

Somalia's Democratic Transition:

A Framework for Electoral System Design

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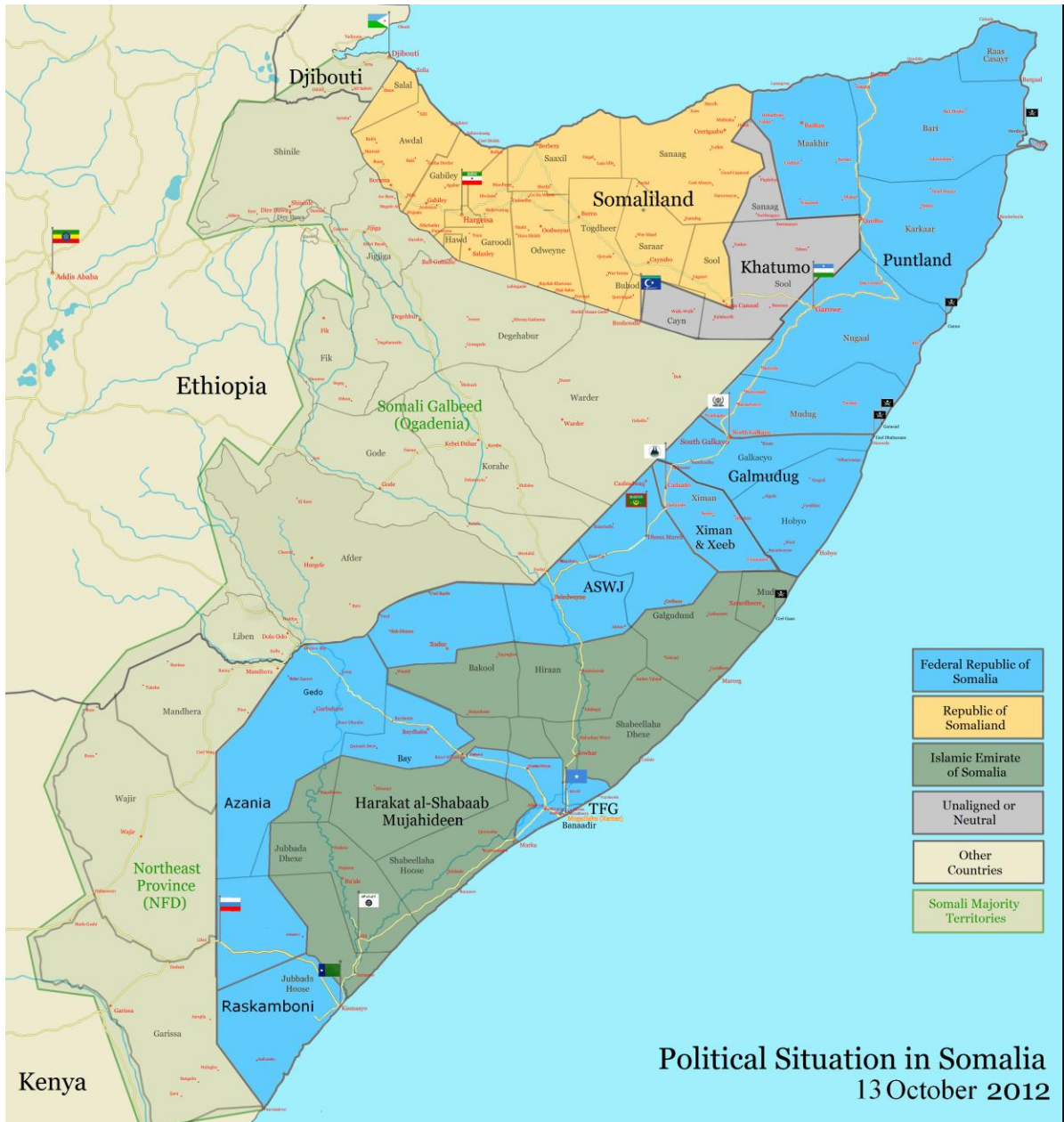
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Approximate Political Situation (Fall 2012)



I. Circumstances of the Transition

After nearly two decades of state collapse – characterized by civil war, fractious clannism, religious extremism, and a revolving door of failed central governments – Somalia stands in a unique position among nations. The roots of these political and security challenges extend back to the dictatorship of Sayid Barre, whose 22-year regime implemented a brand of “scientific socialism” that sought to unravel Somalia’s most enduring social institution, the clan. Yet a series of costly conflicts with Ethiopia, along with Barre’s heavy-handed style of governance, destabilized the regime and led Barre to resurrect clan politics as a mechanism for political survival. Resistance movements began to emerge, with well-funded clan-based militias that ultimately succeeded in overthrowing Barre in 1991. In the political vacuum that followed, sub-clans fought for power as Somalia fell into a disastrous and costly civil war that prompted the UN to conduct one of its first and most ambitious peacekeeping interventions – United Nations Operation in Somalia (UNOSOM) I and II. The United States contributed military forces to the stabilization effort as well, beginning with the United Task Force (UNITAF), which was sanctioned by the UN following UNOSOM I in 1992, and preceded the more expansive UNOSOM II. However, after 18 U.S. Army Rangers were killed in an episode that provoked outrage and raised questions about the value of the peacekeeping mission, international intervention forces gradually scaled back their involvement and withdrew entirely by 1995.

The following decade witnessed nearly 20 attempts at political reconciliation. Repeated conferences and summits were held – both inside Somalia and abroad – each with a similar mix of clan representatives, regional politicians, and militia leaders all working toward a new configuration of central governance. Yet, these efforts produced little compromise and no central authority that was seen as legitimate by Somalis across the country. In 2004, the acting Somali government endorsed the Transitional Federal Charter, and a new Transitional Federal Government (TFG) was established later that year after members of the transitional parliament elected a president, Abdullahi Yusuf, through a vote held in Nairobi, Kenya. The TFG’s authority proved nominal, and their efforts to consolidate political control ran into an emerging Islamist movement – the Islamic Courts Union (ICU) – that set up parallel systems of governance and judicial administration throughout Mogadishu.

Worried about religious extremism and sensitive to the claims of Greater Somalia professed by more extreme factions within ICU, Ethiopia intervened militarily in 2006 to help re-establish the TFG’s authority by removing the Islamists from Mogadishu. Unfortunately, this military action reinforced the impression that the TFG was a product of foreign meddling and not a genuine political expression of Somalia’s own people. The intervention also radicalized and strengthened elements of the ICU, including the movement known as al-Shabaab. Through armed insurgency, widespread political violence, and popular intimidation, the militant group methodically wrested control of southern Somalia away from Ethiopian forces and the TFG, and by 2009 dominated large swaths of Mogadishu. The TFG had decided to relocate from Djibouti to Mogadishu that year as well, but was confined to only a few neighborhoods in the capital after Ethiopia withdrew their military forces and African Union peacekeepers were pushed back by al-Shabaab. Over the course of 2010 and 2011, the AU increased the size and scope of their mission in Somalia – AMISOM – and brought in forces from Djibouti, Guinea, Burundi, Uganda, Sierra Leone, Nigeria, Zambia, and Kenya to counter al-Shabaab’s power in the south and help create secure zones in the capital. Al-Shabaab abandoned Mogadishu in 2011, and today finds itself increasingly squeezed by international forces and without any remaining bases in major urban areas in the south. However, as an insurgent movement it still presents a serious threat to the transitional process.

The improving security situation in the south, along with increasing international pressure to move forward with the political transition, prompted the TFG in early 2012 to arrange two summits in Garowe, Puntland. These conferences put in place a series of actionable steps to formally establish a post-TFG government for all of Somalia. The principles from these meetings set the terms for a National Constituent Assembly (NCA) that would be responsible for drafting and passing the new Somali constitution. Membership of the NCA was selected on the basis of a 4.5 formula, delegating an equal share of the assembly's seats to the four primary Somali clans (excluding Somaliland), and a share half that number to a grouping of Somalia's minority clans. The draft constitution was passed on August 1st, after which a technical committee of traditional leaders, elders, and other political actors began appointing members to fill the new Somali Parliament – a body of 275 individuals that would carry out the next steps for transition. Parliamentary selection followed the same 4.5 clan formula, but became a contentious process after many candidates were disqualified by the technical committee for past transgressions. On August 20th, the date on which the TFG's mandate expired, the new parliament held its first session at the Mogadishu airport with just over 200 appointed MPs.¹ The technical committee would select the remaining members over the next few days. Three weeks later, on September 10, the parliament elected Hassan Sheikh Mohamud to succeed the former TFG president, Sharif Sheikh Ahmed.² President Mohamud, from a sub-clan of the Hawiye, recently appointed a prime minister of the Darod clan family. Parliament previously elected a Rahanweyn clan member to serve as speaker of parliament. This arrangement, with the three top government posts held by different major clans, represents an attempt to apportion power in a manner that keeps all major groups invested in the new central government. However, it also indicates a further institutionalization of clan politics, the consequences of which may be felt in the form of electoral policy and legal frameworks as the transition continues.

Today, Somalia stands at the beginning of a new transitional process. The parliament, president, and council of ministers (recently confirmed by parliament) will be responsible for drafting and implementing a series of laws to govern future elections, settle regional and territorial disputes, define the terms of federalism, and set the conditions for political party participation. The newly appointed parliament remains, in effect, a provisional body to bridge the period between the TFG and future elections that consolidate recent gains by establishing a democratically elected legislature that reflects the political preferences of the Somali people. These parliamentary elections will be based upon not-yet-defined federal government electoral laws, and although they may not be held until four years from now, they hold tremendous importance for their potentially determinative quality – either as a mechanism to build confidence, expand opportunities for participation, and establish a positive electoral culture, or as an episode that sows dissatisfaction with Somalia's democratic experiment due to fraud, incompetence, conflict, or other factors. The former would create momentum toward future parliamentary and local elections. The latter might very well create the impression that Somalia's new government is just the latest in a series of failed and illegitimate regimes.

The following sections of this paper will propose a framework for the electoral components of outstanding transitional tasks. Although the constitution and the Garowe Principles discuss electoral system design, political party participation, and delimitation, none of the existing transitional documents operationalize those principles into a coherent set of institutions, systems, and management bodies. Therefore this paper will define a path that the government might choose to pursue these objectives, along with the steps needed for implementation. The

¹ <http://www.bbc.co.uk/news/world-africa-19314308>

² <http://www.nytimes.com/2012/09/11/world/africa/parliament-selects-mohamud-as-somalias-president.html>

analysis also takes into account the ongoing security challenges in South-Central Somalia, a situation that may necessitate the involvement of international stabilization forces for a period of time that extends up to, and beyond, local and national elections. An assessment of the international community's role in providing election assistance – training, education, logistics, and material support – will be incorporated into the discussion about electoral operations and management. The final section will address possible electoral and political outcomes, and what they might mean for Somalia moving forward.

II. Legal Framework

Somalia last held multi-party, popular elections in 1969. Since that time, the political situation has moved from single-party dictatorship, to civil war, and most recently to a series of unelected or indirectly elected governing bodies. Somalia's territorial integrity and administrative uniformity have been challenged by a number of actors, and the parallel democratic transitions of Somaliland and Puntland have reconfigured the power relationship between the central government in Mogadishu and outlying regions. The original legal framework, under the 1960 constitution, that guided Somalia's post-independence elections is no longer applicable to the current political context, meaning that a new set of electoral structures must be designed to create and define the following elements: **(1)** Electoral system; **(2)** Electoral management body; **(3)** Political party system; **(4)** Electoral justice system.

Electoral System

Having recently been passed by the National Constituent Assembly to replace the Transitional Federal Charter as the country's supreme legal and governing document, the new constitution is a proper place to start when assembling a legal framework for elections. However, while this document creates political institutions of government, defines their roles and responsibilities, and mandates the formation of an independent electoral commission, it largely defers the responsibility for designing an electoral system to the parliament and executive. The frame for the design was established through the Garowe Summits, which produced a set of principles for future negotiations.

Garowe Principles

The Garowe Principles suggest a bicameral parliament, with a Lower House that will follow a system of proportional representation. Membership in the Upper House, however, will be based upon the "established sub-national units with equal representation."³ These "sub-units" include administrative regions as well as federal member states. The former alludes to the 18 regions established under Somalia's original 1960 constitution. The latter addresses an unresolved issue of federalism. At present, the only participating federal state is Puntland. Galmadug, to the south of Puntland, may soon challenge for this status. The Principles provide guidance on additional states, suggesting that two or more regions may form a political union to apply for federal statehood. Somaliland, while the most established and coherent sub-national unit, is not included as a member state in the Garowe Principles, primarily because it has maintained a desire to pursue a path toward independence. Its relationship to the national government remains unsettled.

³ <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RhnQqHTAfCA%3D&tabid=9744&mid=12667&language=en-US>

Constitutional Principles and Provisions

The Constitution builds upon the Garowe Summits to clarify aspects of the new political institutions. First, it begins with a set of useful principles to guide lawmakers.⁴

- Article 3 (5):** 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.
- Article 8 (3):** A person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country.
- Article 11 (1):** All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law.
- Article 12 (2):** It is the responsibility of the state not only to ensure it does not violate rights through its actions, but also to take reasonable steps to protect the rights of the people from abuse by others.
- Article 16:** Every person has the right to associate with other individuals and groups. This includes the right to form and belong to organizations, including trade unions and political parties.
- Article 22 (1):** Every citizen has the right to take part in public affairs. This right includes:
- a) The right to form political parties and to participate in the activities of political parties
 - b) The right to be elected for any position within a political party”
- Article 42 (2)(g):**... It is the duty of each citizen to strive to vote in elections.
- Article 46 (2):** The public representation system shall be open and shall give everyone the opportunity to participate.

Any law governing elections and political parties must adhere to these principles of participation. Notably, women must have a presence (at an undefined level) in all political agencies and institutions. All citizens have the right to participate in elections – both as a voter and a candidate – including members of the Somali diaspora, who will have the right to vote in elections even if they hold additional citizenship elsewhere or live outside of the country. And the state itself has a responsibility to protect voting and electoral rights.

Moving beyond these provisions, the constitution lays out the political institutions that will be subject to elections and popular participation. The new government will operate under a mixed system with parliamentary and presidential components. Of the three branches of government, only the legislature will be chosen by popular elections. The Lower House has 275 members and the Upper House is defined as no larger than 54. These bodies are empowered to elect the president and confirm his or her nominations to fill out ministerial positions. Both legislative bodies will be elected in a “direct, secret and free ballot” by the people of Somalia, though the exact electoral process has not yet been determined.

The constitution states that the members of the Upper House will be apportioned according to the following⁵:

⁴ The Federal Republic of Somalia Provisional Constitution, adopted August 1, 2012

⁵ The Garowe Principles were drawn from the First and Second Somali National Consultative Constitutional Conferences, held on December 21-23, 2011 and February 15-17, 2012 in Garowe, Puntland. Documents found at

1. The 18 regions that existed in Somalia before 1991.
2. The number of Federal Member States of the Federal Republic of Somalia.
3. The condition that all Federal Member States shall have an equal number of representatives in the Upper House of the Federal Parliament.

Yet, these conditions may be contradictory, particularly if the Upper House will apportion seats based upon Somalia's 18 regions *and* the principle of equal representation among all federal states. South-central Somalia is home to far more regions than Puntland and Somaliland, both of which also have an unsettled dispute over claim to portions of the Sool and Sanaag regions, as well as the status of Somaliland's federal participation.

This issue, as well as the broader system for elections and participation, must be a focus of both the new parliament (currently just the 275-member Lower House) and the electoral management body (EMB) to be established by parliament in the near future.

Drawing upon the guidelines above, the following electoral system is recommended at the federal level:

Lower House:

- 275 members elected through closed-list, proportional representation.
- A single electoral district will cover the entire geographic territory of Somalia.

Upper House:

- Seats apportioned evenly among federal member states (currently Puntland, as well as other states to be created through regional unions; Somaliland status to be determined in the future).
- Representatives from each federal member state to be elected through "Alternative Vote," with voters ranking candidate in order of preference.

This scenario will only consider the process for Lower House elections, since negotiations over member states and federal power have not yet yielded results.

National Independent Electoral Commission

Per the new constitution, the Federal Parliament must establish a National Independent Electoral Commission (NIEC) within a period of 60 days after the council of ministers assumes its post. These ministers were nominated by Somalia's new Prime Minister Abdi Farah Shirdon Said on November 4, 2012, and were confirmed by parliament eight days later, on November 12.⁶ The 60-day period will therefore extend to January 11, 2013.

Yet, with little guidance on either composition or appointment process, the electoral commissions in both Puntland and Somaliland may serve as a useful point of reference to design an appropriate model for the new federal government. Here is a brief look at the two regional electoral bodies:

<http://unpos.unmissions.org/LinkClick.aspx?fileticket=HGL2Wx5OstE%3D&tabid=9705&language=en-US> and <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RhnQqHTAfCA%3D&tabid=9744&mid=12667&language=en-US>
⁶<http://www.google.com/hostednews/afp/article/ALeqM5jR6yC4KdB5MfaPogPooFkxP7sJvQ?docId=CNG.576899a3b855ce2049cb5b64172fb008.ee1>

Puntland Electoral Commission (PEC)⁷

Composition:

- The PEC shall be composed of nine (9) members, appointed for a period of six (6) years, and member terms may be renewed.

Appointment Procedures:

1. The Speaker of the House shall call for nominations and they shall be nominated as follows:
 - a. One nomination by each of the three political parties.⁸
 - b. Three nominations by the president.
 - c. Three nominations by the House of Representatives.
2. The House of Representatives shall approve the nominees of the President, the House, and the political parties.⁹

Eligibility Criteria:

- None specified in the Puntland Constitution.

Somaliland National Electoral Commission (NEC)¹⁰

Composition:

- The Commission shall consist of seven (7) members, appointed for a period of five (5) years, and member terms may be renewed.

Appointment Procedures:

1. The Electoral Commission shall be appointed by the President of the Republic of Somaliland after receiving the following nominations:
 - a. Two nominations by the House of Elders.¹¹
 - b. Two nominations by the registered opposition associations/parties.
 - c. Three nominations by the president.
2. The appointment of the Commission shall be approved by the House of Representatives on an absolute majority vote of half their members plus one.

Eligibility Criteria¹²:

- Members must be no less than 40 years old, and no older than 70.
- Members must be a Muslim and behave in accordance with Islam.
- Members must have received an education to at least a secondary level.

⁷ Articles 113, 114, and 115 of the Constitution of the Puntland State of Somalia, adopted December 2009.

⁸ Puntland's Constitution provides that only three political parties (the three largest vote recipients from the first election) may register with the Electoral Commission and contest elections.

⁹ The House of Representatives is Puntland's only legislative body. Membership has been based upon traditional leader appointments since Puntland's founding as a state in 1998, but the 2009 constitution provides that future membership will be determined through popular, direct elections.

¹⁰ Articles 10, 11, and 12, of the Presidential and Local Elections Law (Law No. 20/2001). Document found at http://www.somalilandlaw.com/Election_Law_2001_all_Amends_1-5_2012Final.pdf

¹¹ The House of Elders is the upper body of Somaliland's bicameral legislative structure. Membership is comprised of traditional leaders from clan families within Somaliland.

¹² Abbreviated list to include only relevant provisions. Full list found in Article 12 of the 2001 Somaliland elections law.

- Members must not be a member of a political association or party.
- Members must never have been convicted of a crime.

The provisions for both the NEC and PEC were the product of negotiations among clan leaders, the political elite, and international actors – and for this reason may very well represent a prudent set of policies for NIEC membership appointment and eligibility. However, Puntland's method of using political parties to nominate commissioners is not transferrable to the NIEC since the federal government has not yet instituted a set of laws to govern political party participation or registration. The initial NIEC must form through a different nomination process.

A larger difference not mentioned above regards sequencing. While the NEC was created through legislation that also designed an electoral system and rules for political party participation, the initial PEC was formed on a transitional basis to, among other things, draft prospective electoral laws for consideration by the Puntland parliament. Unless prescribed by the parliament, the current constitution does not endow the NIEC with the responsibility to draw up a set of electoral or political party laws.

It is therefore recommended that the Somalia federal parliament create an electoral management body with the following policies for membership, appointment, and responsibilities:

NIEC Composition

1. The Commission will consist of nine (9) members, each serving a term of 6 years. Members may be re-appointed.
2. Terms will be staggered so that three membership slots will face re-appointment every two years. This will be accomplished by designing the very first NIEC with differentiated appointments. Three members of the first Commission will receive two-year positions, three members will receive four-year posts, and three members will receive the full six-year appointment. Every member appointed after the initial NIEC confirmation will receive six-year positions. Further details are below, under Appointment Procedures.

NIEC Member Eligibility

1. He/she must be a native-born citizen of Somalia; members of the Somali Diaspora may be eligible if they have returned to live in Somalia for more than two years prior to their appointment.
2. Members must be no less than 35 years old.
3. He/she must have at least a secondary level of education.
4. Members must not be a member of a political association or party.
5. Members must have no criminal record and no history of participation in non-state militias.

NIEC Appointment Procedures

1. The initial nine (9) members of the NIEC will be selected according to the following:
 - a. Three members nominated by the President.
 - b. Three members nominated by the Prime Minister.
 - c. Three members nominated by the Lower House of Parliament.

- d. For each set of three nominations from the above actors, one shall serve two years, one shall serve four years, and one shall serve six years.
 - e. All nominees will then be voted upon by the Lower House of Parliament.
- 2. Three nominations will be presented to the Upper House of Parliament for confirmation every two years after the initial NIEC is selected.
 - a. One by the President.
 - b. One by the majority coalition in the Lower House of Parliament.
 - c. One by the minority coalition in the Lower House of Parliament.

NIEC Powers and Responsibilities¹³

- 1. The conduct of presidential elections.
- 2. The conduct of Federal Parliament elections.
- 3. The continuous registration of voters and revision of the voter's roll.
- 4. The registration of candidates for elections.
- 5. The delimitation of constituencies and wards.
- 6. The regulation of the political party system.
- 7. The settlement of electoral disputes.
- 8. The facilitation of the observation, monitoring, and evaluation of elections.
- 9. The regulation of money spent by an elected candidate or party during any election.
- 10. The development of an electoral code of conduct for its candidates and parties.
- 11. The monitoring of compliance with legislation on nomination of candidates by parties.
- 12. Voter education.

As currently envisioned, the NIEC will administer only presidential and parliamentary elections – the two levels of elections detailed in the current constitution. Somalia's new federal structure does present the possibility of regional and local elections as well. However, the NIEC cannot assume responsibility for other elections until a number of federal issues have been resolved, including federal member states and regional/district delimitation. In the interim, policymakers must proceed with the information they have at their disposal, and focus on constitutional obligations agreed upon by the majority of actors. Finally, there will be no voter registration conducted for the first parliamentary elections. Somalia has no national ID and no accurate census data. The NIEC will partner with clans and local communities to devise mechanisms to mitigate fraud related to voter identification. These mechanisms may include the use of invisible ink to mark individuals after casting a ballot.

Political Party System

The most influential institution in Somali society remains the clan. For years there have been formal and informal power sharing arrangements to accommodate various clan families and interests, the most recent of which is seen through the 4.5 formula for representation in the new federal parliament, as well as the division of the three most powerful offices (President, Prime Minister, and Speaker of Parliament) among the Hawiye, Darod, and Rahaweyn clans. As Somalia moves forward with its political transition into electoral democracy, its laws and political institutions will have to be designed in a way that prevents the emergence of strictly clan-based political parties – which can prove paralyzing and destructive for transitioning democracies – yet still allows clan families and their traditional leaders to

¹³ Drawn from Article 111G of the Federal Republic of Somalia Provisional Constitution.

exercise influence over political and policy debates. This is a balance that is not easy to design, nor simple to implement. However, a careful look at Somalia's experience under British and Italian colonial rule, as well as its post-independence history, shows that while not all political behavior is motivated by clan fidelity, clans themselves serve as a permanent source of security and stability in times of crisis. This gives traditional leaders and elders tremendous power as a guarantor of Somali politics, and puts them in a position to wield veto power over the transitional process.

Any system must recognize this reality and ensure that clans can influence but not directly capture political parties. Somaliland and Puntland confronted the same challenges during the initial stages of their transitions, and their respective political party laws are a useful resource for potential strategies and procedures on a federal level.

Both systems follow the same preliminary process. Citizens may register a "political association" to contest district level elections. In Somaliland, this registration requires the following¹⁴:

- An application with information about founding members and organizational structure.
- Payment of SI.Sh 5,000,000 (approximately USD 3,100).
- Internal rules that show clear adherence to democracy, power-sharing, and bottom-up decision-making.
- After receiving provisional approval, each association will have three months to:
 - Provide information about the association's first general meeting.
 - Show that the association has functioning branches in all regions.
 - Provide proof that the association has registered at least 500 members in each region.

In addition, the Somaliland constitution prohibits political parties from forming on the basis of "regionalism" or "clannism".¹⁵ All registered associations may then receive a place on the ballot for district council elections. The top three vote-receiving associations from all regions will receive formal registration as official political parties. No more than three parties may be registered at any given time.

Puntland implemented a system with similar conditions and procedures for the registration of political associations:¹⁶

- An application with information about founding members and organizational structure.
- A payment of USD 15,000.
- Branches in all regions of Puntland.
- Internal rules that regulate association activities, and an agenda that adheres to the constitution.
- At least 500 members from each region of Puntland.

¹⁴ Jama, Ibrahim Hashi. "Somaliland Electoral Laws." Somaliland Law Series. 2009.

¹⁵ Article 9 of the Somaliland Constitution. <http://www.so.undp.org/docs/Somaliland%20in%20English.pdf>

¹⁶ Information based upon meetings with members of the Transitional Puntland Electoral Commission. The law was passed in August, but an English translation is not yet available.

Like in Somaliland, registered associations in Puntland will first compete in district council elections, and the top three vote-receiving groups will be registered as official political parties. Puntland's constitution limits the number of official political parties to three for a period of 10 years, after which the party system will be opened up for fresh competition to select a new set of three parties. The constitution also prohibits associations or parties from organizing around – or forming agendas based upon – clan or military interests.

Using these laws as a basis for a prospective political party system on a federal level is important – yet it is equally vital to differentiate between provisions that are replicable on a national level, and those that may be unnecessary (or even unwise). First, the 500-member requirement from every region is an innovative mechanism to ensure that associations expand beyond the geographic home of a particular clan. That provision should also apply on a federal level, and will extend to at least 500 members from all 18 regions (or 21, if the three new Puntland regions of Ayn, Haylaan, and Karkaar are included in federal delimitation). The impact of this condition will be strengthened by an additional provision for internal democratic processes and procedures. These two conditions, in combination, will help facilitate party agendas that reach beyond clan interests to a broader constituency of Somalis.

However, the strict limit to political party registration – found in both Somaliland and Puntland – is not wise on a federal level. Although it is true that having a low number of parties forces a higher degree of inter-clan negotiation and coalition-building, in this early stage of the new transition it is more important to open access to – rather than restrict – participation. The system design must find a balance between the positive forces of pluralism, and the potentially paralyzing effect of fragmentation. This means that the law will not set an outright limit to the number of parties.

Still, the design should incorporate elements of the model from the autonomous regions to the north. The NIEC will register political association on a provisional basis for the first parliamentary election, open to all groups that meet the eligibility requirements. Those associations that achieve at least 4 percent of the national vote (presumably under the aforementioned closed-list, proportional representation system with a single electoral district) will be registered as official political parties, a status that will grant them the right to contest future elections for a period of 10 years. This provision is intended to aid political party development by providing a degree of stability and predictability for both electoral actors and Somali voters. After 10 years, the system will be opened for fresh competition among all political associations.

Another consideration is the registration fee for associations. Somaliland required payment of approximately USD 3,100, while Puntland set the fee at a much higher USD 15,000. In the context of Somalia's social and economic position – where a large portion of the country is nomadic and per capita GDP is fourth lowest in the world¹⁷ – a higher registration fee both deters participation and places higher importance on the clan, which is one of the few institutions that can finance that level of political payment. Therefore, this design suggests setting a more moderate fee.

With no provision in the constitution for NIEC management of district or regional elections, and no movement by parliament on developing a sequenced timeframe for elections on

¹⁷ The World Factbook. Central Intelligence Agency.

multiple federal levels, policymakers must operate under the assumption that the initial NIEC will register political associations only for parliamentary elections.

The following are recommended conditions for initial registration of political associations on the federal level:

- An application with information about founding members, organizational structure, and internal democratic procedures.
- A registration fee of USD 3,000.
- Operational branches in all regions of Somalia.
- At least 500 members from each region of Somalia.

Any group approved that meets these requirements will be considered by the NIEC for a place on the ballot for the first federal parliamentary elections, which are scheduled to occur within four years.

However, a final condition before ballot registration will be demonstrating to the NIEC that each sequence of five candidates from the association's list include at least one woman, until the 30th slot on the list. This not only ensures a level of female inclusion, but also prevents associations from frontloading the list with only male candidates. Gender participation is as important as it is sensitive. Puntland, for example, proposed a 20 percent female quota only for the first five candidates on each association's list.¹⁸ The new constitution also included a quota in its original draft, setting the level at a higher 30 percent. However, this provision was withdrawn by the NCA, replaced with an informal agreement among all clans and participants that females would be included at significant levels in political associations and government posts. This commitment has thus far yielded moderately positive results, seen in the appointment of two females to serve in the new 10-member council of ministers, one of whom leads the foreign ministry. Although female quotas are far from a panacea – and can sometimes create perverse incentives when parties select their female members – it remains paramount that Somalia's new government takes advantage of the abundant energy and talent of all its citizens. As parties consolidate and the government stabilizes, the quota can be reevaluated to assess its ongoing necessity.

Campaigns and political party funding will be regulated by the NIEC. Conditions will be minimal for each, but there are a few important elements for the NIEC to consider. First, political parties must be prohibited from soliciting or receiving financial or material contributions from militias and al-Shabaab, as well as from individuals affiliated with these groups. In addition, parties may not receive contributions from anyone with a history of criminal activity, including piracy. Second, contributions may be received from the Somali diaspora community. Third, both contributions and campaign expenditures must be recorded and reported to the NIEC. Fourth, political parties are prohibited from using campaign language intended to incite or foment violent conflict.

¹⁸ Puntland's electoral law requires that the top five candidates on a party list for district elections include at least one woman. However, there is no gender quota for the remaining candidates on the list, nor are there guidelines for ordinal placement of woman within the top five.

Electoral Justice System

The new constitution provides that the NIEC is responsible for the settlement of electoral disputes. The commission will set up an electoral justice team, led by an appointed legal expert, to receive electoral complaints and organize a process through which to hear cases. The team will consist of four additional appointed members. The team's findings will then be presented to the entire commission, which in turn will decide on each case by majority vote. Decisions will carry the force of law, although the affected parties may appeal NIEC rulings to the federal judicial system.

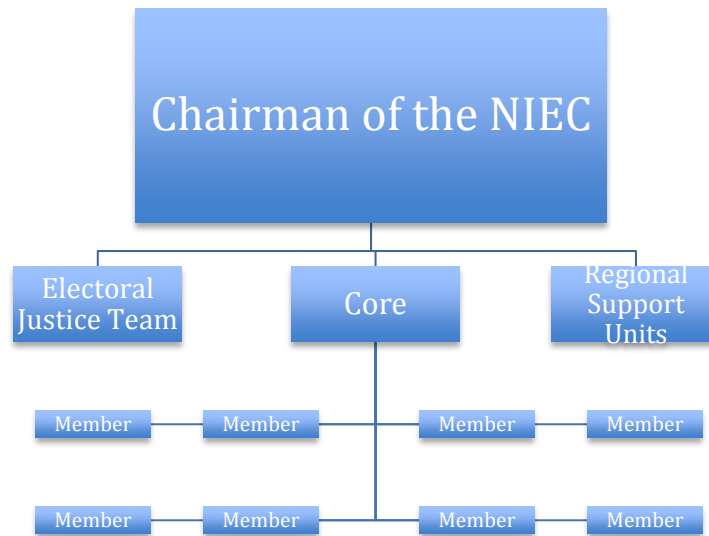
III. Electoral Operations

The steps taken to implement the legal framework described above will determine a number of important factors: voter turnout, voter satisfaction, electoral integrity, electoral conflict or violence, outcome legitimacy, among others. Thus, it is important that the government adequately plans and executes operations in four key areas: **(1)** staffing and training; **(2)** voter education; **(3)** balloting; and **(4)** tabulation, results reporting, and certification.

Staffing and Training

As the body that will be responsible for local, parliamentary, and presidential elections, the NIEC will need a professional staff with the requisite training to execute all phases of planning and implementation. Led by a chairman, the commission will consist of a core of 8 members, an electoral justice team, as well as regional support units to be stationed in all regions. The chairman, who will serve as a core member as well, will be elected by a majority vote of the core group (nine members). As discussed in the legal framework, the nine core members will be nominated by a combination of elected representatives and confirmed by parliament. Once in place, the initial 9 members of the NIEC will be invited to attend trainings run by international election experts. Part of the training will include developing materials for internal use to train future appointed NIEC members.

The nine members will then recruit an electoral justice team as well as regional support units. Below is a diagram of the NIEC's membership and core staff:



As discussed above, the five members of the EJT must all be trained lawyers. They will receive electoral complaints, hear cases, and present findings to the nine core commissioners. The RSUs will each be staffed by at least three individuals that live in the RSU's operational region. RSUs will provide a variety of functions: liaising with local government officials; distributing information to local communities; identifying polling places and organizing electoral logistics; and relaying election results back to the NIEC.

Voter Education

The task of preparing for Somalia's upcoming elections is more than a technical exercise of designing and implementing a system; in a country that hasn't experienced free elections in decades, few citizens are familiar with formal democratic political processes. A tremendous effort is needed to educate the public about the new political system, opportunities for political participation, electoral processes and procedures, and the political rights held by every Somali citizen. The constitution endows the NIEC with the responsibility for voter education, but in practice it will take an elaborate network of coordinated actors to disseminate the relevant voter and civic information to all corners of the country.

The information to be distributed to the public will include the following:

- General principles of democracy and proportional representation political systems.
- A breakdown of Somalia's new federal system.
- A list of all citizen rights, as codified in the new constitution.
- An explanation for the role of political parties in a democracy.
- An explanation for how votes are translated into seats under the electoral system.
- Guidelines for creating and participating in political parties.
- Guidelines for voting and election day process.

- Locations for the nearest polling place.
- Mechanisms for pursuing justice for election-related crime or abuse.

These items must all be disseminated well in advance to the first election. Some are more urgent than others, and NIEC officials would do well to triage to make good use of limited resources. However, the audience for this information will not only be the general public. Sub-national governments, local officials, and traditional leaders must all be targeted as well. Not only do they provide useful conduits between the federal government and local populations, but their support and buy-in to the new system is a necessary component to a successful and peaceful electoral process. They can either serve as a multiplier effect for education campaigns, or as an intransigent roadblock. The latter is more of a concern in Somaliland and Puntland, where officials have expressed varying levels of wariness about the new system's effect on their level of autonomy over their own political transitions. To the extent possible, these concerns must be addressed and mitigated early by both the NIEC and other federal government officials.

With few sources of print or television media, radio is the most common medium for consuming news in Puntland. Election officials can use these stations for public service announcements, as well as for publicizing events where citizens will be invited to interact with federal government representatives to discuss the elections and other civic issues. These events can be organized and run in coordination with local civil society organizations (CSO), who must also take a prominent role in educating and mobilizing the public. Although their capacity is often limited, many local CSOs throughout each region maintain deep roots into the community. They can be valuable partners, particularly since nomadic populations will be difficult to reach without local partners.

Balloting

Somaliland and Puntland have both implemented a system of closed-list, proportional representation. If the same system is applied for federal elections as well, parties will select a list of candidates, report the list to the NIEC, and make it available to the public. Each party list will include a number of candidates equal to the total size of the representative body being contested in a particular election. For future (and still prospective) local elections, the size of each party list will be smaller. For parliamentary elections, each list will necessarily be much larger. Parties may choose to order or highlight their particular list as they see fit, within the gender guidelines explained above.

The ballot will include the name of every eligible political party, as well as a pre-assigned color next to the party's name. In a country with such high rates of illiteracy, this is an important provision. Each party's corresponding color will be publicized across the country as part of the voter education campaign. For reasons of logistics and resources, the initial election will include paper ballots at every polling place rather than electronic or lever-action machines. These ballots will be marked by voters in permanent ink, and then placed in special boxes with tamper-evident seals.

On a logistical and procedural level, presidential elections will be less resource-intensive. Members of parliament are the only individuals who will participate in these elections, and the entire voting process will take place in a centralized location in Mogadishu. The ballot will also be presented in paper form, with a list of candidates that were nominated under the

conditions specified in the constitution. These ballots will be filled in with a special marker that can be scanned by an electronic machine.

Tabulation, Results Reporting, and Certification

For parliamentary elections, the RSUs, in collaboration with support from international actors, will secure the boxes of ballots and tabulate the results at each polling station. It is important that the vote tabulation occur locally, rather than at a centralized location, simply due to the security challenges of transportation throughout much of Somalia. The provisional count from each polling station will be relayed to the RSU headquarters in each region, which will then report the results to the NIEC in Mogadishu. All ballot boxes will then be transported with the aid of international support to the capital of each region, where they will be certified by federal government officials. Criteria for certification will include evidence of ballot box tampering or other forms of fraud, number of complaints filed, the level and quality of reporting from each polling place as well as each RCU, and reported incidents of violence, conflict, or voter intimidation.

Somalia system of proportional representation will likely be implemented with a single electoral district for federal parliament, meaning that the entire country will be voting on the same list of parties. Therefore, the results from each polling place will be combined to create a national vote total.

International observers will be invited to monitor the process as well. They will observe all activities before, during, and after election day in order to certify that the results are accurate and the process is free and fair.

IV. Role of the International Community

Somalia has been a country of concern for the international community for over two decades. Since the civil war in 1991, there have been numerous peacekeeping operations, international conferences for political reconciliation, large-scale humanitarian projects, and – in recent years – scaled up operations to combat piracy and violent Islamic extremism. Today, the African Union continues to have a large contingent of military forces in the southern portion of the country, under the African Union Mission for Somalia (AMISOM), to combat al-Shabaab and eliminate its hold over large swaths of South-Central Somalia. The United States was heavily involved in early peacekeeping efforts (UNISOM and UNITAF), but has since withdrawn from direct engagement and instead provides financial and material support to AMISOM, to go along with ongoing U.S. counterterrorism and anti-piracy operations. The UN's Political Office in Somalia (UNPOS) continues to serve as a special envoy to advance peace and political reconciliation, and was heavily involved in the design and negotiations over the new constitution. The UN Development Programme (UNDP) continues to operate throughout the country as well.

All of these actors must continue to play a role in the ongoing political transition, particularly in the area of electoral logistics, planning, and security. Transportation infrastructure throughout much of the country remains poor, creating a challenge for election workers to establish polling places and reach all communities. As AMISOM wrests control of the south from al-Shabaab and limits its operational capacity to wage destructive war against the government, the African Union should consider amending its mandate to include aiding civilian reconstruction efforts. For the

purpose of this scenario, that must include logistical and security support for elections and related activities – voter education, pre-election planning and coordination with local governments, political party campaigning, etc. In any transitional period that follows a violent conflict, the population must perceive both the process and the results as a legitimate reflection of popular will. At a minimum, this means that the environment must be secure enough to allow for popular participation without fear of violence or retribution. However, electoral needs extend far beyond security, and the international community must contribute support and expertise.

Assistance to Somalia has been problematic over the last few years, for reasons that range from security concerns, to naked graft, to an inefficient division of labor. UNPOS can address the latter factor through a baseline comprehensive analysis of the electoral environment, conducted with the assistance of the UN's Electoral Assistance Division (EAD). This analysis must first include a variety of elements:

- Geographic breakdown of population centers and typical nomadic migratory patterns.
- List of all political units down to the level of mayor within each region.
- List of all traditional leaders within each region.
- Assessment of government capacity in each region to carry out election activities.
- Assessment of the domestic civil society environment in each region.
- Assessment of the security environment in each region.

An accurate portrait of these factors will help other UN organizations, such as UNDP and EAD, organize an international assistance effort that pairs the expertise and capacity of NGOs with the needs of local communities. The geographic and demographic analysis, in particular, will benefit the NIEC in its effort to establish locations for polls and strategies for reaching nomadic communities. The assessment of local government capacity will be useful for election assistance organizations that can provide both technical expertise and resources. These resources will also be useful for the RCUs who will liaise and coordinate with local governments.

UNDP and EAD will organize the international effort to assist with voter and civic education. This includes drafting literature for distribution, contacting media outlets throughout the country, collaborating with local governments and civil society, and building relationships with clan elders to draw upon their extensive networks and influence.

EAD will also coordinate international monitoring and observation operations. These international actors will play an important role in certifying the legitimacy of the election results. Yet, safely and efficiently sending observers to polling places across the country will require coordination between the NIEC, UNPOS, EAD, and AMISOM to ensure that observers achieve the access they need but avoid a duplication of efforts. A number of international organizations with the capacity to conduct observations may demonstrate interest in Somali elections. The International Republican Institute has a substantial presence in Somaliland, where they conduct a variety of projects related to elections and political parties. Other groups have experience with observation in Somaliland, including a coalition of UK-based organizations led by Michael Walls of the University College London's Development Planning Unit. Mr. Walls has organized teams to observe a number of local and parliamentary elections in Somaliland, including the most recent district council polls in November 2012. His group is well-positioned to participate in a national observation effort. Other potential international partners include the Carter Center, the National Democratic Institute, the European Commission, and the Electoral Institute of Southern Africa, all of which have extensive experience in observation, particularly within the context of emerging democracies and unstable political environments. The East African Community (EAC)

may also wish to send election observers; Somalia has petitioned for membership in the EAC, and certification of a peaceful and fair election may be one of a series of conditions the EAC may establish for membership consideration.

Given Somalia's dearth of state resources, one of the most important roles for the international community will be providing material support in the form of election and voter literature, ballots, ballot boxes, reporting documents and systems, communication systems, vehicles, security resources, and other vital elements that contribute to an electoral process. The level and distribution of this support must be based upon the initial electoral analysis conducted by UNPOS. The International Foundation for Electoral Systems should be approached as a partner for these efforts, along with Kenya and Ethiopia, both of which have an interest in seeing elections contribute to a stable Somalia along their borders.

V. Electoral Security

As discussed above, AMISOM forces will remain in the country for a long period of time. Their current mission must be amended if and when their current operations prove successful in diminishing the influence and operational capacity of al-Shabaab. Somali forces will be trained and equipped to hold territory and maintain the peace, and AMISOM will shift part of its focus to electoral security. Responsibilities will include securing a variety of locations, processes and events: political party campaigning; voter education campaigns; transportation of election staff and equipment; polling places before and during election day; transportation of ballot boxes from polling places to RSU offices; and other events as they may arise. The United States and other international actors should continue to provide material and financial support to AMISOM forces to execute this mission.

A competent and well-resourced AMISOM is paramount to the success of the elections. Somalia remains one of the most unstable and dangerous countries in the world. The last twenty years of state collapse have create conditions for the emergence of a number of violent, non-state actors. It has also reinforced the primacy of the clan, and the lack of effective governance has compelled many communities to assume responsibility for their own security. This means that weapons and small arms are ubiquitous throughout the country.

Al-Shabaab and affiliated Islamist movements remain the most violent and uncompromising actors in Somalia. Since 2006, their members have engaged in routine assassinations, bombings, and a draconian administration of justice in areas under their control. The new constitution, despite its deference to Sharia, is antithetical to al-Shabaab and its core objectives. All participants in the new government, as well as external actors, must recognize this fact and prepare for inevitable displays of violence meant to disrupt, intimidate, and overwhelm the new government. Fortunately, AMISOM has succeeded in reducing al-Shabaab's hold over large swaths of the south, including the important port of Kismayo, south of Mogadishu.

Yet, regaining territorial control for the Somali government does not mean that the Islamist group has lost the ability to continue its insurgency. Moving forward, election officials and international actors must be sensitive to the following areas of vulnerability:

- Targeted assassinations of high ranking government officials, including the new president, prime minister, or members of the cabinet – particularly the female ministers recently confirmed by parliament.

- Counter-narrative media campaigns intended to threaten, intimidate, and generally deter the public from participating in the electoral process.
- Attacks against journalists and media outlets that partner with the government to distribute information for voter and civic education.
- Kidnappings of election workers and international NGO staff.
- Bombings of campaign events, rallies, or debates.
- Attacks against polling places.
- Violent retribution against individuals that participated in the electoral process – through political parties, campaigns, or simple voting.

At this stage, al-Shabaab hardliners most likely do not have the capacity to carry out these attacks on a large scale. However, this creates a separate point of vulnerability – the recruitment of average Somalis or other criminal groups as collaborators in al-Shabaab-designed operations. There are already documented examples of these arrangements, particularly with pirate groups located in Puntland. With the success rate of hijacking ships decreasing over the past year, pirates have increasingly turned to land kidnappings as a source of financial reward. This raises the prospect that they may sell their kidnapping services to al-Shabaab. Other Somalis may do the same. In an undeveloped, largely pastoral economy where a large portion of the population lives on a few dollars a day, the promise of quick money will often overwhelm any moral aversion an individual has to criminal activity.

Finally, clan families and traditional leaders must always be considered when implementing a system that promises a fundamental remaking of political process and power. Clans, by nature, are consultative, and their elders are accustomed to negotiation and compromise – a valuable characteristic for an emerging democracy. Yet, it is impossible to ignore the role that clans have played in Somalia's protracted state collapse since the 1991 civil war. Currently, all major clan families are supportive of the transitional process, at least to the extent that they continue to participate in power-sharing government. Their ongoing involvement and level of support is a situation to monitor moving forward.

VI. Outcome Scenarios

The new transitional government is, without question, Somalia's most significant step toward political stability and electoral democracy since the Barre regime took power in the late 1960s. Despite its shortcomings and imperfections, the new constitution was negotiated and approved by all major clans, and represents a unique (if untested) amalgamation of democratic liberalism infused with Sharia and traditional law. Although it has yet to be fully implemented in the form of representative political institutions, the constitution successfully started a process that has already confounded expectations by many observers. A parliament was selected in a manner that, while undemocratic, balanced power among the major clans. A speaker of parliament was promptly elected after the parliament was formed. A new president was elected soon thereafter in a poll that rejected the old regime in favor of an academic widely respected by domestic and international NGOs for his work with local civil society and development organizations. President Mohamud has appointed a prime minister, as well as a council of ministers whose small size (10) and composition (two women, including one as foreign minister) are significant breaks from the past.

Yet, the promise of the constitution and transition remain, to a large extent, unfulfilled. The parliament must now establish a Boundaries and Land Commission to produce

recommendations for delimitation and, more importantly, the issue of federal member states. The latter holds the greatest potential to disrupt the entire transition. Somaliland still desires independence, and is far ahead of the rest of Somalia in political and economic development. Puntland has more modest goals for autonomy within a federal framework, but with its own constitution and path toward electoral democracy, it still retains enough leverage to hold negotiations hostage if its demands are not met. The outcome of federal boundary delimitation and the relationship of federal power among various political units will in part determine the character of the new government.

This outcome assessment can only take into account known or likely policies and laws. Therefore, the analysis will focus on electoral scenarios for the Lower House of Parliament. The parliament will likely pass an electoral law with a closed-list, proportional representation system. Between 10 and 15 political associations will likely succeed in meeting the NIEC's conditions for provisional registration. Although none will be exclusively of one clan, it is equally likely that the four major clan families (or elements of each) will all support separate political associations. Smaller clans will either auction off their support to the larger clans, or will form coalitions of similarly small clans. Some political associations might emerge from wealthy or prominent members of the diaspora. Others may be started by civil society groups, well-known academics, or Somali journalists. It is likely that many initial political associations will not differentiate themselves by issue or ideology, as problems of security, economic development, and social welfare are commonly agreed upon needs throughout the country. Electoral competition, therefore, has the potential to fixate on personalistic or identity politics. Although clans may not monopolize control of particular parties, they may throw their support behind associations that include more of their clan members on their list, or those that commit resources to a particular region. Given the difficult media and campaigning environment, many voters may take guidance from their clan elders, increasing the likelihood of identity or transactional electoral politics.

Of the 10 to 15 associations that contest the initial elections, we may expect only five or six to reach the four percent threshold for representation in the Lower House. Four of these will likely be parties supported by each of the four prominent clans. This is based on the assumption that despite the legal provisions meant to limit clan influence, policymakers cannot engineer an immediate reversal of hundreds of years of socialization toward clan politics. The smaller clans will succeed with their own association, or they will join a coalition with a larger clan. And one or two other parties with a non-clan agenda will win enough support to join the Lower House. The election of the current president – an academic who ousted the incumbent in part from coordinated support and pressure from civil society – is a sign that there may be a constituency for non-clan associations.

Al-Shabaab will likely flex its muscles during the campaign season and on election day, setting off sporadic attacks and possibly assassinating a number of officials. Although they will not succeed in disrupting the election, their efforts at intimidation may depress voter turnout. This would compound already low voter turnout rates from difficult logistics and poor transportation infrastructure.

The international community will have an incentive to certify the election as mostly free and fair, in order to maintain positive momentum and push the transition forward. However, local populations and domestic observers will report numerous irregularities and episodes of potential fraud. Some of these reports will be due to intentional malfeasance. Others will be a function of simple incompetence that results from inexperience with electoral policy and practice. All observers and officials must show due diligence to differentiate between these electoral problems in order to properly assess legitimacy.

The campaign will lead to a surge of Somali nationalism, and will have a positive effect on state unity. The prospect of political pluralism will excite Somalis across the country, leading to a number of new civil society organizations that will begin to advocate more heavily for particular issues on a federal level. There will also be a proliferation of independent media outlets, although the quality of their coverage will likely depend upon clan affiliation or their level of compensation for coverage. The challenge for these outlets will be sustaining themselves as viable media organizations after the campaign season ends. The international community should devote more resources to develop the media community in order to take advantage of its sudden growth.

Despite its challenges and occasional violent setbacks, the process will be seen as largely legitimate by most Somalis. This, in many ways, is more important than the outcome. If the clans, their members, and the local government officials in each region are satisfied that the electoral design and process allows for a fair accounting of Somali popular will, they will be more inclined to stay supportive of the new system even if their particular clan or party of choice did not achieve their desired level of success.

The future success of the transition, however, will depend not upon this initial election, but rather on how the political parties, members of parliament, and the new president respond to the election itself in the form of policy and political negotiations. Elections are a powerful mechanism to shape incentives and form lines of accountability. If political actors understand that their access to power depends upon the satisfaction of their constituents, the government may slowly move from an exercise in wealth extraction to a tool for national improvement. Somalia is starting from square one, with little economic wealth, political fragmentation, a nomadic and clan-based society, and little history of democracy. Incentives do not change quickly, and building trust in yet another iteration of “transitional government” will take time after numerous failed attempts over the past two decades. Yet, a well-understood, legitimate process, followed by elected politicians with broad, downward lines of accountability for the first time in Somalia’s history, is a good place to start. The initial election for federal parliament has the potential to start this process and lay a foundation for future democratic development.