

# *FBA Research report*

# **The Nexus Between Peace Processes and Constitution-Making in Somalia**

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Photo: UN Photo/ Tobin Jones

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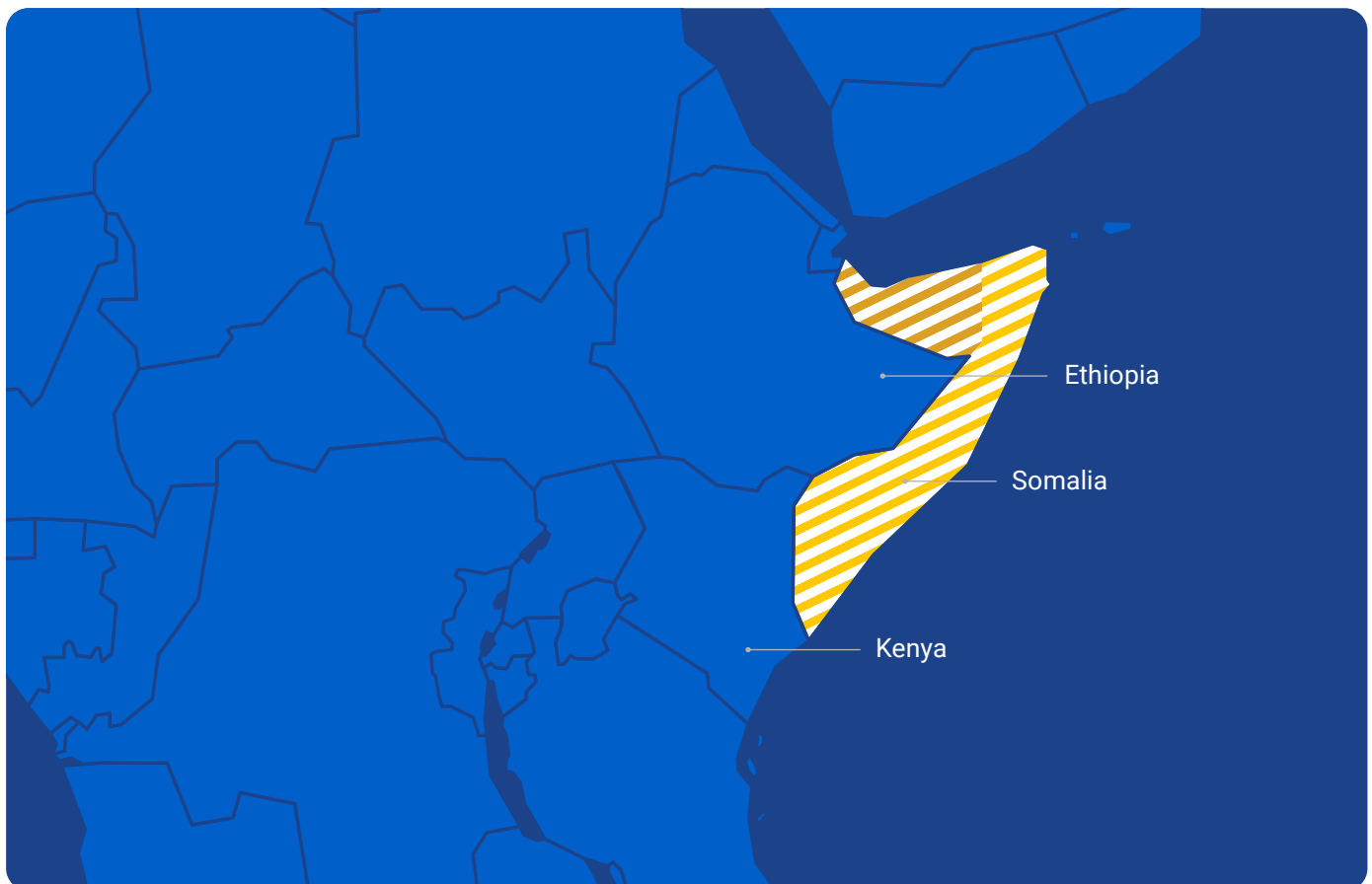


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# 01 *Executive summary*

This study examines the relationship between peace processes and constitution-making in Somalia through interviews and document analysis. It investigates how these processes integrate reconciliation and include minority groups. The focus is on the Arta Peace Process of 2000 and the Mbagathi Peace Process from 2002 to 2004 due to their significant impact on the trajectory of the conflict in Somalia. The study also discusses the 2008 peace process between the Transitional Federal Government and the Alliance for the Re-Liberation of Somalia.



*Peace Processes:* The Arta Peace Process was predominantly led by civil society, elders and intellectuals, resulting in the Transitional National Charter, the Transitional National Assembly, and the Transitional National Government. It established a 4.5 clan power-sharing arrangement, a parliamentary system and regional autonomy, and called for the preparation of a federal constitution. However, the exclusion of faction leaders and warlords undermined the Arta Peace Process. Consequently, the Inter-Governmental Authority on Development (IGAD), the regional organization, sponsored another peace initiative, hosted by Kenya in the outskirts of Nairobi, known as the Mbagathi Peace Process. This process led to the creation of the Transitional Federal Charter, the Transitional Federal Parliament, and the Transitional Federal Government. While it maintained most elements of the previous charter, it adopted federalism and set the stage for constitution-making in Somalia. In 2008, a smaller peace process took place in Djibouti between the Transitional Federal Government and the Alliance for the Re-Liberation of Somalia, which expanded Parliament to 550 members while adopting the Transitional Federal Charter.

*Constitution-Making:* The constitution-making process has consisted of two phases: the transitional period (2000–2012) and the post-transition period (2012–present). During the transitional period, the United Nations (UN) Political Office and six leaders (the President, Prime Minister and Speaker of the Transitional Federal Government, as well as the Puntland President, Galmudug President and Ahlu-Sunna Wal-Jama’ah leader) dominated the process, ultimately producing the current Federal Provisional Constitution. Although the process was not inclusive or transparent, it addressed most issues, leaving several contested matters unresolved for the future. Chapter 15 of the Federal Provisional Constitution outlines the procedure for completing the constitution. Since 2012, various administrations of the Federal Government of Somalia have advanced the constitution-making process. Three post-transition governments established different committees for the constitutional review, with the 2022 committee revising the first four chapters, which Parliament approved in 2024 through a questionable process. Meanwhile, opposition members and some Federal Member States, such as Puntland and Jubbaland, continue to support the 2012 Federal Provisional Constitution.

Findings on the nexus between peace processes and constitution-making indicate that Somalia initially employed a multi-stage approach where the peace process addressed immediate concerns and produced a framework agreement, while constitution-making was to follow after completing transitional tasks related to security and reconciliation, as well as disarmament, demobilization and reintegration (DDR). However, the international community made a political decision to move Somalia to the post-transition stage without completing these tasks. Since 2022, Somalia has shifted its approach, using constitution-making as a peace process. The government argues that this process is a continuation of peace efforts, having finalized the first four chapters and planning to complete the remaining sections soon.

*Reconciliation:* Genuine reconciliation has not occurred in either the peace processes or subsequent constitution-making efforts. Politicians in Somalia have shown little interest in reconciliation, focusing instead on power-sharing. Faction leaders and warlords have deliberately overlooked transitional justice mechanisms, as they are not interested in confronting past crimes.

*Inclusion of Marginalized Groups:* The participation of women has increased since 2000, with women holding approximately 10 per cent of seats in the first Arta parliament of the Third Republic, rising to 24 per cent in the legislature. In the bureaucracy, women represent around 24 per cent, primarily at lower levels. The political class has resisted granting women a constitutional quota, and several critical issues, such as the ability of women to pass citizenship to their children, remain unaddressed. As a result, women's influence in decision-making remains limited. Likewise, unarmed clans (otherwise referred to as "minority" clans), although represented under the 4.5 clan power-sharing arrangement, continue to face marginalization. Members of these communities feel underrepresented in the system, and the allocation they receive is often seen as inadequate. Conversely, some interviewees and experts argue that unarmed communities are over-represented given their real size. Only a reliable census could accurately determine the size of different communities.

*International Role:* The international community has provided financial and technical support for peace processes and constitution-making in Somalia, influencing content by insisting that both respect human rights. Regional actors, particularly Ethiopia and Kenya, have exerted significant influence over constitutional outcomes to protect their geopolitical interests, pressuring Somali actors to remove content deemed unacceptable to Addis Ababa and Nairobi.

*Assessing the Peace Processes and Constitution-Making:* Both the peace processes and constitution-making efforts have failed to achieve their respective goals. Somalia's peace processes did not produce lasting peace or security, and militias remain armed. The governments resulting from these processes have struggled to create a secure environment. Similarly, the constitution-making efforts have not featured an inclusive process resulting in an agreed-upon constitution among key stakeholders.

*Way Forward:* Various stakeholders have reached a consensus regarding the problematic future of the Third Republic established by the Arta and Mbagathi peace processes. Many advocate for a comprehensive national dialogue to address fundamental disagreements about Somalia's future. This dialogue could also provide an opportunity to enhance reconciliation and inclusion for women and other marginalized groups. The study proposes a multi-stage peace and constitution-making process that prioritizes security and reconciliation.

# 02 *Introduction*

Following the state's collapse in Somalia in 1991, external actors, such as neighbouring countries and regional and international partners, organized multiple peace conferences for Somali factions to end the civil war and re-establish a functioning government. Notable among these were the Arta Peace Process (2000) in Djibouti and the Mbagathi Peace Process (2004) in Kenya, which called for the cessation of hostilities, established the Third Republic, and produced the political settlement that introduced democracy, a federal system, a parliamentary government and clan-based power-sharing mechanisms. These efforts led to the establishment of transitional governments and laid the groundwork for Somalia's constitutional development of the Third Republic.

However, despite the clear mandates of these peace processes, expressed in the Transitional National Charter<sup>1</sup> of 2000 and the Transitional Federal Charter<sup>2</sup> of 2004, the constitution-making efforts<sup>3</sup> in Somalia have diverged, resulting in contentious revisions that contravene the original agreements. In 2024, the National Consultative Council, the Federal Government of Somalia and the Federal Parliament advanced constitutional changes that established a presidential system and a more centralized model, albeit labelled “federal”.

This study examines the relationship between peace processes and constitution-making in Somalia, analysing how each influences the other. It also explores how integrating constitution-making with peace processes can promote reconciliation, encourage inclusive participation, and provide practical recommendations for policymakers and practitioners. In terms of structure, the study explains the concepts of peace processes and constitution-making. Then it discusses the evolution of the peace processes in Somalia, focusing on the most consequential peace processes, such as the 13<sup>th</sup> Arta Peace Process in Djibouti<sup>4</sup> and the 14<sup>th</sup> Mbagathi Peace Process in Kenya. The findings are organized around key themes, with a particular focus on reconciliation and the inclusion of women and minorities. Furthermore, the research evaluates the shortcomings of the peace processes and constitution-making efforts, and the competing proposals in Somalia, discussing lessons that can be learned from similar cases globally. Finally, the study concludes with recommendations for the way forward for Somalia's political future.

- 1 See the Transitional National Charter, 2000, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2000-ARTE-TRANSITIONAL-NATIONAL-CHARTER-2000.pdf>>
- 2 See the Transitional Federal Charter, 2000, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2004-Feb-Transitional-Federal-charter-English.pdf>>
- 3 Somalia's Constitution-Making efforts were initiated in 2006. The then Transitional Federal Government established the Independent Federal Constitution Commission. Since then, subsequent governments have kept creating committees and commissions tasked to review and complete the constitution.
- 4 The idea of the 13<sup>th</sup> Arta Peace Process began when the President of Djibouti had given his annual speech at the UN General Assembly in September 1999. Then, the Djibouti government consulted with Somali intellectuals, political leaders, businessmen and traditional elders before organizing the peace conference in May 2000. After two and a half months, the peace process concluded with a Transitional National Charter, Transitional National Assembly and Transitional National Government.

In terms of methodology, the study employs a combination of document analysis and interviews. In conducting this study, the research focuses on reviewing the documents (resolutions, reports, and communiqués) produced during the Arta Peace Process in Djibouti and the Mbagathi Peace Process in Kenya. Additionally, the research provides a critical review of the Transitional National Charter of 2000 and the Transitional Federal Charter of 2004. These two key documents are used to analyse the nexus between the peace processes and constitution-making in Somalia. Furthermore, the research includes interviews with 20 participants, including experts, politicians and businesspeople who are familiar with the peace processes and constitution-making efforts in Somalia. Interviewees are selected based on their familiarity with the subject matter.

# 03 *Understanding the Peace Processes and Constitution-Making Concepts*

Roger Mac Ginty and Anthony Wanis-St John define a peace process as an attempt “to lower the costs of conflict through negotiation that involves the main parties to a conflict.”<sup>5</sup> Peace processes often involve negotiations among competing factions on political, legal and social issues, and include ceasefires, transitional justice and institutional reforms aimed at creating an interim charter or a framework agreement for the long term.<sup>6</sup> On the other hand, Jon Elster argues that constitution-making is process-oriented, characterizing it as “the mechanisms by which constitutions come into being.”<sup>7</sup> For Gabriel Negretto, “constitution-making can be defined as a temporally limited process in which a group of political actors engage in the drafting, discussion, and approval of a formal document that intends to regulate the basic structure of the state and the political regime.”<sup>8</sup> Aurel Croissant argues that the constitution-making process must meet the representativeness, inclusiveness and participatory quality criteria.<sup>9</sup> For constitution-making, Elster cautions against empowering ordinary legislatures and suggests establishing “specially convened” unicameral assemblies. He emphasizes the need to balance secrecy and publicity, with strict deadlines, recommending that the changes take effect after the term in which they are enacted.<sup>10</sup>

Even though they are somewhat related, peace processes and constitution-making serve different objectives. Hallie Ludsin states that “peacemaking concentrates on stopping violence, while constitution-drafting focuses on establishing a functioning and ordered state.”<sup>11</sup> When dealing with state-building of failed states, scholars identify two ways that peace processes and constitution-making influence each other.

First, using a multi-stage sequencing, peace processes often come before the constitution-making process. In Burundi, for example, the Arusha peace process (2000) between the factions and government provided a framework agreement for Burundi’s constitution-making process.<sup>12</sup> In this case, the constitution-making largely followed the peace agreements, at least before 2018. According to Hallie Ludsin, the multi-stage sequencing approach prioritizes

5 Roger Mac Ginty and Anthony Wanis-St John, eds., *Contemporary Peacemaking: Peace Processes, Peacebuilding and Conflict*, London: Palgrave Macmillan, 2022, p. 5.

6 Christine Bell and Laura Wise, “Peace Processes and Their Agreements”, *Contemporary Peacemaking: Peace Processes, Peacebuilding and Conflict* (2022): 381–406.

7 Jon Elster, “Making Sense of Constitution-Making”, *East European Constitutional Review* 1, No. 1 (Spring 1992), p. 16.

8 Gabriel L. Negretto, “Constitution-Making in Comparative Perspective”, *Oxford Research Encyclopedia of Politics* (2017), p. 3.

9 Aurel Croissant, “Ways of Constitution-Making in Southeast Asia: Actors, Interests, Dynamics”, In *Politics and Constitutions in Southeast Asia*, Routledge, 2016, pp. 39–62.

10 See Jon Elster, “Forces and Mechanisms in the Constitution-Making Process”, *Duke Law Journal*, vol. 45, No. 2, 1995, pp. 364–396.

11 Hallie Ludsin, “Peacemaking and Constitution-Drafting: A Dysfunctional Marriage”, *University of Pennsylvania Journal of International Law*, vol. 33 (2011): 247.

12 Willy Peter Nindorera, “Interactions Between Peacemaking and Constitution-Making Processes in Burundi: A Stabilising or a Crisis Factor” (2019).

ending the violent conflict. It prioritizes an interim framework agreement among parties, focusing on tasks of security, reconciliation and trust-building, as well as DDR among warring parties. It deliberately postpones the preparation of the permanent constitution to a later time. Even though it is different from many African civil wars, South Africa is a prime example of the multi-stage sequencing of peace processes and constitution-making efforts. Similarly, Nepal transitioned from an interim arrangement in 2007 to a permanent constitution in 2015.<sup>13</sup>

Second, some scholars contend that constitution-making can also serve to build peace. The rationale is that such a model is more efficient. For instance, according to Espinosa, the 1991 constitution of Colombia “laid the foundation of peaceful coexistence within one polity.”<sup>14</sup> Moreover, constitution-making and the peace process were combined, resulting in parties signing a peace agreement, and approving a complete constitution at the same time, as was the case in the Dayton Accord for Bosnia and Herzegovina. However, Ludsin warns against the combination of the two distinct tasks of peace processes and constitution-making.<sup>15</sup>

In the language of peace studies, peace processes often focus on “negative” peace, i.e., the absence of direct violence, while constitutions mainly seek to establish “positive” peace, i.e., the conditions for justice, equity and social cohesion that address the conflict’s root causes.<sup>16</sup> In some circumstances, constitution-making is one of the features of the peace processes. As Nathan (2019) argues, constitutions that follow the peace processes are the “definitive peace agreements” because they codify the commitments of peace agreements into enforceable law.<sup>17</sup> Sequencing is a critical dimension in this nexus between peace processes and constitution-making. According to Bell and Zulueta-Fülscher, peace processes typically follow several stages, beginning with ceasefire agreements, followed by interim arrangements, and then the phase of inclusive constitution-making.<sup>18</sup> On the other hand, Carl (2019) argues that constitution-making in a divided society is not just a legal process but a political one.<sup>19</sup>

13 See Hallie Ludsin, “Peacemaking and Constitution-Drafting: A Dysfunctional Marriage”, *U. Pa. J. Int’l L.*, 33, no. 1, 2011, pp. 239–322. *Penn Carey Law: Legal Scholarship Repository*, scholarship.law.upenn.edu/jil/vol33/iss1/5. Section 3 explains the multi-stage process.

14 See Manuel José Cepeda Espinosa, *The Peace Process and the Constitution: Constitution Making as Peace Making?* (2016), available at: <<https://blog-iacl-aidc.org/the-colombian-p/2018/6/1/iacl-roundtable-the-peace-process-and-the-constitution-constitution-making-as-peace-making-lzk6m>>

15 Hallie Ludsin, “Peacemaking and Constitution-Drafting”, 2011, Section 2.

16 See the definitions of negative peace and positive peace as coined by Johan Galtung, “Violence, Peace, and Peace Research”, *Journal of Peace Research* 6.3 (1969), p. 183.

17 Laurie Nathan, *The Imperative of Constitutionalizing Peace Agreements*, Berghof Foundation, 2019.

18 Christine Bell and Kimana Zulueta-Fülscher, *Sequencing Peace Agreements and Constitutions in the Political Settlement Process* (Policy Paper No. 13, 2016), International IDEA, available at <<https://www.idea.int/publications/catalogue/sequencing-peace-agreements-and-constitutions-political-settlement-process>>

19 Andy Carl, *Constitution Making in Contexts of Conflict: Paying Attention to Process*, Berghof Foundation, 2019.

For the purpose of this study, even though there are tensions and the two concepts emphasize different aspects of the broader conflict, peace processes and constitution-making are deeply interconnected. Mubashir, Klauke and Vimalarajah argue that although they are often viewed as separate processes, mediation and constitution-making often intersect in practice. They write, “Both [constitution-making and mediation] have unique approaches and techniques that may be mutually resourceful.”<sup>20</sup> Peace processes aim to end violent conflict, while constitution-making is about creating a legitimate political system to permanently manage conflict peacefully. Initially, Somalia’s peace process followed the multi-stage sequencing process. Both the Arta Peace Process in 2000 and the Mbagathi Peace Process in 2004 produced interim charters that tasked Somali parties to work on transition tasks, including security and reconciliation. The delegates of the peace processes have also provided instructions for the constitution-making process. Six subsequent governments failed to complete the transitional tasks. However, since President Hassan Sheikh Mohamud came to power in 2022, Somalia has combined the two by using the constitution-making as a peace process.<sup>21</sup>

20 Mir Mubashir, Julian Klauke, and Luxshi Vimalarajah, “The Nexus of Peace Mediation and Constitution Making: The Case for Stronger Interaction and Collaboration”, in *Rethinking Peace Mediation* (pp. 333–354). Edited by Catherine Turner and Martin Wählisch, Bristol University Press. P. 335

21 One of the senior leaders interviewed for this study argued that the constitution-making is the peace process, as the members of the National Consultative Council represent the same constituencies that the faction leaders represented in 2004. Interview with senior official, June 2025.

# 04 *Peace Processes in Somalia*

Somalia's peace processes and constitution-making efforts are important for the state-building project of the Third Republic. This section focuses on three consequential peace processes in Somalia: the Arta Peace Process, the Mbagathi Peace Process and the 2008 Peace Agreement. These three peace processes have been chosen because of their impact and relevance for the formation and progress of the Third Republic.

## **The Arta Peace Process**

As early as 1991, after the collapse of Somalia's military regime that ruled the country between 1969 to 1991, the political wing of the United Somali Congress, the armed group that had removed the government from Mogadishu, appointed Ali Mahdi Mohamed to lead the transitional government. Ali Mahdi Mohamed was a well-known businessman from Mogadishu. He was a financier of one of the United Somali Congress factions. Yet most of the faction leaders rejected the hastily made decision of the United Somali Congress's political group in Mogadishu. The Somali National Movement, which controlled most of Somaliland, not only rejected the decision but also decided to secede from the rest of Somalia. The military wing of the United Somali Congress and the Somali Patriotic Movement, another prominent armed group, also rejected Ali Mahdi's presidency. Amid this confusion, the Government of Djibouti invited all major factions that fought against the military regime to discuss the way forward. Six factions convened in Djibouti and endorsed Ali Mahdi Mohamed to lead a transitional government for two years.<sup>22</sup>

However, General Mohamed Farah Aideed, the commander of the forces of the United Somali Congress, and some of his allies refused to accept the agreement, sparking a new round of civil war. The international community, led by the UN, sponsored another peace process for Somali factions in Addis Ababa, Ethiopia, in March 1993. Fifteen factions participated in this conference and signed a peace treaty.<sup>23</sup> Again, this effort failed when disputes arose over the selection<sup>24</sup> process for transitional council members. General Aideed favoured factional control, while the UN advocated for community-based selection. Other peace processes, including the Sodere Peace Process in Ethiopia in January 1997<sup>25</sup> and the Cairo Declaration in Egypt in December 1997<sup>26</sup>, also failed. By 1999, Somalia's factions had met at least 12 times in various countries, including Djibouti, Egypt, Ethiopia, Kenya and Yemen, but none resulted in a viable agreement.<sup>27</sup>

The 13<sup>th</sup> Arta Peace Process offered a new opportunity for peacebuilding and state-building in Somalia. President Ismail Omar Guelleh of Djibouti announced his peace initiative for Somalia at the UN General Assembly, promising to invite, this time, civil society groups.<sup>28</sup>

22 See the agreement they reached at reference no.: Distr, GENERAL A/46/319 23 July 1991.

23 See the Addis Ababa Agreement signed by fifteen faction leaders, at <<https://ucdpged.uu.se/peaceagreements/fulltext/Som%2019930327.pdf>>

24 Afyare Elmi, *Understanding the Somalia Conflagration: Identity, Islam and Peacebuilding*, London: Pluto Press, 2010, p. 6.

25 See the Sodere Agreement at <<https://peacemaker.un.org/sites/default/files/document/files/2024/05/declaration20of20national20pledges20and20commitments.pdf>>

26 See the Cairo Declaration at <<https://ucdpged.uu.se/peaceagreements/fulltext/Som%2019971222.pdf>>

27 See Afyare Elmi, *Understanding the Somalia Conflagration*, 2010, p. 6.

28 See the address by the President of Djibouti to the UN General Assembly at <<https://docs.un.org/en/A/54/PV.9>>

Djibouti initially invited about 65 intellectuals from around the world for consultations, followed by about 20 eminent personalities (former politicians), 33 businessmen and 120 traditional elders before the official opening of the peace process.<sup>29</sup> This consultation phase lasted about four months. Based on the recommendations from these consultations, the Djibouti government allowed any Somali willing to participate in the conference to join, resulting in the participation of over 2,500 individuals. Additionally, the Arta Peace Process was notable for its contribution to peace literature, with numerous Somali writers, poets and artists in attendance and documenting the conference.<sup>30</sup>

After more than two months of deliberations and the appointment of official delegates representing the clans, traditional elders at the Arta Peace Process agreed on six key points on 13 June 2000: 1) to establish general peace and reconciliation among all Somali clans, particularly those in conflict; 2) to collectively build an inclusive national government; 3) to affirm the inviolability of Somalia's unity; 4) to return all property to its rightful owners and have the government established in Arta oversee this; 5) to respect and safeguard human rights; and 6) to request support from the international community for the Somali peace process in Arta, Djibouti.<sup>31</sup>

Following this agreement, the peace process continued, with various subcommittees addressing various topics, such as the constitution, foreign affairs, security, DDR, economy, health and reconciliation. Each subcommittee produced a report presented at the plenary conference. Ultimately, the Arta Peace Process resulted in the approval of a Transitional National Charter, the establishment of a Transitional National Assembly with 245 members, and the election of President Abdiqasim Salad Hassan on 26 August 2000. The President then appointed Dr. Ali Khalif Galaidh as the Prime Minister to lead the government.<sup>32</sup>

The political settlement outlined in the Transitional National Charter included a 4.5 clan power-sharing model that saw the 275 parliamentary seats divided among four major clans, each receiving 61 seats, with unarmed (otherwise referred to as "minority") clans receiving 31 seats altogether,<sup>33</sup> as well as a political system reminiscent of the 1960 civilian model (parliamentary), and decentralized regional autonomy. The charter also mandated the Transitional National Government to draft a federal constitution and establish several commissions, including one focused on reconciliation. In short, the Arta Peace Process directed the government to prepare a federal constitution and set the framework for the constitution-making process in Somalia.<sup>34</sup>

29 See the report delivered before the conference concluded in August 1999.

30 Djibouti television aired many plays, songs and poems. The most well-known play was entitled *Darajo iyo Xil Yaa Mudan* [Who deserves to be a leader] by Abdiduh Yusuf. Nabad [Peace] and many others. As per the report on the conference, see the Report of the Secretary-General on the situation in Somalia available at <<https://digitallibrary.un.org/record/430149?ln=en&v=pdf#files>>

31 See The New Humanitarian, *Conference stage of Djibouti peace talks opens* (15 June 2000), available at <<https://www.thenewhumanitarian.org/report/15855/somalia-conference-stage-djibouti-peace-talks-opens>>

32 Ibid. See Paragraph 14 of the report.

33 The parliament consists of 275 seats, divided among four major clans: Darod, Digil and Mirifle, Dir, and Hawiye, each receiving 61 seats. In addition, a number of unarmed clans, often referred to as minorities, are allocated 31 seats, which is equivalent to half the number of seats held by one major clan.

34 See the Transitional National Charter, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2000-ARTE-TRANSITIONAL-NATIONAL-CHARTER-2000.pdf>>

Despite the establishment of a Transitional National Charter, a Transitional National Assembly, and a Transitional National Government, the latter failed to consolidate power and take control of the country. At that time, Somaliland rejected the Transitional National Government, claiming it had seceded from the rest of the country. Many armed factions similarly rejected the outcomes of the Arta Peace Process in Djibouti. Puntland's President and many faction leaders and warlords in southern Somalia also rejected the Transitional National Government, arguing that important actors did not participate in the Arta process. Ethiopia supported this group, likely to undermine the Transitional National Government, and eventually succeeded in organizing the subsequent Mbagathi conference, which was hosted by Kenya and sponsored by IGAD.<sup>35</sup>

Still, the Arta Peace Process in 2000 was successful in that Somalia, as a state, was able to rejoin regional and international forums. The leadership of the Transitional National Government, specifically President Abdiqasim Salad Hassan and Dr. Ali Khalif Galaidh, reclaimed Somalia's seats in the regional organization IGAD, the African Union (AU), the Arab League and the UN.

### **The Mbagathi Peace Process**

At the time of this initiative, Somalia had a weak transitional government, and most politicians had experience with the preceding Arta Peace Process. Ethiopia influenced many warlords, while Djibouti had a significant impact on the Transitional National Government.<sup>36</sup> Four groups participated in the Mbagathi Peace Process: the Transitional National Government, the Somali Reconciliation and Restoration Council (a coalition of 15 faction leaders and warlords), the Group of Eight (comprising eight faction leaders and warlords), and a coalition of civil society groups. IGAD sponsored and managed the peace process, with Kenya hosting it, and Ethiopia, Djibouti and Uganda providing support.

The Mbagathi Peace Process consisted of three phases. Phase I brought together Somali parties to sign the Declaration of Cessation of Hostilities and the Political Cooperation Agreement.<sup>37</sup> All parties signed this declaration. In phase II, delegates appointed six committees to address key issues, including the Constitutional and Federal Committee, the Economic Recovery Committee, the Land and Property Disputes Committee, the Demobilisation, Disarmament and Reintegration Committee, and the Conflict Resolution Committee.<sup>38</sup> Phase II was the most challenging, as groups struggled to agree on major issues. As a result, a harmonization

35 BBC News, "Somali warlords form unity council", 22 March 2001, available at <<http://news.bbc.co.uk/2/hi/africa/1235434.stm>>; see International Crisis Group Report, *Salvaging Somalia's Chance for Peace*, available at <<https://www.crisisgroup.org/sites/default/files/salvaging-somalia-s-chance-for-peace.pdf>>, p. 2.

36 Interview with a diplomat who was part of the leadership of the peace process. Nairobi, July 2025.

37 See the Declaration on Cessation of Hostilities and the Structures and Principles of the Somalia National Reconciliation Process, available at <<https://peacemaker.un.org/sites/default/files/document/files/2024/05/so021027cessationhostilitiesandstructuresomalionalreconciliation.pdf>>

38 International Crisis Group, *Negotiating a Blueprint for Peace in Somalia* (6 March 2003), available at <<https://www.crisisgroup.org/sites/default/files/59-negotiating-a-blueprint-for-peace-in-somalia.pdf>>; see also Christian Webersik, "Bargaining for the Spoils of War: Somalia's Failing Path from War to Peace", *African Security* 7.4 (2014), pp. 277–302.

committee, led by Professor Abdi Ismail Samatar, was formed to reconcile the drafts that the six functional committees presented.<sup>39</sup> Eventually, however, the harmonization committee's recommendations were rejected. The political dynamics favoured the faction leaders who had the support of Kenya and Ethiopia, who ultimately imposed their version of the charter, albeit with minor changes.<sup>40</sup>

Phase III focused on clan power-sharing and the formation of the Transitional Federal Government of Somalia. During this phase, the heads of state from key countries involved in the Somali peace processes (Djibouti, Ethiopia, Kenya and Uganda) collaborated closely to achieve the final results. After two years, the Mbagathi Peace Process culminated in the creation of the Transitional Federal Charter and the Transitional Federal Parliament that elected President Abdullahi Yusuf Ahmed to lead the Transitional Federal Government.<sup>41</sup> President Yusuf appointed Dr. Ali Mohamed Gedi as Prime Minister.

The two-year Mbagathi peace process succeeded in producing a Transitional Federal Charter, a Transitional Federal Parliament and a Transitional Federal Government. However, despite representing Somalia internationally, the leadership of the Transitional Federal Government, including President Abdullahi Yusuf Ahmed and Prime Minister Ali Mohamed Gedi, failed to secure the country and end the civil war. Instead, a major violent conflict erupted between the Islamic Courts and the government, along with various warlords.<sup>42</sup>

### **The 2008 Peace Agreement**

The Union of Islamic Courts, a coalition of Sharia courts that emerged in southern Somalia in the early 2000s and united in 2006 to form a governing authority, fought all the warlords in Mogadishu, Lower Shabelle, Jubbaland, Middle Shabelle and Hiran regions, most intensely since 2006. The Union of Islamic Courts ultimately defeated these warlords, and also stabilized southern Somalia and reopened Mogadishu's international airport and port. However, due to the war on terrorism and regional dynamics, the international community, led by the United States, and regional countries, led by Ethiopia, defeated the Islamic Courts and installed the government in Mogadishu.<sup>43</sup>

Yet after their defeat, some Islamic Court leaders regrouped and formed an armed opposition group called the Alliance for the Re-Liberation of Somalia. An attempt to end the conflict between the Transitional Federal Government of Somalia and the Alliance of the Re-Liberation of Somalia was then made in 2008 in Djibouti, mediated by the UN Political Office.

39 Ibid, p. 10.

40 Ibid.

41 Voice of America, "Somalia's Abdullahi Yusuf Chosen President", 11 October 2004, available at <<https://www.voanews.com/a/a-13-a-2004-10-11-1-somalia-s/291249.html>>

42 Al-Jazeera, "Somalis brace for all-out war", 15 December 2006, available at <<https://www.aljazeera.com/news/2006/12/15/somalis-brace-for-all-out-war>>

43 The New York Times, "U.S. Signals Backing for Ethiopian Incursion into Somalia", 27 December 2007, available at <<https://www.nytimes.com/2007/12/27/world/africa/27africa.html>>

As a result, the moderate Islamist groups, which dominated the alliance, accepted the Transitional Federal Charter, while the government accepted the expansion of parliament by adding another 275 members, selected by the Alliance for the Re-Liberation of Somalia. While President Abdullahi Yusuf Ahmed resigned over the proposal,<sup>44</sup> moderate leaders of the government, led by Prime Minister Nur Hassan Hussein, and moderate Islamist leaders led by Sharif Sheikh Ahmed, nonetheless signed the 2008 agreement in Djibouti. Additionally, based on the agreement an election was held in Djibouti, and Sharif Sheikh Ahmed, the leader of the Moderate Islamist Group, became the President of Somalia. President Sharif Sheikh Ahmed subsequently led the negotiations on the provisional constitution. The constitution was mainly in line with the previous Transitional Federal Charter. Also, President Sharif organized the first post-civil war election in Mogadishu, although he lost the election; he accepted the results.

The 2008 agreement succeeded in lowering the violence; however, even with the inclusion of moderate Islamists, the conflict between the government and the Islamists continues, indicating that the peace processes have not yet resolved the war, and some groups are still outside the political settlement. In this case, many consider Al-Shabaab, which was part of the Union of Islamic Courts, to still be outside of the political settlement, with many scholars calling for their engagement.<sup>45</sup>

### **The International Community's Role in the Peace Processes**

The international community played an important role throughout the three peace processes of 2000, 2004 and 2008. Even before that, following the state's collapse in 1991, it intervened by sending thousands of troops to the country. In addition to ending the famine that took hundreds of thousands of lives in the 1990s, the international community, through the UN, organized the Addis Ababa peace process in 1993, although this effort did not resolve the conflict. Subsequently, the UN, along with various countries and regional organizations like the AU and IGAD, sought to mediate between Somali factions. The Arta and Mbagathi peace processes showcased the international community's constructive involvement. In Djibouti, it supported the peace process by endorsing the Djibouti proposal at the UN and later legitimizing the outcomes. In Kenya, IGAD sponsored the Mbagathi Peace Process, which received further international recognition and support in 2004.<sup>46</sup> Similarly, the 2008 peace process between the Transitional Federal Government and the Alliance for the Re-Liberation of Somalia was organized by the UN Political Office in Djibouti, with backing from the international community.

44 BBC News, "Somalia's president quits office", 29 December 2008, available at <<http://news.bbc.co.uk/2/hi/africa/7802622.stm>>

45 Afyare Elmi and Abdi Aynte, "Negotiating an End to Somalia's War with al Shabaab", *Foreign Affairs*, 7 February 2012, available at <<https://www.foreignaffairs.com/articles/somalia/2012-02-07/negotiating-end-somalias-war-al-shabaab>>; see also Mohamed Haji Ingiriis, "Building Peace from the Margins in Somalia: The Case for Political Settlement with Al-Shabaab", *Contemporary Security Policy* 39, no. 4, February 2018, available at <<https://doi.org/10.1080/13523260.2018.1429751>>; Mohammed I. Shire, "Dialoguing and Negotiating with Al-Shabaab: The Role of Clan Elders as Insider-Partial Mediators", *Journal of Eastern African Studies* 15, no.1, December 2020, available at <<https://doi.org/10.1080/17531055.2020.1863099>>; Anneli Botha and Mahdi Abdile, "Al-Shabaab Attitudes Towards Negotiations", in *War and Peace in Somalia: National Grievances, Local Conflict and Al-Shabaab*, eds. Michael Keating and Matt Waldman (London: Hurst, 2018).

46 See Afyare Elmi, *Understanding the Somalia Conflagration*. 2010. Chapter two summarizes Somalia's peace processes and chapter eight discusses the role of the international community in Somalia.

**Table 1** The Most Consequential Peace Processes in Somalia

Process	Year(s)	Main Actors	Key Outcomes
<b>Arta Peace Process</b>	2000	<p><b>Domestic:</b> Somali civil society, intellectuals, elders, businessmen and independent politicians.</p> <p><b>External:</b> Djibouti government. IGAD, AU and UN supported the outcome.</p>	<ul style="list-style-type: none"> <li>– Established the Transitional National Charter, the Transitional National Assembly (245 Members of Parliament) and the Transitional National Government.</li> <li>– Elected President Abdiqasim S. Hassan.</li> <li>– Agreed on a political settlement that entails the 4.5 formula, a parliamentary system, regional autonomy and multi-party democracy.</li> <li>– Recommended the initiation of drafting a federal constitution.</li> </ul>
<b>Mbagathi Peace Process</b>	2002–2004	<p><b>Domestic:</b> Transitional National Government, Somali Reconciliation and Restoration Council (15 factions), Group of Eight (eight factions), and civil society.</p> <p><b>External:</b> IGAD, Kenya, Ethiopia, Djibouti, Uganda, European Union (EU), UN, AU.</p>	<ul style="list-style-type: none"> <li>– Created the Transitional Federal Charter, the Transitional Federal Parliament and the Transitional Federal Government.</li> <li>– Elected President Abdullahi Yusuf Ahmed.</li> <li>– Adopted a federal system and added it to the name of the country.</li> <li>– Maintained the 4.5 clan power-sharing formula, a parliamentary system and multi-party democracy.</li> <li>– Initiated the drafting of a federal constitution.</li> </ul>
<b>Djibouti Agreement</b>	2008	<p><b>Domestic:</b> Transitional Federal Government, Alliance for Re-Liberation of Somalia.</p> <p><b>External:</b> UN Political Office for Somalia, IGAD, Djibouti, AU, United States, EU.</p>	<ul style="list-style-type: none"> <li>– Established a Transitional Federal Government.</li> <li>– Accepted the expansion of parliament to 550.</li> <li>– Managed to see the Alliance for the Re-Liberation of Somalia accepting the Charter.</li> <li>– Continued constitutional negotiations.</li> <li>– Secured an agreement between the Transitional Federal Government and the Alliance for the Re-Liberation of Somalia to collaborate.</li> <li>– Elected President Sharif Sh. Ahmed in Djibouti.</li> </ul>

# 05 *Constitution-Making Process in Somalia (2004–Present)*

The two peace processes of 2000 and 2004 had a significant impact on the constitution-making process in Somalia, which has spanned over two decades and remains highly contentious. It has unfolded in two main phases: the transitional period (2000–2012), which led to the establishment of the current Federal Government of Somalia, and the post-transition period (2012–present).<sup>47</sup>

## **Transitional Period (2000–2012)**

Initially, the 2004 Transitional Federal Charter mandated the creation of an Independent Federal Constitution Commission, tasked with drafting a federal constitution within two and a half years. Established in 2006 and receiving generous support from the international community, this Commission initially comprised 15 members. In 2009, the Independent Federal Constitution Commission presented a draft constitution. However, six signatories (political leaders)—who later dominated the process—disagreed with its content.<sup>48</sup> The UN Political Office became the de facto leader and pressured Somali parties to adhere to a new, externally driven roadmap for ending the transition.<sup>49</sup>

The Independent Federal Constitution Commission was expanded in 2010 to 30 members. However, its members were primarily selected based on clan affiliation and political loyalty rather than expertise. Many lacked the necessary technical skills for constitutional drafting, and their work was ultimately overshadowed by political interference.<sup>50</sup> Key constitutional decisions were later made during the UN-facilitated Garowe I and II conferences in 2011 and 2012. Facilitated by the UN Political Office for Somalia and hosted by Puntland authorities in Garowe, these conferences brought together Somalia’s transitional leaders and regional stakeholders. The parties agreed to adopt a federal constitution, a parliamentary government, a proportional electoral model and a National Constituent Assembly.<sup>51</sup>

In April 2012, the Independent Federal Constitution Commission and the Committee of Experts—the latter led by the late Mohamed Osman Jawari—submitted a harmonized draft constitution to the roadmap signatories and UN Special Representative Augustine Mahiga. However, rather than advancing the process transparently, the signatories moved the constitutional meeting to Addis Ababa, excluding both the Independent Federal Constitution Commission and the members of the Committee of Experts. A closed-door Technical Review

47 Afyare Elmi, *Revisiting the UN-Controlled Constitution-Making Process for Somalia* (2 September 2012), available at <<https://www.e-ir.info/2012/09/02/revisiting-the-un-controlled-constitution-making-process-for-somalia/>>

48 The six signatories are the president of the Transitional Federal Government, Sharif Sheikh Ahmed, the Prime Minister of the Transitional Federal Government, Dr. Abdiweli Mohamed Ali, the Speaker of the Parliament, Sharif Hassan Sheikh Adan, the president of Puntland, Abdirahman Mohamed Farole, the president of Galmudug, Mohamed Ahmed Alim and the leader of the Ahlu-Sunnah Wal-Jama’a, Khalif Abdulqadir Moalim Nur. The Special Representative of the UN Secretary-General, Dr. Augustine Mahiga, led the process.

49 See Reliefweb, *Statement on Adoption of the Roadmap*, 6 September 2011, available at <<https://reliefweb.int/report/somalia/statement-adoption-roadmap>>

50 Heritage Institute for Policy Studies, *Somalia’s Parliament Should Produce a Constitution by and for the People*, 2017, available at <<https://heritageinstitute.org/somalias-parliament-should-produce-a-constitution-by-and-for-the-people/>>

51 Ibid.

Committee, composed of representatives from each signatory member, revised the draft constitution in Addis Ababa and later in Nairobi. This revised version was adopted by the signatories in June 2012 and ratified by a hand-picked National Constituent Assembly on 1 August 2012 in Mogadishu.<sup>52</sup>

Throughout the transitional phase, international actors, particularly the UN Political Office for Somalia and IGAD, played crucial but double-edged roles in shaping the process. While providing technical and financial support, they also influenced the political direction of the process, often at the expense of Somali ownership. Moreover, the rushed and secretive nature of this final phase alienated many stakeholders. Civil society groups, Islamic scholars and members of the diaspora criticized the process. The original drafters of the constitution publicly distanced themselves from the final version, citing unauthorized revisions to over 70 articles, including provisions on Islam, federalism and the role of Mogadishu.<sup>53</sup> The adoption of the Federal Provisional Constitution in 2012 marked the end of the transitional period, but it left many fundamental issues unresolved.

#### **Post-transition Period (2012–present)**

Neither the public committees (the Independent Federal Constitution Commission and the Committee of Experts) nor the secret committee (appointed by the signatories) produced a final and complete constitution that could be presented to the public for ratification. It required another revision.

Chapter 15 of the Federal Provisional Constitution created two commissions: the Independent Constitution Review and Implementation Committees, and the Oversight Committee, and tasked them to lead the constitution-review process. It also empowered Parliament to become a constituent assembly by a two-thirds majority to amend the constitution.<sup>54</sup> President Hassan Sheikh Mohamud (2012–2016), who led the first post-transitional government, established these two bodies accordingly.

Notably, women led both committees, at least initially. Maryan Arif Qasim, a Member of Parliament (MP), led the Oversight Committee, while Asha Gelle chaired the Independent Constitution Review and Implementation Committees. However, both institutions were underfunded and lacked autonomy. For instance, the Independent Constitution Review and Implementation Committees was created two years late and suffered from political interference, leading to Chairwoman Asha Gelle's resignation in 2015. She cited frustrations over a lack of funding, unmotivated members and constant political meddling.<sup>55</sup>

52 Afyare Elmi, *Revisiting the UN-Controlled Constitution-Making Process for Somalia* (2010).

53 Ibid.

54 See articles 132–137 of the Provisional Federal Constitution, available at [https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted\\_Constitution\\_ENG\\_Final-for-Printing\\_19-SEPT12-1.pdf](https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted_Constitution_ENG_Final-for-Printing_19-SEPT12-1.pdf)

55 Heritage Institute for Policy Studies, *Somalia's Parliament Should Produce a Constitution by and for the People*, 2017, available at <https://heritageinstitute.org/somalias-parliament-should-produce-a-constitution-by-and-for-the-people/>

A Memorandum of Understanding was signed in 2015 between the Independent Constitution Review and Implementation Committees, the Oversight Committee, and the Ministry of Constitutional Affairs to coordinate efforts. In July 2015, Parliament passed a resolution assigning the Independent Constitution Review and Implementation Committees and the Oversight Committee only technical review duties, with political issues to be resolved by the National Leadership Forum, composed of regional and national leaders. These issues included the structure of the executive, distribution of powers, the status of Mogadishu and the judiciary.<sup>56</sup>

The Oversight Committee presented three different constitutional options and recommended the first one, which prescribed a presidential system, a unicameral legislature and a federal model biased towards the centre.<sup>57</sup> A constitutional conference planned for Garowe in 2016 (also known as Garowe III) failed due to disagreements, particularly regarding the proposal to shift towards a presidential system. Some leaders argued that such a system would marginalize certain clans.<sup>58</sup>

Consequently, the review process was postponed once again to be addressed by the following government. In 2017, President Mohamed Abdullahi Farmajo took office. The Independent Constitution Review and Implementation Committees continued its work under new leadership. A new Oversight Committee, led by Senator Abdi Qaybdiid and comprised of members from both chambers, led the review process. This Committee produced a new draft constitution that heavily differed from the one presented by the previous Oversight Committee. Due to election-related issues, however, the new draft was never submitted to Parliament.<sup>59</sup> Consequently, again, it had to be passed to the following government.

On 15 May 2022, President Hassan Sheikh Mohamud was re-elected, making him the first ever president of Somalia to serve a second term. Two new committees were tasked to lead the constitution-review process. Burhan Adan Omar was chosen to lead the Independent Constitution Review and Implementation Committees. Of its ten members, this committee had only one woman. Hussein Idow, an MP, led the Oversight Committee. Under President Hassan Sheikh Mohamud's leadership, the current constitution committees (2022–2026) have proposed recommendations that are similar to those made by the previous constitution committees (2012–2016).

The current government claims it has the authority to amend the constitution, which is why it altered the first four chapters. It also intends to revise the remaining chapters to create a complete constitution but has been unsuccessful in this endeavour so far. The revised four

56 Ibid, p. 5.

57 See Mohamed Riyad M. Almosly, "Comparative Analysis of the Constitutions of the Federal Member States of Somalia and the Federal Provisional Constitution of Somalia", Max Planck Institute Report, 2020; see Afyare Elmi and Abdirizak Muhumed, *On Reviewing Somalia's Provisional Constitution: Background, Challenges and Future Prospects*, Published by the Heritage Institute for Policy Studies, 2022. P. 12. Available at <<https://heritageinstitute.org/wp-content/uploads/2022/08/Constitution-Report-English.pdf>>

58 Heritage Institute, *Somalia's Parliament Should Produce a Constitution by and for the People*, 2017.

59 See the Constitution that the second Oversight Committee produced.

chapters would move Somalia to the presidential system with direct presidential elections. Additionally, these changes concentrate power in the presidency and reduce the authority of the prime minister and federal member states.

Additionally, the government approved three laws based on those four chapters, namely the Electoral Law, the Political Parties Law, and the Election and Boundaries Commission Law. Based on this, the President established a new political party: the Justice and Solidarity Party. Leaders of the Federal Member States of Southwest, Galmudug, Hirshabelle and SSC-Khatum supported the government's position and joined the President's political party.<sup>60</sup>

The new electoral framework includes multiple voting systems—first-past-the-post for executives and open- and closed-list proportional representation for legislatures—, while limiting national political participation to only three official parties. Additionally, the Federal Government, through the National Consultative Council, granted disproportionate governance powers to the centre, assigning 44 exclusive responsibilities to the Federal Government, while Federal Member States received only 29. In addition to foreign affairs, citizenship, monetary policy and security, the Federal Government would oversee elections and national policies in several areas, including education, health, justice, airports, ports, and postal and telecommunications services. This indicates a strategic rollback of federalism.<sup>61</sup>

The legislature, through a questionable process, approved the changes. Key stakeholders—such as Puntland, Jubbaland, opposition leaders and civil society actors—were sidelined, and parliamentary approvals were obtained through apparent procedural irregularities, corruption, lack of transparency and inadequate public consultations.<sup>62</sup> In contrast, the opposition has rejected the government's approach. In their latest communiqué, they reaffirmed that the 2012 Constitution is the law of the land and that the 2020 Electoral Law is the valid framework for conducting elections.<sup>63</sup> This situation is further complicated by the absence of a constitutional court, which has never been established.

It should be mentioned that, in addition to the conflicting committee reports, elite manipulation, lack of public participation and arbitrary processes at the federal level, Somalia's sub-national governments, known as Federal Member States, namely Puntland, Galmudug, Jubbaland, Southwest, Hirshabelle and the newly created North-East independently drafted their own

60 The East African, "President Mohamud's party evokes divisive debate in Somalia", 17 May 2025, available at <<https://www.theeastafrican.co.ke/tea/news/east-africa/mohamud-party-evokes-divisive-debate-5045302>>

61 Ibid.

62 Ibid. In the new arrangement, the president can fire the PM. Moreover, the distribution of powers and responsibilities is biased towards the federal government. See Afyare Elmi, *Can Somalia's Third Republic Be Saved?*, available at <<https://mecouncil.org/publication/can-somalias-third-republic-be-saved/>>; see "Somalia accused of 'threatening national unity' with new constitution", available at <<https://www.theguardian.com/global-development/2024/apr/05/fears-violence-somalia-constitution>>

63 War-Murtiyeed ka soo baxay Goloaha Samatabixinta Soomaaliyeed [Somali Rescue Forum Communiqué], Mogadishu, July 2025, available at <<https://dawan.so/wp-content/uploads/2025/06/Warmurtiyeedka-Madaxada-Samartabixinta-ee-Nuuca-Doorasho-ay-rabaan-ay-ku-cadeeyeen-1-3.pdf>>

constitutions at various times. Federal Member States frequently contest the supremacy of the Federal Government, arguing that the distribution of powers and responsibilities remains unresolved. They have occasionally challenged the Federal Government in four key areas—foreign affairs, citizenship, monetary policy and defence—assigned to the Federal Government by the provisional constitution. Some Federal Member States have even established their own banks, printed currency, formed intelligence agencies and conducted foreign relations.<sup>64</sup> In response, the Federal Government has protested and, at times, weaponized its juridical powers against the Federal Member States.<sup>65</sup>

Another discussed but inadequately addressed issue is the status of Mogadishu within a federal Somalia. Various constitutional committees have identified three options: Mogadishu as a federal district (similar to the USA's Washington, DC model), Mogadishu as a full Federal Member State (like Germany's Berlin model), and Mogadishu as a capital city within a Federal Member State (akin to Canada's Ottawa). While most delegates in the peace processes agree on recognizing Mogadishu as a capital city, some raise concerns about what is often referred to as the "Mogadishu advantage." The civil war has disrupted the diversity and natural growth of the capital city, causing many residents to flee their homes and resettle in regions such as Somaliland, Puntland, Southwest, Jubbaland, Hirshabelle, Galmudug and North-East. Forced evictions of people from their homes in Mogadishu, and the grievances stemming from the civil war, combined with the absence of reconciliation among the populace, serve as unspoken motivations for rejecting Mogadishu and advocating for a weak central government.<sup>66</sup>

During the post-transition constitution-making, the international community played supportive but also, at times, spoiler roles. Kenya and Ethiopia were particularly attentive to the process, as they were interested in the content of the new constitution. For example, Somalia's 1960 constitution<sup>67</sup> included an article committing the country to supporting the independence and unity of Somali territories. However, there are regions with majority Somalis within the territories of Kenya and Ethiopia. Addis Ababa and Nairobi suspect that Somalia recognizes Somalis from these regions as its citizens, which Ethiopia and Kenya perceived as "irredentist".<sup>68</sup> Consequently, this article was removed from the charters and

64 Puntland has had its own bank and its constitution allows the printing of currency. See Article 109 of the Constitution of Puntland.

65 See Afyare Elmi and Abdirizak Muhumed, *On Reviewing Somalia's Provisional Constitution*. 2022. p. 12.

66 Some of the interviewees refer to the Mogadishu issue as the "elephant in the room" which people avoid discussing openly. The communities and families that were evicted from their homes in the 1990s resettled in other parts of the country. There has not been meaningful social reconciliation and there are still security problems in the capital. This complicates the decision on the status of Mogadishu.

67 See article 6(4) of Somalia's 1960 constitution, available at <<https://icric.gov.so/wp-content/uploads/2023/07/1960-Constitution-Som-English.pdf>>

68 Ogaden region in Ethiopia and Northern Frontier Districts (the current Northeast Kenya) are the territories under discussion. Somalia supported movements that wanted to secede from Kenya and Ethiopia and join Somalia in the 1960s. Because of this, Somalia and Ethiopia fought twice, in 1964 and 1977. Ethiopia and Kenya have an agreement against Somalia regarding this issue. This is linked to the citizenship issues. Somalis from these regions can easily live and be considered citizens in Somalia.

the Federal Provisional Constitution.<sup>69</sup> European powers, on the other hand, pressured Somalia to remove the capital punishment article from the constitution. Indeed, the 1960 Constitution contained an article that prescribed capital punishment. Although Somalia practised capital punishment, the elites in charge of the constitution-making process removed this provision.<sup>70</sup> These international forces have also consistently championed the rights of marginalized groups, including women and unarmed communities.<sup>71</sup> However, local elites did not respond the same way as with the removal of capital punishment, and resisted advocacy for the implementation of a gender quota for women's participation in politics.

### **Key Lessons from Somalia's Constitutional Process**

Three key lessons emerge from Somalia's protracted constitutional process. First, Somali citizens have been consistently excluded. Public consultation has been minimal, and decision-making has remained in the hands of elites and foreign actors. The Independent Federal Constitution Commission conducted public education and public consultations using the media. Yet, these were not included in the final documents. Even when civil society actors sought inclusion, their efforts were often ignored.<sup>72</sup>

Second, foreign actors—especially Ethiopia, Kenya, European countries and the UN—have supported the process, for example by providing it with funding since 2006, in addition to material and technical support to the Independent Federal Constitution Commission. At the same time, they have exerted pressure at different times, at the expense of Somalis' ownership of the process.

Third, the process has suffered from lack of institutional continuity. Commissions have been formed and dissolved at will. Drafts have been rewritten in secrecy and imposed without meaningful debate.<sup>73</sup> This was the case during the negotiations in 2012. All of the committees that were working on the constitution-making were marginalized. The politicians and the UN Political Office took over the constitution-making and made changes to the drafts that the Independent Federal Constitution Commission and the Committee of Experts completed.

69 See Article 6(4) of Somalia's 1960 Constitution, available at <<https://icric.gov.so/wp-content/uploads/2023/07/1960-Constitution-Som-English.pdf>>

70 Article 16(3) of the 1960 Constitution institutionalized capital punishment. But the 2012 Provisional Federal Constitution excluded that article.

71 See Afyare Elmi, "Revisiting the UN-Controlled Constitution-Making Process for Somalia", E-IR, September 2012, available at <<https://www.e-ir.info/pdf/26196>>. See also Afyare Elmi, *On Reviewing Somalia's Provisional Constitution Background, Challenges, and Future Prospects*, Heritage Institute for Policy Studies, August 2022, available at <<https://heritageinstitute.org/wp-content/uploads/2022/08/Constitution-Report-English.pdf>>

72 Jan Amilcar Schmidt, "Mission Impossible? Opportunities and Limitations of Public Participation in Constitution-Making in a Failed State – The Case of Somalia", in *Public Participation in African Constitutionalism*, pp. 194–209, Routledge, p. 199.

73 Afyare Elmi, "The limits to the UN-controlled constitution-making process in Somalia", in *Horn of Africa Journal*, Vol. 31. 2014.

In short, despite numerous charters and constitutional drafts, as well as two decades of donor investment, Somalia's political class has failed to agree on a legitimate, inclusive and nationally owned constitution. The constitution-making process has been top-down, externally driven and procedurally flawed. At the time of writing this study, the country faces the possibility of two competing constitutions, with some political factions using the 2012 Federal Provisional Constitution that ended the transition, while President Hassan Sheikh Mohamud and his supporters favour the new one, which has only four chapters presented and approved so far.

# 06 *The Nexus Between Peace Processes and Constitution-Making in Somalia*

This section presents key findings regarding the complex relationship between peace processes and constitution-making efforts in Somalia. It explores important issues, such as the sequencing of events, overlapping mandates, and the prioritization of one process over the other.

The relationship between Somalia's peace processes and constitution-making is reciprocal. Both major peace processes (the Arta Peace Process of 2000 and the Mbagathi Peace Process of 2004) had components that related to the constitution-making efforts, discussing and agreeing on charters. Constitution-making impacted the peace processes by shaping the compromises of the peace negotiations. At times, disagreements over the interim charter jeopardized the progress of the peace negotiations. This section focuses on answering the following question: How do the peace processes and the constitution-making efforts influence or affect each other in Somalia?

The data from the documents and interviews revealed two contradictory perspectives. The first view argued that the constitution-making was embedded within the peace processes, claiming that most of the major issues had been settled in the peace process. The argument here is that the peace process establishes the framework for constitution-making. Therefore, the latter is a supplementary process that must adhere to the former and cannot change the fundamental components of the peace agreements.<sup>74</sup> In contrast, the second view contends that constitution-making is a continuation of the peace process. The peace process, in the form of constitution-making, continued through the National Consultative Council, which represents various constituents, as a substitute for the faction leaders from the Mbagathi conference.<sup>75</sup>

## **First View: Constitution-Making as Embedded in the Peace Process**

This view suggests that the two major peace processes made interim charters that served as foundational legal documents to guide the establishment of transitional governments. These charters did not resolve all constitutional questions at once; instead, they provided a provisional legal framework and explicitly delegated the task of constitution-making to the transitional authorities, while establishing basic principles and timelines for the process.

74 Interview with a member of the judiciary in Somalia, Mogadishu, June 2025. Most interviewees agree with this view. Using the Somali example of tree, they say the peace process agreement represents the root while the constitution-making represents the branches of the tree.

75 This is the view of the supporters of the government. For them, the parliament can change the constitution whenever it deems it necessary.

According to Article 1(3) of the Transitional National Charter of 2000, “the Somali Republic will establish a federal system, but during the transitional period, it will form an autonomous regional administration.”<sup>76</sup> Article 30 of the Transitional National Charter orders the government to establish the “National Commission for Reviewing the Constitution and Reorganizing the Law.”<sup>77</sup>

Another example where those drafting the charters in the peace process made a conscious choice that had an impact on subsequent constitution-making commissions was on the powers of the president. Somalia’s 1960 Constitution included an article that granted the president the power to appoint and dismiss the prime minister.<sup>78</sup> Given the recent memory of the military government and its link to the conflict, the delegates of the peace processes were worried about a future powerful president. Therefore, they made a conscious decision to limit the powers of the president. They granted the president symbolic powers to appoint and dismiss the prime minister based on the parliament’s vote of confidence.<sup>79</sup> Under the current Federal Provisional Constitution, parliament has to give its confidence to the president’s appointed prime minister. The president cannot dismiss the prime minister; only parliament can fire the prime minister through a vote of no-confidence.<sup>80</sup> By including these articles in the charter, the conference delegates directed the constitution-making process.

Furthermore, as a result of the Mbagathi Peace Process, the 2004 Transitional Federal Charter mandated the creation of the Independent Federal Constitution Commission, tasked with drafting a federal constitution within two and a half years.<sup>81</sup> Article 11(9) linked the government’s survival to its completion of the federation. It states:

*In the event that the Transitional Federal Government is unable to complete the process of federalism all over Somalia within the prescribed period of two and half years [sic], the Government shall request Parliament for a vote of confidence, failing which the Transitional Federal Parliament shall withdraw its support and a new Transitional Federal Government shall be formed in the manner set out in this charter.*<sup>82</sup>

Interestingly, the Transitional Federal Government could not meet this clear deadline. As mentioned in section 5.1 above, it established the 15-member Independent Federal Constitution Commission in 2006, two years after the peace process ended, and its members lacked the

76 See the Transitional National Charter of 2000, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2000-ARTE-TRANSITIONAL-NATIONAL-CHARTER-2000.pdf>>

77 Ibid.

78 Article 78(3) of the 1960 Constitution states that “The Prime Minister shall be appointed and dismissed by the President of the Republic”, available at <<https://citizenshiprightsafrika.org/wp-content/uploads/2020/10/Somalia-Constitution-1960.pdf>>

79 See Article 25(5) of the TNC, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2000-ARTE-TRANSITIONAL-NATIONAL-CHARTER-2000.pdf>>

80 See chapters six and seven of the Federal Provisional Constitution of Somalia, available at <[https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted\\_Constitution\\_ENG\\_Final-for-Printing\\_19-SEPT12-1.pdf](https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted_Constitution_ENG_Final-for-Printing_19-SEPT12-1.pdf)>

81 See Article 11 of the Transitional Federal Charter, available at <<https://icric.gov.so/wp-content/uploads/2023/07/2004-Feb-Transitional-Federal-charter-English.pdf>>

82 Ibid.

expertise, independence and neutrality needed for the task.<sup>83</sup> Because of this, between 2006–2007, the Transitional Federal Government experienced a prolonged crisis in which the president and the prime minister fell into a power struggle. President Abdullahi Yusuf Ahmed argued that the government failed to prepare a federal constitution within the time and, therefore, had to be replaced. As a result, the President got his way, and Prime Minister Ali Gedi resigned.<sup>84</sup>

As described in section 4.3, in 2008 another smaller peace process (compared to the ones in 2000 and 2004) in Djibouti resulted in the inclusion of moderate Islamist groups in the government and the doubling of the Federal Parliament.<sup>85</sup> This again caused a political crisis that led to the resignation of President Abdullahi Yusuf Ahmed, who did not want to negotiate on opening the constitution debate.<sup>86</sup> Sharif Sheikh Ahmed, the leader of the Alliance for the Re-Liberation of Somalia, became president in 2008. On the other hand, the moderate Islamist group was pressured to accept the charter as it was, except for the doubling of MPs. Generally, this was the only outcome of this peace process: an increase in the number of MPs from 275 to 550. In other words, the peace process changed the charter, but in doing so resulted in a political crisis as it changed the parameters upon which the charter had been agreed in the previous peace processes.

Additionally, the 13<sup>th</sup> Arta Peace Process in Djibouti and the 14<sup>th</sup> Mbagathi Peace Process in Kenya influenced Somalia's constitution-making process over two decades—the transitional period (2000–2012) and the post-transition period (2012–present).<sup>87</sup> These peace processes not only laid the groundwork for governance arrangements but also actively shaped the content, structure, process and direction of constitution-making efforts in Somalia. Indeed, the Arta and Mbagathi peace processes mandated the initiation of constitution-making in Somalia. They represented the first serious attempts to establish a state governed by an agreed-upon charter. This was particularly significant because Somalia's military government suspended the constitution in 1969 when it came into power. The Arta and Mbagathi peace processes led to the adoption of the Transitional National Charter and the Transitional Federal Charter, respectively. Both documents provided a mandate and a roadmap for the country's constitutional development, outlining power-sharing mechanisms and thereby linking peacebuilding with the design of the constitution.<sup>88</sup> As a result, using the previous charters, the different committees eventually prepared the Federal Provisional Constitution of 2012.

83 See Heritage Institute, 2017.

84 Al-Jazeera, "Somali prime minister resigns" (30 October 2007), available at <<https://www.aljazeera.com/news/2007/10/29/somali-prime-minister-resigns>>

85 Agreement Between the Transitional Federal Government of Somalia and the Alliance for the Re-Liberation of Somalia, Djibouti, 9 June 2008, available at <<https://unpos.unmissions.org/sites/default/files/080818%20-%20Djibouti%20Agreement.pdf>>

86 Al-Jazeera News, "Somali president steps down" (29 December 2008), available at <<https://www.aljazeera.com/news/2008/12/29/somali-president-steps-down>>

87 Afyare Elmi, *Revisiting the UN-Controlled Constitution-Making Process for Somalia*, 2 September 2012, available at <<https://www.e-ir.info/2012/09/02/revisiting-the-un-controlled-constitution-making-process-for-somalia/>>

88 See the Transitional National Charter of 2000 and Transitional Federal Charter of 2004.

Moreover, the delegates decided on the main components of the political settlement. In fact, the practice emerging from the peace processes institutionalized clan power-sharing in the constitution-making process. Although there is no specific article or clause mandating the 4.5 clan power-sharing system, it has become an unquestioned practice. The delegates in the peace processes decided to use a 4.5 clan power-sharing formula until the country would be secured and unified, and the census would be completed.<sup>89</sup> So far, the governments have not been able to fulfil these conditions. All constitution committees formed to date have been selected based on this power-sharing framework. Each draft constitution presented has included provisions for maintaining clan power-sharing through a “communal balance clause.”<sup>90</sup> This issue is so sensitive that those vying for leadership positions avoid even suggesting changes to this power-sharing arrangement.

President Hassan Sheikh Mohamud changed the parliamentary system and the federation but avoided this contentious topic. Interestingly, while the formula ensures some form of representation, it has thickened clan identity as it became the standard of fairness when it comes to government appointments. It has undermined the meritocracy principle, thus posing long-term challenges for a citizen-based democratic transition and state cohesion.<sup>91</sup> In other words, this temporary solution that was used during the peace process has become what one of the leading Somali scholars, Mukhtar, called an important step towards reconciliation, since clans agreed to power-sharing based on their relative size. For Mukhtar, the delegates’ agreement on the 4.5 clan formula made it possible to reconstitute the Third Republic.<sup>92</sup>

Several scholars disagreed and argued that clan power-sharing has institutionalized discrimination.<sup>93</sup> Additionally, critics of the 4.5 clan power-sharing formula argue that, while it ensured representation for unarmed communities, it became a standard that everyone uses at every level, including the leadership of security and the bureaucracy. This replaced the meritocratic system. Notwithstanding the effects of the formula, what is clear is that the peace processes, particularly the practice introduced through them of the 4.5 formula, have fundamentally shaped and constrained the constitution-making process.

89 The delegates of the Arta Peace Process in 2000 agreed on the clan power-sharing using the 4.5 model temporarily. This was an unwritten agreement. In 2011, Puntland rejected this (see the Garow 1 Principles). Yet, bearing in mind the security circumstances and lack of census of the population, all subsequent six parliaments used the clan power-sharing system.

90 See Article 64(3) of the Federal Provisional Constitution of Somalia, available at <[https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted\\_Constitution\\_ENG\\_Final-for-Printing\\_19-SEPT12-1.pdf](https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted_Constitution_ENG_Final-for-Printing_19-SEPT12-1.pdf)>

91 Afyare Elmi, “Decentralized Unitary System: A Possible Middle Ground Model for Somalia”, *Arab Center for Research and Policy Studies*, Issue May (2015).

92 See Mohamed H. Mukhtar, “Somali Reconciliation Conferences: The Unbeaten Track”, in Abdullahi A. Osman and Issaka S. Souare [eds.], *Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State* (London: Adonis and Abbey Publishers, 2007), p. 128.

93 See Mohamed A. Eno, “Inclusive but Unequal: The Enigma of the 14<sup>th</sup> SNRC and the Four-Point-Five (4.5) Factor”, in *Somalia at the Crossroad: Challenges and Perspectives on Reconstituting a Failed State* (London: Adonis & Abbey Publishers Ltd, 2007), p. 68.

It is also worth pointing out that, during the Mbagathi peace process, deep divisions emerged among Somali factions regarding the proposed constitutional frameworks. As described in section 4.2 above, most faction leaders and warlords rejected the draft presented by the Harmonization Committee, led by Professor Abdi Samatar. Then, these faction leaders and their external supporters threatened to withdraw from the conference. This stalemate halted the entire peace process, indicating how constitutional disagreements could derail broader reconciliation efforts.

In this case, the organizers (IGAD's Technical Committee) prioritized the continuity of the peace process over achieving consensus on the charter. They opted to abandon the harmonized version to prevent the conference from collapsing. Recognizing the challenges of achieving constitutional consensus during fragile negotiations, both peace processes adopted a pragmatic approach. They distinguished between the immediate tasks of peacebuilding and the long-term goal of constitution-making. This shows that the latter was embedded within the political dynamics of the former, rather than being a separate exercise.<sup>94</sup>

In short, many political actors argue that the main components of the peace agreements,<sup>95</sup> as outlined in the transitional charters, constitute the basic law and cannot be changed through the constitution-making process. The two charters mandated governments to establish a federal constitution, a democratic government and a parliamentary system. Political forces, particularly from the peripheral regions, want the constitution-making bodies to adhere strictly to the prescriptions of the peace processes in Djibouti, Kenya, and the Garowe I and II agreements. Puntland politicians have led these forces. During the charter discussions in Mbagathi (2002–2004), the late Abdullahi Yusuf Ahmed, who at the time was President of Puntland, and the Somalia Reconciliation and Restoration Council coalition he led strongly demanded the federal system. The proponents of this proposal did not trust a centralized unitary system. Therefore, they dominated the Mbagathi peace process, locked in their interests in the charter, and constrained the constitution-making bodies.

Proponents of this proposal claimed to represent the interests of the peripheral regions. The Somali Republic, established in 1960, was a unitary state that not only neglected but also exploited and greatly affected these regions. The political forces backing this proposal expressed deep suspicions of the Federal Government.

94 Ahmed Samatar and Abdi Samatar, "Somali Reconciliation: Editorial Note", *Bildhaan: An International Journal of Somali Studies*, 3.1 (2008), available at <<https://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1017&context=bildhaan>>

95 The main components of the political settlement are the clan power-sharing, the parliamentary government, federal system and periodic democratic dispensation. See Afyare Elmi, *Can Somalia's Third Republic Be Saved?*, available at <<https://mecouncil.org/publication/can-somalias-third-republic-be-saved/>>

### **Second View: Constitution-Making as a Continuation of the Peace Process**

This perspective argues that the constitution-making process is a continuation of the previous peace processes in Somalia and, thus, not necessarily constrained by them. Based on this notion, some government officials believe that the peace process is ongoing, rather than a single event that concluded in Arta or Mbagathi. They view the current constitution-making as integral to the peace process, with the potential to change key components of the Transitional National Charter and the Transitional Federal Charter. A senior government official stated that “the peace processes in Somalia have never been concluded; they are ongoing. In Mbagathi, clans were represented by faction leaders and warlords, but now they are represented by legalized Federal Member States. The current leaders can make decisions that reflect this changing context.”<sup>96</sup>

Although most interviewees in this study disagreed with this perspective, the government approached the issues at hand with this mindset. Consequently, it revised the first four chapters of the Federal Provisional Constitution. The government replaced the parliamentary model with a presidential system and allocated powers and responsibilities among different levels of government in a way that favoured centralization. Additionally, it drafted and enacted three pieces of legislation—the Electoral Law, the Political Parties Law, and the Election and Boundaries Commission Law—that reflected its interest in restricting the political space. For example, the government limited the number of parties to three and established a first-past-the-post system for the presidential level, an open-list proportional representation system for the parliamentary level, and closed-list proportional representation for the Federal Member States and local levels. The national opposition, along with Puntland and Jubbaland, rejected these changes.<sup>97</sup>

Furthermore, during the post-transition period (2012–present), constitution-making became exclusive to politicians. At any given time, the ruling government manipulated the selection process for various committees and politicized their mandates. Evidence of this can be seen in the significant differences between the drafts produced by different committees. Three different committees have been appointed by three post-transitional governments (the first and second terms of the Hassan Sheikh administration in 2012–2017 and 2022–present, as well as the Farmajo administration in 2017–2022). This politicization negatively impacted the peace processes. Politicians ignored the charters from the Arta and Mbagathi peace processes. The government formed an extra-legal body, the National Leadership Forum or National Consultative Council, consisting of selected members from the Federal Government and Federal Member States, to negotiate contested issues before using the parliamentary process. This body, more powerful than both Parliament and the Council of Ministers, has dominated decision-making for the past decade.

<sup>96</sup> Interview with a senior government official in Mogadishu, via telephone, June 2025.

<sup>97</sup> See Afyare Elmi, *Can Somalia's Third Republic Be Saved?*, 2025.

The committees appointed under the first Hassan Sheikh administration (2012–2017), led by MP Maryam Qassim, presented three options for the constitution and recommended the first one. In this, and as mentioned in section 5.2, the committee prescribed a presidential system, a unicameral legislature and a more centralized state, albeit with a federal label. However, the constitution committees under the Farmajo government rejected this and maintained the parliamentary model, federal system and bicameral legislature. When President Hassan Sheikh Mohamud was re-elected in 2022, he reverted to the 2016 proposal of his committees. Now, based on the four revised chapters adopted in 2024, Somalia is meant to transition to a presidential system. The proposal for centralization, while still labelled as “federal”, is also under active consideration, as the National Consultative Council has already endorsed it.

As such, political forces, primarily from the centre (Mogadishu), have advocated for a presidential system, a strong central government and a proportional representation political system.<sup>98</sup> They argue that most of the political leaders represented in the National Consultative Council adopt political decisions that guide constitution-making bodies in a way that extends the peace processes. Under this logic, the peace processes did not end with the Arta and Mbagathi conferences but continue in the framework of the National Consultative Council. That would also mean the National Consultative Council can deviate from the framework agreement under the previous peace processes and write a constitution that does not follow the premisses they set.<sup>99</sup> A senior government official defended this approach, stating that “the current constitution-making process is partly a peace-making effort because the National Consultative Council members represent the interests of the same communities that the faction leaders and warlords represented during the Mbagathi peace process.”

98 The logic behind this is that Mogadishu is the population centre and, therefore, whoever the capital city backs will win the election. Politicians from periphery regions reject this proposal, saying it permanently excludes many communities from the leadership of the country.

99 Interview with a politician who supports the government, via WhatsApp, Mogadishu, 28 May 2025.

# 07 *Findings on Peace Processes and Constitution-Making in Somalia*

The explanation of the multi-layered linkages between the peace processes and constitution-making in Somalia highlights the conflicting views within the country's political class regarding the relationship between the peace processes and constitution-making efforts. Historically, previous peace agreements produced interim charters, established governments and mandated transitional tasks, including security and reconciliation, as well as DDR, census activities, constitution-making processes and elections. Unfortunately, these tasks were not fulfilled.

The international community made a political decision to advance Somalia to the post-transition stage by supporting the provisional constitution and indirect elections. However, this decision lacked a clear rationale, as the government did not have full control of the country, had not established a permanent constitution approved by a referendum, and had not organized democratic elections based on the principle of one-person, one-vote. Consequently, governments changed through various dispensations (indirect selection processes), and security was maintained by peacekeeping forces. However, this perspective shifted in 2022 when President Hassan Sheikh Mohamud took office. The current government has adopted a new approach, framing constitution-making as part of the peace process. It has changed the fundamental components of the political settlement through its parliament. At the time of writing this study, the government is pursuing constitution-making as a means of peacebuilding (the second view outlined in section 6.2 above), while the opposition continues to advocate for the multi-stage sequencing (the first view outlined in section 6.1 above).

This disagreement stems from the country's tribal and regional differences. During the Mbagathi peace process, faction leaders, mainly from Mogadishu—the centre of Somali politics—resisted the proposal that was presented. The conference was stalled for months; however, Kenya, the host, along with IGAD, which sponsored the process, pressured various Somali factions, as well as Ethiopia, Djibouti and Uganda, to reach an agreement. As a result, the charter version supported by the Somalia Reconciliation and Restoration Council gained backing from the key external actors essential to the success of the peace process.

Proponents of the second view argue that delegates from some parts of Somalia were not convinced but rather coerced into the Mbagathi agreement. Additionally, they assert that federalism has been impossible to implement for the past 21 years. For them, despite different levels of political development, none of the Federal Member States has devolved powers and responsibilities to the local district levels. More importantly, some Federal Member States behave as if they were independent entities, conducting their foreign relations and managing their security and economy without regard for the Federal Government. Finally, they claim that both the context and political actors have changed and, therefore, new constitutional discussions are necessary, and Parliament can make such decisions.<sup>100</sup>

100 Interview with a senior official of the government, Mogadishu, June 2025.

The opposite proposals outlined above highlight the extent to which Somalia's political forces contest the essence of the state-building project. Somaliland aims to secede from the rest of the country and establish its own state. Puntland and Jubbaland have suspended their relations with the Federal Government of Somalia, and some political leaders there have openly expressed their frustrations with the Federal Government, calling for the establishment of a fourth republic based on a confederal model. Meanwhile, politicians from the Federal Government are also frustrated with the centrifugal forces, thus changing the core components of the political settlement and prescribing a more centralized presidential system.<sup>101</sup>

At the time of writing this study, Somali political leaders disagree on the force of the results of the peace processes and the role and powers of the constitution-making bodies.<sup>102</sup> Puntland President Said Abdullahi Deni and Jubbaland President Ahmed Mohamed Islam have withdrawn from the meetings of the National Consultative Council at different times, accused the Federal Government of power-grabbing, and called for a national dialogue.<sup>103</sup> Deni even pledged to host such a dialogue. Conversely, Somalia's President Hassan Sheikh Mohamud, leader of the opposing faction, has also initiated a dialogue, although it has not led to an agreement. In other words, the two camps agree that the status quo is untenable and that there is a need to return to the negotiating table.

101 See Afyare Elmi and Abdirizak Muhumed, *On Reviewing Somalia's Constitution*, 2022. See also the discussions on the four chapters of the constitution that have been revised, available at <<https://icric.gov.so/wax-kabeddelka-dastuurka/>> (in Somali)

102 See Hiiraan Online. *Somali Salvation Forum accuses government of neglecting terror fight, selling public land*, available at <[https://hiiraan.com/news4/2025/Sept/202751/somali\\_salvation\\_forum\\_accuses\\_government\\_of\\_neglecting\\_terror\\_fight\\_selling\\_public\\_land.aspx](https://hiiraan.com/news4/2025/Sept/202751/somali_salvation_forum_accuses_government_of_neglecting_terror_fight_selling_public_land.aspx)>. See also the position statement of the Somali Rescue Forum, which brought together most of the leading politicians in Somalia, available at <[https://hiiraan.com/news/2025/May/wararka\\_maanta31-190415.htm](https://hiiraan.com/news/2025/May/wararka_maanta31-190415.htm)>

103 See Hiiraan Online, "Puntland, Jubbaland accuse federal government of abuse of power, warn of regional autonomy measures", 26 June 2025, available at <[https://hiiraan.com/news4/2025/Jun/202002/puntland\\_jubbaland\\_accuse\\_federal\\_government\\_of\\_abuse\\_of\\_power\\_warn\\_of\\_regional\\_autonomy\\_measures.aspx](https://hiiraan.com/news4/2025/Jun/202002/puntland_jubbaland_accuse_federal_government_of_abuse_of_power_warn_of_regional_autonomy_measures.aspx)>

# 08 *Assessing the Peace Processes and Constitution-Making in Somalia*

Based on the literature review (both primary and secondary) and the interviews, this study has identified a series of shortcomings in the peace processes and constitution-making in Somalia. The most important is that both the peace and constitution-making processes have failed to achieve their respective goals. The peace processes in Somalia have not ended the violent conflicts, and the ongoing constitution-making process, which began in 2004, has also failed to produce a permanent, agreed-upon and Somali-owned constitution. Additionally, Somalia's peace processes have not resulted in a unified and secure country where constitution-making exercises could begin. Consequently, the government disregarded the peace processes and adopted constitution-drafting as a peace-making tool. Besides these failures, they did not advance reconciliation and inclusion.

## **Lack of Genuine Reconciliation**

Reconciliation, like many concepts in the social sciences, lacks a universally accepted definition.<sup>104</sup> Its meaning is shaped by cultural, historical and political contexts. The Stanford Encyclopedia of Philosophy describes reconciliation as a process and outcome, and it defines it as “an improvement in the relations among parties formerly at odds with one another.”<sup>105</sup> According to Galtung, reconciliation involves ending hostilities, healing psychological and emotional wounds, and rehabilitating both victims and perpetrators.<sup>106</sup> Reconciliation provides closure for past harms and establishes a foundation for sustainable peace and coexistence through the rebuilding of trust.<sup>107</sup> Furthermore, genuine reconciliation must address both emotional and material legacies and should not be limited to mere symbolic gestures of forgiveness or coexistence.

Neither Somalia's peace processes nor the constitution-making efforts have genuinely advanced reconciliation among groups and individuals in the country. The Arta Peace Process was the most effective. Most well-respected traditional leaders of the Somali clans have participated in the conference. A Somali form of reconciliation at the general level took place where some traditional leaders of the Hawiye clan provided apologies. However, most warlords who committed heinous crimes refused to participate in the conference because they were not recognized as leaders. Through their absence, they avoided accountability. Additionally, the conference did not include a clear outcome that addressed transitional justice issues. The delegates called for general reconciliation among Somalis, without mechanisms to account for past crimes.

104 See Noga Glucksam, “The Many Conceptions of Post-Conflict Reconciliation: Learning from Practitioners”, *Peacebuilding*, 24 June 2024, available at

<<https://doi.org/10.1080/21647259.2024.2370686>>

105 See “Reconciliation”, *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Metaphysics Research Lab, Stanford University, 2 August 2019, available at

<<https://plato.stanford.edu/entries/reconciliation/>>

106 See Johan Galtung, *Twelve Creative Ways to Foster Reconciliation After Violence*, *Intervention*, vol. 3, no. 3, 2005, pp. 222–234.

107 See Martina Fischer, “Transitional Justice and Reconciliation: Theory and Practice”, *Advancing Conflict Transformation: The Berghof Handbook II*, ed. Beatrix Schmelzle and Martina Fischer, Berghof Conflict Research, 2011, pp. 405–423.

In contrast, the warlords and faction leaders who were responsible for human rights atrocities dominated the Mbagathi Peace Process. Since they controlled the process, the conference did not directly address the issues of transitional justice. In passing, they called for general amnesty among the Somali groups and individuals. This self-serving approach to reconciliation and transitional justice was counterproductive for the state-building project. The Arta Peace Process<sup>108</sup> in Djibouti and the Mbagathi Peace Process in Kenya<sup>109</sup> assigned the task of reconciliation to the future government. Both charters called for the governments to establish a reconciliation commission. Instead of reconciling the groups, the peace processes focused on government formation, with participants preoccupied with the question of power-sharing: “Who should get what? The reconciliation was fake in the peace processes,”<sup>110</sup> argued one senior legal scholar and advisor in Mogadishu.

On the other hand, both Somalia’s Transitional and Post-Transitional governments did not use the constitution-making process to advance reconciliation, which could have been done through the establishment of a reconciliation commission both empowered and well-funded. Politicians did not consider this a priority. A former minister interviewed for this study stated: “The government leaders did not like the calls for reconciling with groups outside the process. They often said, ‘This is a federal government, not a reconciliation government.’”<sup>111</sup> This reluctance is understandable, as each reconciliation effort might trigger undesirable changes that could affect the government’s structure. Consequently, the successive governments failed because those outside the process either directly fought against them, and many others withheld their support.

With regard to the constitution-making efforts, during the latter part of the transitional governments, only six signatories dominated the process. In the post-transition period, the constitution-making process was manipulated by the presidents of the federal governments to reflect their political interests. Reconciliation was neglected.

Most interviewees highlighted two key issues. First, they noted the absence of genuine reconciliation among the groups and individuals in Somalia. Second, they attributed the challenges in making the state functional to this lack of reconciliation. However, one interviewee disagreed, stating: “Establishing authority by force should precede reconciliation.”<sup>112</sup> He added: “Consider the example of the Union of Islamic Courts; they successfully established authority by expelling warlords and returning properties to their rightful owners.”<sup>113</sup> This observation highlights the fact that politicians have largely prioritized dividing government positions over creating a secure environment or implementing a fair judicial system.

108 See Article 30 of the Transitional National Charter, available at

<<https://icric.gov.so/wp-content/uploads/2023/07/2000-ARTE-TRANSITIONAL-NATIONAL-CHARTER-2000.pdf>>

109 The Charter that resulted from the Mbagathi Peace Process mentions “reconciliation” in the preamble, saying the delegates are committed to reconciliation. Article 4 adds “reconciliation” to the values that would be used when interpreting the charter. Like the Arta Peace Process, Article 68 established National Reconciliation Commission.

110 Interview with a legal scholar who worked in the judiciary of the of the Federal Government of Somalia, Via Telephone, May 15, 2025.

111 Interview with a former minister, Mogadishu, June 2025.

112 Interview with an academic, Mogadishu, June 2025.

113 Ibid.

At the time of writing this study, Somalia is experiencing a constitutional crisis. The government aims to draft a new constitution, while the opposition, including the presidents of Puntland and Jubbaland, seeks to maintain the 2012 constitution. The post-transition governments have tasked the reconciliation to a department that reports to the Interior Ministry. The Truth and Reconciliation Commission<sup>114</sup> that the Federal Provisional Constitution ordered has not been established yet.

### **Lack of Inclusion of Women in Peace Processes and Constitution-Making**

Women's inclusion in peace processes and constitution-making has its roots in the human rights and democratic norms that the international community has been advancing since the 1960s. UN Security Council Resolution 1325 of 2000 recognized the disproportionate impact of armed conflict on women. Therefore, it urged Member States to “ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”<sup>115</sup> The subsequent Resolution 1820 of 2008 considered sexual violence a war crime, and called for the states and conflicting parties to protect women and girls.<sup>116</sup> Moreover, UN General Assembly Resolution 66/130 recognized the importance of women's political participation and urged Member States to combat discrimination and gender stereotypes and review electoral systems to meaningfully include women in all levels of decision-making.<sup>117</sup> Inclusion of women is not just about symbolic representation; it is about substantively affecting both the process and the outcome of peace processes and constitution-making efforts.<sup>118</sup> Women must influence the peace processes and constitution-making processes through both formal representation in the peace negotiation and the constituent assembly, as well as through civil society activism. To contribute to post-conflict peacebuilding meaningfully, women must have the ability to mobilize, gain recognition and political weight, and be part of the process, including through quotas, to ensure their perspectives and interests are reflected in the processes and outcomes.<sup>119</sup>

In Somalia, peace processes and constitution-making efforts have partially included women. Many women participated in both the Arta Peace Process in Djibouti and the Mbagathi Peace Process in Kenya, albeit with limited influence. In fact, Asha Haji Elmi co-chaired the Arta Peace Process. The Transitional National Charter reserved 25 seats for women out of 245 members of the Assembly—about 10 per cent. The Mbagathi peace process in Kenya,

114 See Article 111I of the Federal Provisional Constitution, available at <[https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted\\_Constitution\\_ENG\\_Final-for-Printing\\_19-SEPT12-1.pdf](https://icric.gov.so/wp-content/uploads/2023/07/2012-Adopted_Constitution_ENG_Final-for-Printing_19-SEPT12-1.pdf)>

115 UN Security Council, *Resolution 1325 (2000)*, S/RES/1325, 31 October 2000, United Nations Digital Library, available at <<https://digitallibrary.un.org/record/426075?v=pdf>>

116 UN Security Council, *Resolution 1820 (2008)*, S/RES/1820, 19 June 2008, United Nations Digital Library, available at <<https://digitallibrary.un.org/record/629882?v=pdf>>

117 UN General Assembly, *Resolution 66/130: Women and Political Participation*, A/RES/66/130, 19 December 2011, United Nations Digital Library, available at <<https://documents.un.org/doc/undoc/gen/n11/466/62/pdf/n1146662.pdf>>

118 Lone Jessen and Natalie F. Hudson, *Women's Inclusion in Peace Processes: Using Behavioral Insight to Enhance Mediation Practices and Conflict Parties Approach to Gender Equality*, United Nations Department of Political and Peacebuilding Affairs, 2022.

119 Aili Mari Tripp, “Women's Mobilisation for Legislative Political Representation in Africa”, *Review of African Political Economy*, vol. 43, no. 149, 2016, pp. 382–99.

through the Transitional Federal Charter of 2004, allocated at least 12 per cent.<sup>120</sup> During the discussions leading to the end of transition, political leaders promised women that they would allocate a 30 per cent gender quota in the draft constitution. That did not happen. The Federal Provisional Constitution, which resulted from the charters, remained non-committal, saying: “Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions.”<sup>121</sup>

In practice, women’s political participation was between 10 and 24 per cent for the last 25 years. Women in civil service account for only 24 per cent of employees, of which 80 per cent are in the lower grades.<sup>122</sup> Even though there is some progress, women face multiple challenges in participating in politics in Somalia.<sup>123</sup> Additionally, when MP Maryam Arif Qassim led the constitution committees, she presented a draft allowing women to pass citizenship to their children; however, subsequent drafts excluded that article.

#### **Lack of Inclusion of Marginalized Groups in Peace Processes and Constitution-Making**

In Somalia, referring to clans as “minority” or “majority” is problematic due to the absence of a census detailing the sizes of different communities. This study instead uses the terms “armed” and “unarmed” clans when addressing issues of marginalization. The peace processes have partially included unarmed groups through a 4.5 clan power-sharing arrangement, which allocates 31 total parliamentary seats to them, while each of the four armed clans receives 61 seats. However, there is disagreement regarding the fairness of this allocation. Many individuals from unarmed communities believe the decision reflects the subjective decisions of the leaders of armed clans.<sup>124</sup> Conversely, others argue that unarmed clans are over-represented and contend that they would not even get 31 seats through a popular, first-past-the-post election, or even a proportional representation system.<sup>125</sup> Ultimately, only a credible and fair census would clarify whether this assessment is justified. That said, the inclusion of marginalized groups in the Senate is very poor. The Banadiri communities and many unarmed clans are not represented in the Senate.

120 See Article 29 of the Transitional Federal Charter.

121 See Article 3 of the Federal Provisional Constitution.

122 See Awalle Hussein Abdi, “Using Meritocracy to Reform Somalia’s Public Service: Challenges and Opportunities”, Heritage Institute, 2025, available at <https://heritageinstitute.org/wp-content/uploads/2024/12/MERITOCRACY.pdf>, p. 17.

123 See Ladan Affi and Zainab Hassan, *Women & Politics: Overcoming Barriers of Political Representation in Somalia*, available at <https://heritageinstitute.org/wp-content/uploads/2022/08/Women-and-Politics-July-2022.pdf>

124 See Mohamed A. Eno, “Inclusive but Unequal: The Enigma of the 14<sup>th</sup> SNRC and the Four-Point-Five (4.5) Factor”, 2007.

125 Interview with a civil society member, Mogadishu, June 2025. One of the religious scholars who participated in the Arta Peace Process narrated the discussion that took place in Arta when some of the leaders of the unarmed groups rejected the share given. Sheikh Omar Faruq, a well-respected scholar, convinced the unarmed groups to accept the deal.

The exclusion of marginalized communities could be understood by reflecting on the past practice of including relevant actors. A close look at the participants in the peace processes and constitution-making efforts reveals a problematic trend in the inclusion of all the relevant actors. Civil society dominated the Arta Peace Process to the extent that the government of Djibouti refused to accept warlords and faction leaders to represent their respective areas. As individuals, they could participate in the conference.

The warlords and faction leaders who dominated the Mbagathi Peace Process reciprocated this and marginalized the civil society-led Transitional Government. They also excluded Islamists, business leaders, intellectuals and civil society leaders. The exclusion of the Islamists furthermore contributed to the violent conflict between the Islamic Courts and the government. In 2008, the Islamist leader, Sharif Sheikh Ahmed, became President<sup>126</sup> and led a unity government that consisted of the former Transitional Federal Government and the Islamist groups. This did not end the problems stemming from Islamist groups. Only the moderate groups joined the government, while Al-Shabaab and other extremists remain outside of the political process. That said, the above trend shows that whichever group could mobilize external support would dominate the outcome and ignore the interests of other groups.

The same practice has been true with the constitution-making process since 2006. During the transition, the six signatories have excluded the rest. In particular, many politicians from the South, particularly Mogadishu, complained about the Garowe I and Garowe II agreements.<sup>127</sup> During the post-transition period, the government of the day appointed allies, friends and family members to the constitution committees. For instance, Puntland withdrew from the constitution committees (2012–present) several times and stopped cooperating with Mogadishu, blaming the government for not accommodating its interests. It blamed President Hassan Sheikh for manipulating and dominating the constitution-making process.<sup>128</sup> More importantly, the last three committees under two presidents produced irreconcilable draft constitutions.

The lesson from the above practice is that only groups that mobilized and demanded inclusion achieved it. As Tripp argues, marginalized groups should mobilize and pressure policymakers to be included in the decision-making at all levels.<sup>129</sup>

126 Al-Jazeera, "Somali MPs elect new president", 31 January 2009, available at <<https://www.aljazeera.com/news/2009/1/31/somali-mps-elect-new-president>>

127 See the Garowe Agreements I and II, available at <<https://peacemaker.un.org/en/documents/garowe-principles-i-and-ii>>

128 Puntland State has severed relations with the last four Federal Governments. Since 2023, President Said Deni of Puntland has refused to participate in the NCC meetings.

129 See Aili Mari Tripp, "Women's Mobilisation for Legislative Political Representation in Africa", 2016.

# 09 *Conclusions and Way Forward*

This study explored the relationship between peace processes and constitution-making efforts in Somalia, reviewing relevant literature that informs the research. It found that both the peace processes and constitution-making efforts failed to meet their respective goals of ending the violence and enacting a unified political and institutional framework for the country under a constitution. Furthermore, the government has failed to create a secure environment where citizens can freely participate in constitution-making.

Most transition tasks remain incomplete, despite the establishment of six governments since 2000. Chief among these tasks is advancing reconciliation, an aspect that authorities have largely ignored. The processes also failed to fully include women and marginalized communities. Whichever group or groups had an advantage or controlled the peace processes and the constitution-making efforts weaponized them to exclude and exploit others.

Regarding the nexus between peace processes and constitution-making efforts, the literature reviewed in this study reveals two distinct approaches to reconciling the two. One view combines the two, considering constitution-making as a peace process. According to Ludsin, this approach has multiple issues that can undermine the short-term goals of peace and the long-term objectives of constitution-making. The other view recognizes the differing goals of each process and recommends sequencing them through a multi-stage approach. In this model, groups reach an interim framework agreement that prioritizes security and reconciliation, while the constitution-making process would commence after the transition tasks are completed.

Both approaches are currently being used. The government is advocating for the combination of constitution-making and peace processes, asserting through its constitution-making initiatives that Parliament can amend the constitution as it sees fit, including altering its fundamental components. Meanwhile, most opposition groups prefer the multi-stage approach. They argue that the major components of the political settlement—power-sharing, parliamentary system, federalism and democracy—have already been established and cannot be changed by Parliament.

These competing views have had concrete implications in the progress of the state-building project, which has been, at best, very slow. The main reason is that the essence of the state is contested among political forces. Most, if not all, of Somalia's political actors are sceptical about the survival of the Third Republic, which was established through the peace processes in Djibouti and Kenya. Somaliland leaders are pursuing secession from Somalia. Since 1991, Somaliland has not been part of the state-building project in Somalia, and the Hargeysa administration did not participate in the Arta and Mbagathi peace processes.

Concerned about the viability of the Third Republic, the leaders of the Federal Government of Somalia have already unilaterally changed the major components of the political settlement by introducing a presidential system and a more centralized model. President Hassan Sheikh Mohamud and his parliament approved an Electoral Law, a Political Parties Law, and an Election and Boundaries Commission Law.<sup>130</sup>

Conversely, Puntland, Jubbaland and many national opposition leaders rejected the government's approach, expressing dissatisfaction with its policies. They suspended the relationship with the Federal Government of Somalia.<sup>131</sup> In 2025, Puntland President Said Abdullahi Deni announced that he would host a national dialogue.<sup>132</sup> Jubbaland President Ahmed Mohamed Islam also called for a national conference to discuss the way forward.<sup>133</sup> Many opposition leaders, including former presidents Sharif Sheikh Ahmed and Mohamed Abdullahi Farmajo, as well as three former prime ministers (Abdi Farah Shirdon, Hassan Ali Kheyre, and Mohamed Hussein Roble), also rejected the government's proposal and called for a national dialogue.<sup>134</sup> Different camps agree that the Third Republic is facing significant challenges. However, they seem to be pursuing self-serving agendas that are incompatible.

To overcome the current challenges, Somalia's political class must engage in a new national dialogue to chart a path forward. Rather than prescribing specific institutions for Somalia, a platform or forum is needed for Somalis to evaluate the progress of state-building efforts and explore potential solutions.

In reconciling peace processes and constitution-making, one possible solution is for a national dialogue that leads to a multi-stage process that first establishes a comprehensive peace agreement. This agreement would provide the elite with time to create a secure environment, build trust and design a process for a permanent constitution. Furthermore, previous peace processes have deferred the critical issue of reconciliation to the governments. Unfortunately, for the past 25 years, various administrations have neglected to address the atrocities that occurred in earlier decades. Somali leaders often prioritized discussions about power-sharing and politics while sidestepping the more pressing issues of reconciliation, security, democracy and elections. It is essential that the reconciliation issue be included in any upcoming discussions among Somali leaders.

130 See Somalia Heading the Wrong Way, Says the Opposition. Garowe Online, available at <<https://www.garoweonline.com/en/news/somalia/somalia-headed-in-wrong-direction-opposition-says>>.

See also the completed four chapters at the Independent Constitution Review and Implementation Committees page, available at <<https://icric.gov.so/#>>

131 See Hiiraan Online, "Puntland, Jubbaland accuse federal government of abuse of power", 2025.

132 See Wardheer News, "Puntland President Calls for Urgent National Conference amid Political Deadlock in Somalia", 15 June 2025, available at <<https://wardheernews.com/puntland-president-calls-for-urgent-national-conference-amid-political-deadlock-in-somalia/>>

133 See Garowe Online, "Somalia: Jubaland Accuses President Hassan Sheikh of Undermining Federalism", 13 May 2025, available at

<<https://www.garoweonline.com/en/news/somalia/somalia-jubaland-accuses-president-hassan-sheikh-of-undermining-federalism>>

134 See the communiqué issued by the Somali Rescue Forum in which a dozen politicians stated their position on the government's constitution and election initiatives.

Finally, the national dialogue should address the inclusion of women in the political process, which so far has largely been tokenistic. The international community has been the primary advocate for women's inclusion at all levels. At the Federal Government level, women make up only 20 per cent<sup>135</sup> of the members in both chambers and just 24 per cent<sup>136</sup> of the civil service, with most occupying lower-level positions. Interestingly, female university graduates constitute nearly half of all graduates. More importantly, workplace conditions are not conducive to supporting women.<sup>137</sup> The study calls for a genuine discussion on this matter.

135 Ladan Affi and Zainab Hassan, *Women & Politics: Overcoming Barriers of Political Representation in Somalia*, Heritage Institute for Policy Studies, 2022, available at

<<https://heritageinstitute.org/wp-content/uploads/2022/08/Women-and-Politics-July-2022.pdf>>

136 See Awalle Hussein Abdi, *Using Meritocracy to Reform Somalia's Public Service*, 2025.

137 Ladan Affi and Zainab Hassan, *Fostering Safe and Inclusive Workplaces for Women in Somalia*, Heritage Institute for Policy Studies, 2024, available at

<<https://heritageinstitute.org/wp-content/uploads/2024/11/Fostering-Safe-Workplaces-Nov-2024.pdf>>

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