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The 2016 Election in Somalia: A Non-Paper on a Common Sense Electoral Process

“Something that approximates an “election” but that is not an Election combined with something that approximates an “extension” but that is not an Extension”

Under the Vision 2016 document drawn up by the Federal Government of Somalia in 2013 and endorsed by the international community, including the United Nations, Somalia must meet its deadline for holding elections in 2016 in order to usher in more legitimate and reformed institutions. It is something that the current Somali leadership, regional bodies like the Inter-Governmental Authority for Development (IGAD) and Somalia’s other international partners all agree on. Yet, with only 9 months remaining of the mandate and tenure of the current Somali government, there are growing anxieties among most stakeholders with regard to the viability of holding elections, even an election that may approximate an “election”, but is not really an election in the real sense of the word, since such an indirect election does not enlarge the franchise to include all eligible voters.

This non paper is meant to examine the current context and explore the structural work necessary for an election to happen and measure them against the remaining time of the transition in the context of the prevailing political and security configuration of Somalia during the next several months. The paper will also put forth the various models of electoral processes advanced by stakeholders (Somali and non-Somalis), researchers and commentators and measure them against the criteria mentioned above. Finally, the paper will provide a realistic middle ground option, which can offer a good prospect for a more legitimate, less disruptive outcome that can also produce more legitimate and reformed institutions.

1. The National Consultative Forum On Electoral Processes for 2016 Elections

The National Consultative Forum On Electoral Processes (NCFEP) for 2016 Elections was formed on September 21, 2015 in Mogadishu in the presence of many stakeholders such as the regional administrations, parliament, civil society, the government and international community. Its mandate is to engage the public, solicit advise on best models on electoral processes and report back sometime in December its findings regarding a harmonized model detailing an electoral process for 2016. The Forum again held its second meeting on the 19th and the 20th of October 2015 in a secure environment inside the “Green Zone” at the airport and issued a positive-looking Communiqué on the way forward for a 2016 election. It is a daunting task, but it is doable. It is very likely that after conducting intensive canvassing of views from relevant segments of the Somali public in the coming few weeks, the NCFEP would chose from one of the electoral models already under discussion by commentators, politicians, the government, Think-Tanks, and the international community. So what are the existing models?

2. Existing Models on Electoral Processes being floated around

The PR System:

The Proportional Representation model of elections, as the model, suggests is for political groups in society to receive an equal share of representation to their numbers and is anti-dote to the winner-takes all based on first-past-the Post (FPTP) system. It is a political party driven model and citizens vote for the party but the party decides which candidates would be in its list of candidates. The PR system is informed by a belief that most political groups ought to be represented in the electoral system and that there is no wastage of votes as in the case with the FPTP system. According to the proponents of this model, the whole country will be treated as one big constituency.

District Based Electoral College (DBEC) System and its Variations.

The underlying premise of DBEC system is to take back elections as close to the people as possible, and it therefore proposes that elections take place in the 92 districts that existed prior to 1991, but that only about 100 voters would elect each candidate in the proposed 275 parliamentarians adjusted on the 4.5 formula and that close to 28,000 (275 X 100) voters would vote for the president. There is another variation of this model in a paper entitled "Enhanced Legitimacy" that was put out earlier this year.

3. Is It Possible To Hold Either Of These Electoral Models in 2016?

Apart from the merits or demerits of either of these two models, it is almost impractical for models of this scale involving either political parties fielding a list of candidates contesting votes in the entire country or an "Electoral Commission" conducting elections in many districts of the country:

(a) Selection Modalities

It would be a political and a logistical nightmare to embark on a selection formula establishing the 100 or so electoral colleges for hundreds of sub-clans and sub-sub-clans because every region consists of clans but also sub-clans and sub-sub-clans, and it would be extremely divisive and potentially dangerous to go this route. The question would be who will be given the mandate to choose the 100 or so voting members for each sub-clan? If the elders' process of 2012 was deemed to have been corrupt and also divisive, think about multiplying that over. As a matter of fact, in localities just recovering from either clan conflicts, the divisive on-going power plays of interim regional state formations and communities juts liberated from the grip of Alsbabab, the potential for civil flare up among communities on this issue is certainly there.

(b). Is There A Credible Arbiter to Conduct Elections In 2016?

On June 6, 2015, the Somali Federal Parliament endorsed a nine member National Independent Electoral Commission whose mandate under the constitution is to prepare the electorate for elections and make sure that elections are conducted in a fair, free and transparent manner.

As it stands, setting aside the fact that the NIEC does not have sufficient capacity to prepare for and conduct elections of this scale in just a short period, the legitimacy of the NIEC and the integrity of some of its members are being questioned by some regional administrations, most notably Puntland, Jubaland & South West and some members of the international community as recently confirmed by the UN Monitoring Group and also by prominent members of civil society. With such limitations, it is quite unlikely that the NIEC would realistically play a significant electoral role any time soon, creating a gaping hole in the architecture of an electoral process for 2016.

(c). Enabling Environment For Elections: Security and Stability

With the deteriorating security situation and the withdrawal of the Somali National Army from many localities in South Central Somalia, if significant gains are not made to reclaim many towns and villages from Alshabab in the next few months, then it would be improbable for elections to be successfully conducted in districts, regions and villages. Moreover, Should the security situation get worse, the government would become so distracted and expend its energy less on the electoral process and concentrate on the security front.

(d). The Impeachment Motion Against President Hassan Sheikh Mohamud

Any casual observer of Somali politics over the years will observe that Somali politics like all politics is raw and also plays out its self in a zero-sum game result. What manifest itself outwardly as negotiations, dialogue and compromise posture, may turn out to be hiding clandestine activities by parties involving calculated power games designed to out-manoeuvre each other. Remember President Abdullahi Yusuf and his outwardly calm-looking Prime Minister Nour Hassan Hussein (Nour Adde) at the end of 2009.

We outsiders were all taken by surprise at the ouster of President Abdullahi Yusuf, a tough and seasoned politician schooled enough in power games. With the here on, there-off of the motion, the prospects of it going away are not good given past history. As a matter of fact, Foreign Policy Magazine in a piece on Somalia dated October 2, 2015 actually sounds off this same view stating “That’s not to say that Mohamud is on solid ground at home, where his opponents are promising to continue pursuing the case.” At best, if this political wrangling continues to the end of the year, then it would have a negative impact not only on the electoral process but it would also sap whatever goodwill there might have been for a smooth transition.

This non paper raises all the variables (mentioned above) that may present themselves as potential obstacles to the smooth execution of an acceptable electoral process that can produce the universally agreed upon outcome of an election in 2016. But it would also be prudent to think through a contingency plan if all the ingredients contained in the original forward-looking proposals do not mirror the expected outcome. If all else fail, this non-paper presents a fall back position.

A Non-Election “ELECTION” Coupled With A Non-Extension “EXTENSION”

1. STAND UP THE UPPER HOUSE

With Puntland, Galmudug, Jubaland and South West State theoretically functioning as potential members of a future federal arrangement, if Hiiraan and Middle Shabelle and Banadir regions are established expeditiously before the new year, there would be a skeleton framework for a working federation from which an Upper Chamber of parliament could be constructed. As per the Garowe constitutional conference of February 2012 (The Garowe Principles 1&2), a tacit political agreement was made to set up an Upper House composed of 3 senate members from each of the 18 regions in existence before 1991, for a total of 54 members of an Upper House. The composition and the formula for choosing the 54 members can be deliberated within the NCFEP but the actual election/selection of the members of the Senate ought to be left to the regional administrations, provided that the election/selection is conducted in an inclusive manner; And provided that at least 30% of the proposed senate is composed of women.

2. EXTEND THE TERM OF THE CURRENT PARLIAMENT

Since parliamentary elections or even selections would be disruptive and may even cause more harm than good, it is best to give the current parliament a shelf life of three years beyond August 2016. As dysfunctional as it appears, members of the current parliament are the most educated lot Somalia has ever had with 56% of them college graduates.

It has functioning committees that have honed their skills during the last few years. Also women parliamentarians constitute about 15 percent in the House, which is better than the average in the region, and it is doubtful that the number would increase or even remain the same in the event of an election or selection.

3. A Combined, Enhanced, Reformed and more Legitimate Parliament

With a new Senate in an Upper house composed of 54 member combined with the existing parliament of 275 members, the new reformed parliament will be composed of 329 members.

AN EFFECTIVE ELECTORAL MODEL FOR August/September 2016

1. Enabling Legislation

(a). If the NCFEP adopts this model by December, it would send its recommendation to parliament and parliament would approve and provide a buy-in for the recommendations, considering they would have a vested interest in the matter.

(b). Parliament would then have to de-defer Article 138 (2) of the Provisional Constitution of Somalia, which was deferred by parliament on September 7th, 2012. The reason it was suspended was because there was no Upper House in existence then and that it was stipulated in the constitution that the two Chambers of house shall elect the president. Once this is handled through

legislation, the Federal Government can start early in February to assist the regional administrations to come up with the (S)electoral mechanisms to produce members of the Upper House and that process could conclude by June 2016, in time for a 2016 fall election.

2. Elections

By August 20th 2016, the election of the leadership of both Chambers of the House can be concluded and the presidential election conducted on September 10, 2016 for a three-year term for all parties.

WHAT ABOUT CORRUPTION DURING AND AFTER ELECTIONS

Corruption is endemic in Somalia and it starts with political corruption in a very insidious manner. If parties or personalities win elections through bribery and come to power under brazen corrupt practices, then this sort of politics severely corrodes the whole body politics and fosters a general impunity on corruption. What to do then and how to deter corruption?

AN INTERNATIONAL COMMISSION AGAINST IMPUNITY IN SOMALIA (ICAIS) IS THE ANSWER:

In the case of impunity with respect to corruption and human rights violations, Somalia quite mirrors the experience of the Latin American country of Guatemala. Guatemala ended an over 30 year civil conflict and violence in 1996 when political adversaries signed a peace agreement which contained commitments to end impunity on human rights, death squads and corruption but these practices continued unabated because of weak institutions and lack of political will. Then in 2004, after a concerted campaign by human rights groups and civil society, the Guatemalan government was forced to sign an agreement with the Department of Political Affairs (DPA) of the United Nations to establish International Commission Against Impunity in Guatemala. The Commission is international in nature, works closely with the Guatemalan justice system, under Guatemalan law but it has investigative and prosecutorial powers.

So far through the work of the commission, several Ministers and other heavy weight personalities have been indicted and serving jail time. Not only that, it seems that the commission has dented the brazen culture of impunity in Guatemala. Currently what passes for such international scrutiny is the United Nations Monitoring Group on Somalia and Eritrea (UNMG) but about the only powers it has had over the years is the naming and shaming of corrupt personalities and institutions, with no powers of enforceability. As such, it would be prudent to have the Somali government sign an arrangement with the DPA some time early 2016 establishing an INTERNATIONAL COMMISSION ON IMPUNITY IN SOMALIA (ICOIS). With this body in place by early 2016, the ICOIS and civil society groups can start public awareness campaign and education on the legal repercussions of corruption so that warning signs would be in place in time for the approach of the next election. With such a powerful international institution potential candidates would think twice before they contemplate corrupt electioneering.