

**REPORT OF THE SEMINAR ON FEDERALISM AND
CONSTITUTIONAL AFFAIRS FOR THE SOMALI
TRANSITIONAL FEDERAL PARLIAMENT**

BY

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1. INTRODUCTION

This is a report of the Seminar on Federalism and Constitutional Affairs held for the Somali transitional Federal Parliament in Baidoa, Somalia from May 3rd to May 8th 2006.

The Seminar was organized and supported by the UN Political office for Somalia (UNPOS) in conjunction with the office of the speaker of the Somali Transitional Federal Parliament.

The Seminar was conducted by a team of 5 persons, under the leadership of Ms. Kamar Yousuf, Peace Building Project Officer, UNPOS who co-ordinated the whole process. The other members of the team were:-

1. David Adedayo Ijalaye, Emeritus Professor of Law, Obafemi Awolowo University, Ile Ife, Nigeria. He was a legal Counsel to the UNOSOM – 11 in 1993 – 1995.

Professor Ijalaye made the keynote presentation entitled, *“The Current Somali Transitional Federal Charter, The Somali Constitution of 1960 and the Constitution of The Federal Republic of Nigeria 1999 As Well As Relevant Provisions of Other Federal Systems – A Comparative Analysis”*

2. Ahmed Issack Hassan – A constitutional Lawyer from Kenya. He is an Advocate of the High Court of Kenya practicing Law in Nairobi and a former member of the Constitution of Kenya Review Commission (CKRC).

He was a discussant of Professor’s Ijalaye paper and presented an analysis of the Somali Transitional Charter and the 1960 Somali Constitution. He chaired the plenary sessions of the Seminar and the Group work.

3. Abdullahi A. Ibrahim – A Somali National educated in Kenya. He provided expert advice in the translation of the seminar papers and programme from English to Somali. The availability of the seminar documents in Somali enabled all the participants take part in the Seminar in a more meaningful and informed manner.
4. Ali Mohamed Ibrahim – A trained Graduate Teacher from Kenya and a former National staff of UNICEF – Somalia. He provided the translation and interpretation services during the Seminar as well as recording the daily proceedings there.

2. **BACKGROUND**

1. The Somali National Reconciliation Conference (SNRC) was successfully completed with the adoption of a Transitional Federal Charter, inauguration of the Transitional Federal Parliament (TFP) (August 2004), the election of the President (October 2004), the endorsement of the Prime Minister and the Transitional Federal Government (TFG) (December 2004), and the announcement of the Constitutional Commission in April 2005.
2. The Charter envisages the continuation of the reconciliation process and the establishment of federal, regional and district administrations. Since the concept of federalism is new to Somalis, there seems to be no clear grasp of what is required, and the procedures for constituting the regional administrations. Both contain elements that could give rise to future disputes that could jeopardize the transitional political process. It is, therefore, imperative that members of the TFP understand the fundamental issues related to a federalist structure of government and the constitutional review process necessary for national unity and reconciliation.
3. The TFP faces the daunting task of creating an efficient and inclusive national political and legislative framework. It must work with the Government to create effective regional and district administrations for overseeing key social services, provide the conditions for security and the rule of law, and lay the groundwork for reconstruction and development initiatives. It must achieve this with visionary leadership and credibility that inspires the confidence of the Somali people and reinforces its mandate to lead Somalia into a new era of peace and reconciliation.
4. To improve the capacity of the TFP to respond to legislative and constitutional challenges, UNPOS organized the seminar so that the TFP and its leaders are trained in basic principles of parliamentary democracy and understand the Charter and the workings of other legislative assemblies. A national and federal debate is essential and it should be informed by comparative African/international experiences.
5. The United Nations Political Office for Somalia (UNPOS) was established on 15th April 1995 in order to assist the Secretary-General's efforts to advance the cause of peace and reconciliation in Somalia through contacts with Somali leaders, civic organizations and the States and organizations concerned. UNPOS, in addition to maintaining contacts with the Somali parties, neighboring countries and other international actors and

organizations concerned, has been monitoring closely the situation related to Somalia and assisted the Secretary-General in providing periodic briefings and written reports to the Security Council. UNPOS continues to undertake sustained efforts in support of initiatives by member states and regional organizations in the search for peace and reconciliation in Somalia.

The seminar was organized by UNPOS as part of its continuous support to National reconciliation in Somalia and to assist the new governance structures during this transition period.

3. **SEMINAR OBJECTIVES AND EXPECTED RESULTS/OUTPUT**

The seminar was timed to take advantage of the new found unity between the Speaker and the Transitional Federal Government after the year long stalemate that was brought about by their dispute on the deployment of foreign troops from the frontline states in Somalia. The agreement between the two in Yemen in January 2006 enabled Parliament to meet in Baidoa and for the Transitional Federal Government to relocate from Jowhar to Baidoa.

The political context and prevailing conditions fitted in well with the objects and purpose of the Seminar.

(A) The Objectives of the Seminar were to:-

- To defuse the tension and potential triggers between members of the TFP, the Executive branch, as well as some ministers that might undermine the unity and cohesion of the Transitional Federal Government (TFG) and the Somali reconciliation process.
- To sensitize the TFP on the immense challenges of constitutional, legislative and administrative matters.
- To provide a comparative analysis of Federal Systems giving examples of problems and prospects.
- To discuss the challenges of nation-building and governance in transition.
- To examine constitutional issues such as key aspects of the Transitional Federal Charter for Somalia and Internal Rules of the Parliament, and to ensure full understanding of their contents.

- Stimulate a dialogue on the Transitional Federal Charter, and the Internal Rules of Parliament bearing in mind the old Somali Constitution of 1960.
- Develop a clear strategy to implement the terms of the Charter. This will include raising awareness of the provisions of the Charter; key policies and laws; security, and devolution of power.
- Develop guidelines, procedures and work program for the new Constitutional Commission for Somalia.

The expected outcomes of the seminar and expected achievements were:-

- Improved understanding of the Transitional Federal Charter, and exposure to federalist government structure, as well as important constitutional matters such as the principle of separation of powers., devolution of Powers, Parliamentary and Presidential System of Government, etc.
- Increased level of contact and dialogue among different parliamentarians. This will not only foster peace, but it will also result in increased capacity to make legislative decisions.
- Overall reduction in the levels of conflicts; an increase in capacity to address differences in opinion through dialogue and avoidance of violent means.

The participants were expected to get a clear understanding and appreciation of their role and functions as Parliamentarians i.e. Representations, Law Making, Oversight of Government and create the enabling environment for democratic governance and constitutional development.

4. **SEMINAR METHODOLOGY – Form, Process and Content.**

The office of the Speaker and the Secretariat of the Somali TFP provided invaluable administrative support during the conduct of the Seminar:-

- in the registration of the Participants,
- manning the daily attendance Register,
- distribution of Seminar materials,
- organization of the groups during group work.

The Seminar was conducted as if it was a session of the Parliament. After the Speaker officially opened the Seminar, he left his deputy to continue to chair all the other sessions. The Deputy Speaker remained in the chair throughout the Seminar from its opening to the end of each day.

The presence of the Deputy Speaker in the chair contributed to the large turnout and presence of the participants in the Seminar as members had to get his permission to go out.

The Seminar was scheduled to begin at 9 O'clock in the morning and end at 4 O'clock in the afternoon with a morning tea break and lunch break. After representations from the members and consultations with the Speaker, the Programme was revised to start at 8 O'clock in the morning ending at 2 p.m. in the afternoon. The programme for Friday was revised to end at Midday to enable Members go for the Friday Prayers.

After the opening speeches of the Speaker and the UNPOS representative, Proceedings of the Seminar commenced with the presentation by Professor D.A. Ijalaye of his paper entitled, *“The Current Somali Transitional Federal Charter, The Somali Constitution of 1960 and the Constitution of The Federal Republic of Nigeria 1999 As Well As Relevant Provisions of Other Federal Systems – A Comparative Analysis”*

PRESENTATION – PROF. D.A. IJALAYE

Comparative study between the 1960 Somali Constitution and the present Charter .vs. the Nigeria Constitution 1960 – 1999. Presentation examined/discussed the Federal aspects of the Somali charter and the Nigerian Constitution and highlighted common provisions in the two documents and after critical analysis of specific provisions peculiar to Somalia, suggests areas where each could borrow from the other.

The Professor's Presentation were interpreted into Somali by the translators and so were his answers during the next sessions.

The presentation was then followed by a Plenary discussion.

PLENARY DISCUSSION/QUESTION AND ANSWER

This session was interactive discussion mainly in the form of question and answer. It has been observed that member's views touched on wide ranging

aspects of the charter. Members meaningfully and enthusiastically participated in the interactions throughout.

It was observed that for many reasons members are either not conversant or hold completely opposing views on the interpretation of certain sections of the charter. The realization of the women quota (12% of 275) as stated clearly in the charter continues to generate gender polarization/division. In their pursuit to transform the current charter into a future constitution, members will need to build on the following sections with clarity and proper interpretation.

- Citizenship and dual nationality
- Federalism - Form and mode of sharing powers and resources.
- Affirmative action for women and minorities.
- Separation of powers between the executive and the legislature.
- Appointment of cabinet members from the Parliament.
- Supremacy of the transitional charter.
- The Judicial System – hierarchy, power and functions of the different courts.
- The place of Religion, Culture in the Constitution and Legal System.

The next presentation was made by Ahmed Issack Hassan with a discussion, analysis and commentary on the Transitional Charter and the Paper by Professor IJalaye.

Mr. Ahmed expounded and discussed in detail sections in the Charter where members had shown interest the previous day. Certain sections of the Charter i.e. Citizenship, Legislature, Executive, Judiciary, devolution and the different levels of governments in different Federal Systems were compared with Constitutions in some other countries a notable example being Nigeria and South Africa. He also shared the Kenyan experience in the discussions on the various sections of the Charter.

After presentation the floor was open for general discussion in the form of question and answer. Members demonstrated good understanding of many issues while at the same time expressing divergent opinions with respect to certain others. It is needless to mention the majority are able and willing to meet the expectations of the Public. However it appears that some members' strong opposition to some fundamental issues like the adoption of federalism is a cause to worry with the potential to break the progress made during the reconciliation.

While this Seminar aims to build the parliaments capacity to transform the current Charter into a Constitution within the given time frame, progress in

this field can only be achieved if members start to build confidence and trust among themselves. It has been established that at least one requirement in the Charter has already been breached i.e the women quota. An attempt by the few women members to amend the Charter so as to fulfill the criteria has been in vain.

At the end of the Interactive Plenary Sessions, the participants were divided into Six (6) thematic groups as follows:-

- 1) Citizenship.
- 2) System of Government.
- 3) Leadership and Integrity and the recall of MPs.
- 4) The office of the Attorney General.
- 5) The Judiciary.
- 6) Devolution of Power.

Each group was given its terms of Reference and guidelines for discussion in the group work. Each group was to have its own Chairman who would also do reporting of the group work to the Plenary Session.

Group work produced a more interactive session as members became more involved in the process paying attention to assignments. Each group had to defend its presentation in the Plenary enabling participants to own the process and determine the way forward to issues.

The group work and Plenary discussions after the group reports was quite robust and focused. The discussions brought out the gaps and weaknesses that are in the Charter and the various Provisions that had been breached or not implemented within the given time.

These discussions also exposed sharp differences of opinion and divide between the members on some key issues like, Federalism, Citizenship, and Affirmative action for women.

The group reports and the Plenary discussions were then analyzed and reduced into key recommendations and action to be taken by the Government and Parliament. These analysis and recommendations are set out in detail in the Sections to follow.

The Seminar ended on a high note with an elaborate closing ceremony presided over by the Deputy Speaker and the Prime Minister of the Transitional Federal Government. Vote of thanks were given by the Chairpersons of key Parliamentary Committees. All the Speakers expressed gratitude to UNPOS for facilitating the Seminar. There was total unanimity

on the need the members had for such a Seminar and how useful it had been for them. They requested for similar training and capacity building for the Committees of Parliament.

5. **ANALYSIS AND COMMENTARY**

Majority of the Members of the Parliament demonstrated a good understanding of the Charter. A substantial number are Professionals in different fields and they displayed their expertise in those areas during their Presentations. Not all the members were delegates at the Somali National Reconciliation conference but were appointed to the Parliament on the 4.5 clan formula. Some of these members occasionally addressed issues that were resolved at the Conference e.g. on Federalism and Dual Citizenship.

There were sharp differences between the Members on some issues that generated a lot of heated debate and passion. These were on Federalism, Dual Citizenship and Affirmative Action for women representation in the Parliament.

On the issue of the affirmative action for Women in Parliament Members were agreed that although article 29 of the Charter provided for the Membership of Parliament to include at least 12% of the total, in actual fact they were only 8%. This was because of the failure by some clans to include Women nominees in their List during the selection process.

What generated debate was where to place the blame for the violation of the Charter and what action Parliament should take to satisfy the requirements of article 29 of the Charter.

Members debated the possibility of amending the Charter to give women more special seats to fill the gap or to take the matter to the yet to be created Supreme Court which is empowered by the Charter to deal with issues relating to the interpretation of the Charter.

On Federalism the debate was concentrated more on the need for that System of Government than on the substantive issues of devolution of Power and sharing of resources. Issues that were resolved at the National Conference were again re-opened. Although the Charter states that Somalia shall be a Federal state, Members still revisited the desirability and viability of Federalism for Somalia.

There was a clear division of the Members on those for and those against federalism. The supporters of federalism relied on the Charter and argued for the enactment of appropriate legislation for the setting up and

functioning of the structures of the Federal State. They were however cognizant of the Practical social economic, political and financial difficulties that militate against the full realization of this objective.

Those against federalism maintained that Somalia was not ready for this System. That Somalia is a Nation – State with a homogenous attributes – one people, one language, one religion, etc. They also argued that the 4.5 plan adopted at the Conference for the sharing of power and resources was not compatible with Federalism. In any event, they argued that decentralization may very well be better suited to the situation in the country.

This debate is far from over and will only be resolved by the Somali people when they hopefully vote on the new Constitution that is intended to be drafted by the recently appointed Constitutional Commission.

Another issue that generated a lot of controversy and debate was on dual citizenship. There was a clear divide between those who supported a more liberal and expansive interpretation of the dual citizenship provision in the Charter and those that favoured a narrower and restrictive interpretation.

Article 10 of the Charter provides for citizenship. It defines citizens to include those currently holding Somali Nationality, those born in Somalia and those whose fathers were born in Somalia. The section also permits dual citizenship and mandates Parliament to enact appropriate legislation within 12 months.

It was observed that Parliament was already in breach of article 10 of the Charter as the 12 months have lapsed and no Law has been passed.

It was noted that a large number of Somali citizens hold dual citizenship of other countries. Indeed, during the group work, the Committee on Citizenship reported that a half of its members held dual citizenship. Those who continued to hold their Somali Nationality or did not leave the country argued for restrictions on dual citizenship.

They proposed that those holding Public or Constitutional offices such as the President, The Ministers, MPs, Judges, etc should not hold dual citizenship and their loyalty should only be to their country – Somalia. This was vehemently opposed by the Members who hold dual citizenship. They sought to expand the categories of persons who can be Somali citizens to include those of Somali descent, those from Somali speaking territories and nationals of Somalia who acquired other nationalities. They asserted that

although the 1960 Somalia Constitution did not allow for dual citizenship, it provided for the union of all Somalis living in the Five regions that formed the Greater Somalia – British Somaliland, Southern Somalia, N.F.D., Djibouti and Ogaden region of Ethiopia.

Female Parliamentarians were also concerned at the discrimination of Somali women by article 10(2) of the Charter which gave citizenship to children whose fathers were born in Somalia. They argued that children whose fathers are foreigners but whose mothers were born in Somalia are denied equal treatment as the others. They pressed for the recognition of the Somali Woman's right to confer citizenship as in other Jurisdiction and especially in Israel where such a right is Superior. Those in support of the article said that it was in conformity with the customs and faith of the Somali people which is a Patrilineal Society.

This debate on dual citizenship is certainly going to continue and will have to be settled in the detailed legislation to be enacted by Parliament. Such Law will also contain the acquisition of citizenship by registration and naturalization.

The discussion on the Judicial System recognized the need for Legislations to enable the proper operation of the Courts. The Charter does not give much detail on the hierarchy and Jurisdiction of the Courts. Neither does it indicate where the family Courts will be placed.

The place of Islam in the Judicial System and the linkage between the Courts and traditional dispute resolution mechanisms which have evolved overtime were matters that occupied a lot of time in the discussions also.

On the Executive, the debate was largely on the suitability of the dual executive adopted in the Charter which was also borrowed from the 1960 Constitution. The structure of the executive is neither one in a pure Parliamentary System of Government nor a Presidential one but rather a hybrid of the two.

Members discussed the need to have an executive structure that promotes good governance and does not lend itself to conflicts between the President and the Prime Minister. The pure Presidential System as in Nigeria was identified to be a good example of one less prone to conflict and enhances the separation of Powers between Parliament and the Executive. This need for the clear separation of the Executive from the Parliament was evident in the Seminar when an International NGO, National Democratic Institute (NDI) held a parallel Seminar for Members of the Cabinet and 27 of these

Cabinet Ministers, who were also Members of Parliament, had to go for that Seminar.

It was also noted that article 46(5) of the Charter is in conflict with article 47(1)(b) on the qualifications of the Cabinet Ministers as Members of Parliament. There were some Members who felt that article 46(5) was amended by Parliament in its last sitting but others disputed this stating that what was passed by the Parliament was a motion to amend the Section but not the amendment bill itself.

This argument brought to the fore the need for Members to understand the whole process of Law making and of amending the Constitution and the Publication of the same through an official Publication or Gazette.

A survey of the Charter revealed a large number of legislations that is required to be enacted by Parliament. Some of these legislation have a time limit within which they must be enacted. Yet to date Parliament has only considered the Bill for the Constitutional Commission. It is way behind in its legislative Calendar and Members resolved to work through the different Parliamentary Committees in the discharge of their legislative mandate.

6. **RECOMMENDATIONS**

1. A similar training/Seminar for Members of the Parliamentary Committees on relevant thematic areas e.g. Federalism, Constitutional Affairs, Gender, Citizenship and the Constitutive Process, Judiciary and the Legal System, etc. would be very useful and helpful in enhancing the capacity of the members in executing their mandate.
2. A collaborative and inter-agency consultative workshop for key Members of Parliamentary Committees, Line Constitutional Commission and Government Ministries would also be desirable for example a consultative meeting comprised of the Parliamentary Committee on Constitution, the Constitution Commission and the Ministry of Justice would help in creating a synergy in how they will work together in their different roles to achieve the desired results.
3. The Transitional Charter requires a thorough audit by experts to isolate all the Provisions that refer to Laws to be passed by Parliament. These articles or Provisions need to be collated and a compendium prepared showing the relevant article, the Law that is required, and the time frame, if any. For

example Article(5) requires a law on Citizenship and gives Parliament 12 months to enact that Law.

4. Article 71(2) of the Charter provides that the 1960 Somalia Constitution and other National Laws shall apply in respect of all matters not covered and not inconsistent with the Charter.

Both the Charter and the 1960 Somalia Constitution are available but not the “other National Laws”. There is no Institutional Memory for these National Laws. They need to be collected and collated if circumstances permit and an index prepared. This will compliment the work of The Transitional Parliament in the enactment of the new legislation required under the Charter.

5. In addition to the capacity building for the Members of the Parliament, there will also be a need for another support of a technical kind. Both the Institution of the Parliament and/or the Government Department responsible for preparing the Bills for presentation to Parliament requires the assistance of legislative draft persons. Such legal experts will offer invaluable advice and service in the preparation of the many bills that will require to be enacted into legislation by the Parliament.
6. Parliament also requires support in strengthening its Secretariate through training in the provision of recording facilities (hansard) and translation services.
7. Where the training or seminar is being done by Non-Somali speaking experts and Professionals, it is necessary and desirable to translate the written materials in Somali which is the National and Official Language.

7. CONCLUSION

The Seminar for the Somali Parliamentarians on Federalism and Constitutional Affairs organized by UNPOS was very successful and met its objectives. The Seminar was unprecedented in that it was the first such training held by any agency for such a large number in Somalia.

The participants demonstrated a high level of responsibility, commitment and dedication throughout the period of the Seminar. The request for more of such trainings and capacity building by different Parliamentary Committees was borne out of the realization of the need to structure them in Focus groups and Committees. It is hoped that others will follow in the

footsteps of UNPOS in the conduct of such trainings and support to the Transitional Federal Government of Somalia and the other Federal Institutions established under the Charter.

*Annexures – Seminar
Programme and the Papers
Presented in English and Somali*

*Monday 15th May 2006
Nairobi, Kenya.
Ahmed Issack Hassan.*

END