntland government has stressed several times the features that a federal Somalia shall have: in February 2012, for example, the President of Puntland Farole has said<sup>8</sup>:

*“The type of federalism we would like to see for Somalia is a system where power and resources is divided between the states and the federal level. Gone are the days when power and resources was unfairly concentrated in a single city-state”*

In a way, Puntland poses a direct challenge to the federal government: after twenty years of chaos and inconclusive attempts towards the national reconciliation, the root node for Mogadishu is the recovery of Puntland's confidence and trust, that can be regained showing signs of stability and institutional commitment. Conditions not fully met presently by the federal government.

A similar discourse stands for the Galmudug state, one of the most concrete other instances of regional entity, which considers itself a federal division within a larger federal republic of Somalia, recalling the 2004 Transitional Federal Charter (TFG).

Jubaland, in Southern Somalia, is now a federal state. It has been established with the merging of Lower, Middle Juba and Gedo regions, namely following the provision of Article 46 of the 2012 constitution:

“Based on a voluntary decision, two or more regions may merge to form a Federal Member State”

Jubaland has approved a draft charter in March 2013 recognizing the Somali Federal Government and envisaging the Jubaland State government's responsibility to “participate in the creation of a Federal Somali Government founded on unity, co-operation and power sharing” as well as to encourage “unity of the people of Jubaland and the larger Somalia” (Article 4). However, it is important to note that the charter drafts the borders of Jubaland, without the work of the National Commission and the approval of the Lower House of the Somali Parliament, as required in the constitution. On the other hand, local elites found frustrating the slow pace of the political initiative in Mogadishu, and they decided to accelerate the process. At one point, this legal anomaly could be a matter of discussion with the Somali Federal Government. To say the least, it is not a sound precedent for future developments of federalism in Somalia. In fact, until now Mogadishu has rather dampened enthusiasm<sup>9</sup>: since the first steps towards the formation of the federal state of Jubaland, at the central government level it was noted that the neo-state would have “deprived” the federal government of the port of Kisimayo, one of the most important strategic and economic centres of the long Somali coast: in the light of the uncertain definition of federalism, the loss of Kisimayo sounded like a mortgage on the future. Mogadishu has substantially failed to negotiate a consensus in the Jubaland affair; the federal leadership has definitely failed the test and signs are out there that federalism, as conceived now, is not universally accepted as governmental arrangement among the Somalis. President Hasan and Prime Minister Shirdon did not appreciate Jubaland's initiative, to the point that the latter has declared “unconstitutional”<sup>10</sup> the convention of delegates who met to craft the state, since the federal government was not involved to the desired extent. Still, Jubaland counts on the informal support of IGAD and of neighbouring Ethiopia and Kenya (which would welcome the formation of a buffer state as a defence against criminal organisations based in Somalia). A further element of potential destabilisation to be kept in mind.

And lastly the self-declared independent Somaliland: the prospects for its reintegration in the Somali state remain bleak at the moment. Somaliland did not even participate in the Second London Conference on Somalia (7th May 2013), marking its destiny to be other than Somalia's one. However, authorities of Somaliland met with the central government in Ankara on 13 April 2013, preferring this venue to a stage arousing such an international interest as London. A continuation of the talks took place in Istanbul on 7 July, and Turkey has privately met leaders of the two parts in the following months. President Hasan Sheilh Mahmud has presented his stand on the issue, when he has encouraged the leaders of Somaliland to “swallow their ambition for independent nationhood<sup>11</sup>”, a sort of speech that counterparts in Somaliland did not appreciate, since it was perceived to be a menace to the commitment of continuing the dialogue which both sides agreed on in Ankara. Worthy of mention here, some<sup>12</sup> have perceived the “Turkish meetings” to be clan-based, to have falsely claimed to represent all Somalis, and have blamed Ankara for offering them a stage.

## CONCLUSIONS

In conclusion, federalism shall accomplish the task of preserving national unity through the distribution of powers and sovereignty between the central state and the autonomous territorial entities operating within it. It shall ensure the peaceful coexistence of peoples, while recognizing their diversity. In Somalia, we start from a paradox: these differences are minimal. Although victims of the social construction of the infamous ethnic paradigm (indeed a common condition to the Africa countries that have experienced colonialism and the divide and rule strategy), Somalis anyway perceive themselves and are perceived as a homogeneous group<sup>13</sup>. An enviable position, in the light of the ethnic problems that occur in several neighbouring countries. Since Somalia is ethnically compact, the social differentiation has its pivot in the politicization of genealogical affiliation and on the distribution of wealth, which both respond to the logic of the clan. Somali society does not suffer from an ethnic differentiation, but it is nevertheless lost on patrimonialism and corruption, vehicles of stability disintegration.

Federalism, in theory, is a valid instrument to reproduce at the institutional level the tradition clan fragmentation of society. The duo institution-tradition at this stage would find its perfect realisation in a decentralised structure which does preserve local powers, yet fostering the national identity. Federalism is seen as ensuring that every state will have an equal part of the national wealth, and that peripheral areas will not suffer the distance from the capital city, resulting in a loss of political power and resources allocation. It takes to break away from the Mogadishu-based system, since in the memories of many Somalis it has brought destruction and state collapse. The federal government has then little choice to validate this view: it must request federal states a honest commitment to federalism and has to ensure on its side "a fair distribution of resources" (Article 50). The government must also find the right balance between Western political institutions and the enormous wealth contained in Somali tradition: a synthesis that also means an harmonization between European law, customary law and *shari'a*, while avoiding tendencies of centrifugal type. The elders' advising role implemented in Jubaland could be an example for other federal states, but less we know about how it would work at the Somali governmental level.

Finally, the FSG shall leave specific issue such as population census and political participation to local parliaments to the concerned federal state's discernment, reducing considerably accuses of acting to benefit one group over the other.

The chances of maintaining peace in the new Somali state depend to a great extent upon the final sanction of the federal formulation. However, the nascent institutions will have to contend immediately for the confidence of the citizen with the clan. In order to survive, institutions need to make sure that citizens, when necessary, will resort to the local available institutions, and will not seek for the protection offered by clans, as happened during the civil war<sup>14</sup>. This consideration is not meant to suggest a deny neither of the clan nor of the traditional value of clan affiliation. It indicates though a rejection of the political manipulation of belonging, which feeds the logic of sectarian divisions and the hoarding of the national cake: a story already seen in Somalia, with a notorious ending. This relevant result is achievable through transparency and through agreed, shared decision on political processes shaping the Somali federalism. Therefore, it shall be done right away, without unjustified delays. And that is the point where it will be possible to assess much of the success, or failure, of the new Somali state. A federal government, with strong local institutions freed from latent affiliation criteria, can definitely help avoiding many of the risks by

providing the clan, and therefore Somali citizens, with the instruments for a fair representation in the state. Unfortunately, at the moment the Somali Federal Government is still behind in the implementation of federalism, leaving the initiative to the federal states which, in doing so, run into a legal paradox, since the constitution has appointed the National Commission only with the task of setting federal boundaries: but the National Commission has yet to be set up, probably in reason of political mediations still in the making and the general slow pace of the conciliation process in a country which has experienced an extremely long period of civil war and social unrest. In the light of present political circumstances, Somali federation appears inevitably weak, while the country oscillates between a functioning decentralisation and a chaotic balkanisation. Nevertheless, there are good prospect of getting better, as long as the time required to determine the boundaries of the federal states and establish the federal institutions is considerably shortened. Namely, as long as the federal government takes the initiative.

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## ENDNOTES

- 1 Cf. Lewis, I. M. 1999. *A pastoral democracy*. Munster: Lit Verlag Munster-Hamburg and James Currey Publishers (p. 161)
- 2 Cf. Leonard, D.K. and Samatar, M.S. 2011. What does the Somali experience teach us about the Social Contract and the State? *Development and Change*, vol. 42, issue 2, 559-584
- 3 As part of the Scientific Socialism programme
- 4 See, for example, Interpeace and Puntland Development Research Center (PDRC) publication “The Puntland experience: a bottom-up approach to peace and state building” (2008). It can be accessed online at: [http://www.interpeace.org/publications/doc\\_download/57-the-puntland-experience-english](http://www.interpeace.org/publications/doc_download/57-the-puntland-experience-english)
- 5 Cf. PDRC's publication: Somali Customary law and traditional economy, cross sectional, pastoral, frankincense and marine norms (2003)
- 6 Ibidem: “Many Somalis believe that the fall of the Somali state and outbreak of civil war had their roots in grazing land disputes (p. 56)”
- 7 Menkhaus, K. 2003. State Collapse in Somalia: Second Thoughts. *Review of African Political Economy*, n. 97, 405-422 (p.409)
- 8 Puntland President Speech at the second Somalia National Constitutional Conference (Garowe II) 15-17 February 2012
- 9 <http://www.irinnews.org/fr/report/97860/briefing-somalia-federalism-and-jubaland>
- 10 <http://www.issafrica.org/iss-today/tensions-over-the-jubaland-process-in-somalia-could-embolden-al-shabaab>
- 11 <http://somalilandsun.com/index.php/regional/2960-somaliland-swallow-your-ambitions-and-join-the-union-president-hasan->

- 12 <http://www.wardheernews.com/somalia-the-unspeakable-turks-facilitated-clan-based-political-pact/>
- 13 Cf. Osman, A. A. 2007. Cultural Diversity and the Somali Conflict: Myth or Reality? *African Journal on Conflict Resolution*, vol. 7, n. 2, 93-134 (p. 98)
- 14 Cf. Samatar, A. I. 1992. Destruction of State and Society in Somalia: Beyond the Tribal Convention. *The Journal of Modern African Studies*, vol. 30, n. 4, 625-641 (p. 637)