Forum for Civic Dialogue on

Somaliland Constitution

Presented by Michael Walls
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Constitutions

• Fundamental law, but not necessarily one document
  – Codified: based around a single document (most countries)
  – Written: but no single document (eg United Kingdom, New Zealand, Israel)
  – In each case, a country’s constitution is more than the document with the title
  – For a constitution to be effective, it must be protected (entrenched) but changeable: a ‘living’ set of institutions

• Establishes the system of government and the division of powers between executive, legislature and judiciary
Somaliland Constitution

• A codified document PLUS the legislation that elaborates on that central document
  – Determines that the country will adopt a presidential system with a bicameral parliament
  – Developed over a period of time with two versions and numerous adjustments
  – Adopted in 2001 with overwhelming public support, although some complain that the referendum was seen as a vote on independence rather than on the constitution per se
Constitutionalism vs Constitutional Review

• Institutionalising an understanding of the constitution is more important than changing it
  – All constitutions are flawed, but a strong culture of respect for the constitution will enable many flaws to be overcome
  – Legitimacy is paramount
  – Nevertheless, there are aspects of Somaliland’s constitution which warrant review
Thoughts on Constitutional Review

• Any review should consider the degree to which current wording contributes to the fundamental principles outlined in the Preamble to the current document, and in Article 127:
  – Sharia law;
  – Decisions through consultation;
  – Division of power between executive, legislature and judiciary;
  – Decentralisation of administration;
  – Respect for private property rights;
  – Basic rights of individual life and freedom;
  – Peaceful coexistence with neighbouring states;
  – Unity of Somaliland; and
  – Multi-party system.
Separation of Powers

• Careful formulation of appropriate checks and balances between branches of government more important in presidential systems

• Independent judiciary with powers and responsibility to undertake constitutional review are vital
  – Both a point for review and a means of minimising the need for future review
  – Conditions relating to appointment and tenure of senior members of judiciary most urgent area for reform

• Responsibilities/balance between executive and two houses of parliament also needs review
  – Eg budget, parliamentary oversight of trade deals, treaties, ministerial activities, etc
Parliamentary Elections

• Election procedure for House of Representatives is backed by legislation and has been tested, but selection process for Guurti remains undecided
  – Article 58 establishes a six year term, but says only that members will be elected “and a parliamentary law shall organise their electoral system”
  – Direct or indirect election? Would ‘direct election’ (ie popular vote) be consistent with need for a constitution that is “based on people’s faith, heritage and aspirations” (Preamble)?
  – What part should clan play in government?
Electoral Systems and Terms of Office

• Political parties
  – Law No. 14/2000 governs political parties
    • No indication whether the law applies to all local elections or just those in 2002
    • If there is no mechanism for emergence of new parties, this clearly contravenes constitution Article 23:3. Some process allowing parties to emerge/disappear is essential for democracy to function

• National Electoral Commission
  – Law No. 20/2001 establishes the terms by which the NEC is established:
    • 7 members; nominations to President who appoints commissioners; approved by House of Representatives by absolute majority
    • Term is five years and is renewable
    • President can dismiss members provided House confirms dismissal by simple majority

• Article 88:2 limits President to no “more than two consecutive terms of office”
  – Does this mean ten years or less, or one term then one re-election?
Other Issues …

- Transitional articles removed (eg Article 130)
- Gender, minority and age representation should be reviewed
  - Eg Article 59 states that Guurti member must be ‘old man’, while Article 82 states that President must have female spouse
- Decentralisation is stated as a fundamental constitutional principle: relationship between municipal/regional councils and central government needs elaboration
- Conditions in which it is permissible to suspend specific rights need clarification
  - eg various articles (42:3, 83:5) allow elections to be delayed for ‘security’ reasons, yet these are loosely defined
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