

The Roles and Functions of Somalia's Upper House: Shared Duties and Exclusive Responsibilities



Dahir Mohamed Ali

Abstract

Somalia adopted a new federal constitution in 2012 which established a bicameral type of parliament, upper house (senate) and the lower house (the house of the people). This type of legislature is different from the traditional system of Somalia's parliaments since independence 1960, because Somalia used to have a unicameral legislature.

This article describes the rationale for the adoption of this system and creating of the second chamber. It also highlights both the principal functions of the upper house, which is the exclusive powers of the upper house, and shared functions with the house of the people in the light of the Provisional Constitution of the Federal Republic of Somalia. In addition, it proposes some recommendations that must be taken into consideration during the constitutional review process.

Keywords: Somalia, bicameral legislature, upper house, federal system.

1. Introduction

The Federal Parliament of Somalia is a bicameral, consisting of an Upper House (Senate) and a Lower House (House of the People) as stipulated in article 55 of the provisional constitution. The Upper House was established for the first time in 2016. The House of the People comprises 275 MPs, while the newly established Upper House contains 54 senators.¹ There are some shared duties between both chambers of the Somali parliament such as law-making process i.e. considering, debating and approving bills. In addition to that, each house has its own exclusive particular functions.

This article strives to enlighten the roles and the functions of the Somalia's Upper House. The article discusses several questions regarding the functions and duties of the Upper House. These include why does Somalia need to have an Upper House in its parliamentary system? What are the shared functions of both Houses? In addition, what are the exclusive functions of the Upper House?

This paper examines the reasons for the adopting of a two-chamber system. After that, the shared functions of both Houses and exclusive functions of the Upper House will be identified. Furthermore, this study proposes some recommendations should be taken into consideration during the constitutional review process.

2. Background of Somalia's Legislative Branch

2.1 Unicameral Legislature

The first constitution of Somalia of 1960, established Somalia's first parliament in the post-colonial era (the National Assembly) as a unicameral legislature. This National Assembly lasted only for nine years, and it was unconstitutionally dissolved by a military coup which, in 1969,

swept aside the constitution of the Republic and marked the end of parliamentary democracy. The period between 1969 and 1979, Somali was without constitution, and the structure of the governance was based on the first and second charters of the revolution and governed by presidential decrees.²

The constitution of 1979, also established unicameral system as stipulated in article sixty of such constitution, which was replaced in 1990, by new democratic constitution that was published in the official bulletin on 14 October 1990 without referendum.³

One of the notable issues that should be mentioned is that during the military era, the legislative branch has become dependent on the executive branch until the collapse of the central governmental in 1991. Since then, Somali tried to rebuild its crumpled state from 2000, and all stages the legislative branch consisted of single house, until the adoption of the provisional constitution in 2012 which establishes Somalia's first bicameral type of legislative branch and guarantees the power sharing between federal government and its member states.⁴

2.2 Adoption of Bicameral Type of Legislature

Somalia traditionally was a unitary state which had a single house of legislative since the independence until the adoption of the new federal constitution in August 2012. The new constitution changed the system of the government from unitary state to federal one. The main reason was to distribute the power of governance between the federal government and member states as outlined in chapter five of the constitution.⁵

Normally, in the federal system each level of government is willing and eager for power and participating power sharing with other level. For that

reason the Somali Federal Member States desire to participate in exercise of powers by their participation in federal bodies. On such basis, the federal parliament is organized in a bicameral type, where one of the chambers (upper house) is elected by the member states and at the same time represents them.⁶

Upper Houses across the different countries of the world are organized differently by their electoral system.⁷ Although the Provisional Constitution of Somalia anticipates for the direct election of members of the Upper House as per Article 72, the current Upper House members were elected by the parliaments of Member States. The members will serve for a renewable term of four years, which is the same as members of the lower house (Article 60).

According to the provisional constitution, the number of members of the Upper House may not exceed 54 senators and should be based on the eighteen pre-1991 administrative regions. All Member States should have an equal number of representatives. However, considering the possibility that some of the states may be composed of more administrative regions than others, the requirement that the members should be elected based on the eighteen regions may not be compatible with the requirement to ensure the equal representation of member states (Article, 72).

3. Duties & Responsibilities of Upper House

3.1 Shared Responsibilities between the two houses

In Somalia, the parliament consists of the upper house (Senate) and the lower House (House of the People). Both Houses have a number of powers that allow them to perform their duties effectively. For instance, Legislation can come into force only after both the Senate and the House

of People have passed it. This implies that some functions are shared among the members of both Houses.

The shared duties and responsibilities between the Upper House and the House of the People which are listed in article 71 of the Provisional Constitution include law making, amendment of constitution, and participation in the election of the President of the Federal Republic. In addition to these, both Houses also participate in the process of declaring an emergence state and appointing some members of government institutions, as provided for by the Constitution and among others.

The details of the shared responsibilities between the upper house and lower house as mentioned in articles (61, 71, 92 and 131) of the provisional constitutional are as listed below:

3.1.1 Participating for Constitutional Review and Amendment

Since the federal member states want to have their say in the process of constitutional amendment, their channel is the second chamber the (Upper House), which represents them. In Somalia, the Upper House participate both constitutional review and amendment to ensure that the ideas and interests of the Federal Member States have been upheld.

3.1.2 Legislative Competence of the Upper House

In assessing the legislative powers of the upper houses in federal countries, there are two prominent trends. In the first category, Upper Houses share the power of law making equally with the Lower House. In this regard, for a bill to obtain legal application, it must achieve the consent of both Houses.

In the second category, Upper Houses play a subsidiary role in the parliament. In this regard, each piece of legislation does not necessarily need the approval of both Houses but the Upper House should only make sure that the interests of the states are taken into account. The United States and Switzerland upper houses fall under the first category while German and Indian follow the second approach.

In Somalia, the Upper House participates in making of all laws as per articles (79, 82, and 83) of the Provisional Constitution, in that regards the Somali Upper House falls under first category.

3.1.3 Participation in Presidential Election and Impeachment

Presidential elections and impeachments are both among the functions that shared by the both Houses as provided by the articles (69, 71, and 92) of the provisional constitution.

3.1.4 Participation in the Process of Declaring State of Emergences

Both houses have the legal rights to participate in the process of declaring state of emergencies as mentioned in the article 131.⁸

3.1.5 Participation in the Process of Appointing of Some Government Officials

Both Houses exercise some other additional functions including the involvement of the appointment of flowing government officials:⁹

- Members of the Judicial Service Council;
- Chairman and Judges of the Constitutional Court;
- Members of the National Independent Electoral Commission;
- Members of the Boundaries and Federation Commission;
- Members of the Arbitration Committee

3.2 Other Possible Shared Functions

In addition, two other important functions appear in the Provisional Constitution exclusively to the House of the People, namely, budget approval and ratification of international treaties. However, this article argues that these functions should be shared between the two houses.

3.2.1 The Upper House and the Approval of National Budget

The Federal Budget represents an expression of the priorities and values of the Federal Government, the extent to which the regional states are involved in the approval process can determine their impact on the policy choices of the federal government.

In most federal states, the regions are involved in the budgeting process through the Upper House. In some federal states, the House of People has the primary responsibility in the approval of budget while in others the senate is involved on the equal basis with the first house in drafting and approving the budget.

For example in Nigeria and USA, the both Houses must approve the same version of budget before its execution. In contrast, in the countries South Africa, Pakistan, Indonesia, Australia and Germany, the main responsibility of approving the budget is belongs to the House of the People. Then, the Upper House can give commentary and recommendations about the budget to House of the People. However, the latter is not bound by comments and recommendations of the former. In Ethiopia and Mexico, the power to approve the Federal Budget is belongs to the Lower House only.¹⁰

In Somalia, under the Provisional Constitution, only the council of ministers can initiate the drafting and preparation of annual Federal Budget as provided in article (99, d), and the Federal Parliament cannot

draft the Federal Budget as stated in article (69, 1) and article (80, 1:b) of the provisional constitution. Even though, the Provisional Constitution gives the Federal Parliament the power to approve the Federal Budget, it is not clear whether the budget needs the approval of the House of the People alone or need also the approval of the upper house but kept silent.

3.2.2 The Upper House and Ratification of International Treaties

Under the Provisional Constitution, specifically in article (90, q), International Treaties are normally proposed by the council of ministries and approved by the House of the People and finally consented by the President of Somali Federal Republic.

In many federal countries such as the United States and Germany, the Upper House is involved in the approval of international treaties. In fact, in the United States, only senate is involved, the Lower House does not have a formal role in the ratification of such treaties.¹¹ Therefore, this article proposes that the Somali Upper House should be involved in the process of approving international treaties, and that should be considered in the constitutional review process.

3.3 Exclusive Powers of the Upper House in Somalia

In addition to the shared powers with the House of the People, the Upper House has two major exclusive powers, which the Lower House cannot participate. These powers are:¹²

- 1- Representation of the interest of member states at federal level
- 2- Protection and safeguarding the whole system of federalism of the republic

3.3.1 Representing the Interests of Member States

The two central features of the Federal arrangement are self-rule at the regional level and shared rule at the Federal level. One of the main curial mechanisms through which the principle of shared-rule is given is the establishment of Upper House.

In Somalia, the Second Chamber or the Upper House represents the interest of the Federal Member States as provided in article 61 of the provisional constitution, which states that every member of the Upper House of the Federal Parliament has especial responsibility to represent the interest of the Federal Member State that he or she represents.

However, the establishment of bicameral legislator, with Second Chamber representing the interest of the member states is normally seen as an essential feature of Federal State. It is also considered as the most common and formal way through which member states participate in the decision making process at the federal level.¹³

3.3.2 Protecting and Safeguarding the Whole System of Federalism

Another important exclusive task for the Upper House is the protection of the federal system and ensuring that the principles of federalism as guaranteed in the constitution being protected and not violated. In the federal states, the Upper House is deemed as guardian of the federal system.

In Somalia, the protection, and safeguarding of the federal system is one of the most important responsibilities of the Upper House as mentioned in article 61. The Clause 3 of article 61 states that every member of the Upper House should safeguard the Federal system, whilst acting in the spirit of inter-governmental cooperation.

The principle of federalism in Somali's Federal Constitution is one of the guiding principles that all levels of the government should observe. Clause three of article three of the constitution states that the Federal Republic of Somalia is founded upon the fundamental principles of power sharing in a federal system. It is also notable that the principle of federalism is one of the basic constitutional principles that cannot be amended by either Houses of the Parliament, as cleared in article 132 of the provisional constitution. Therefore, protecting and safeguarding of this principle is one of the key exclusive tasks of the Upper House.

3.4 Additional Possible Exclusive Power

Although it is not prescribed in the Provisional Constitution, it is very important that the Upper House should be included in the approval of appointment of higher diplomatic officers. The Upper Houses of some federal counties like The US Senate are involved in the appointment of higher diplomatic officers. In this way member, states can participate in the formation of country's foreign policy.¹⁴

4. Conclusion

There is no doubt that Upper House in the federal countries is very crucial because it's the channel that member states use in the participation of decision making at federal level. This article discussed the shared duties and responsibilities of the two Houses (Upper House and Lower House). It also underlined the key, exclusive duties of the Somali Upper House.

In comparing with other Upper Houses of federal states it seems that, under the Provisional Constitution, the Upper House of Somalia has some shortcomings about some important duties. For that reason, this study proposes that during the constitutional review process the below recommendations should be taken into consideration:

- 1- The involvement of the Upper House in the process of budget approval must be clear in the constitution and review commissions should consider this as an important matter since the Upper House is representing the member states.
- 2- Both Houses must ratify the international treaties together. Currently, under article (90, q) of the Provisional Constitution international treaties are proposed by the council of ministers, approved by the House of the People and consented by the President of the Republic. Therefore, the Upper House has no role in its approval and this is not in harmony in the interest of the almost all federal states. For that reason, the constitutional review should reflect on this crucial issue.
- 3- In most Federal States, the Upper House is involved in the appointment of high-ranking diplomatic personnel. The curial power that should also be granted to the Somali's Upper House while constitutional is being reviewed.

Notes

¹ Refer to Articles 64 & 72 of The Provisional Constitution (2012) of Federal Republic of Somalia.

² Following the 1969 military coup, the Supreme Revolutionary Council SRC [Golaha Sare ee Kacaanka], consisted of 25 military officials, took over all the duties of the President, the National Assembly and the Council of Ministers; and they repealed the constitution in 1970. They issued their first and second charters. The Somali Revolutionary Socialist Party (SRSP) [Xisbiga Hantiwadaagga Kacaanka Soomaaliyeed, XHKS] was established in July 1976, and became the only ruling party from 1976 to 1991. A new constitution for Somalia was promulgated in 1979. Major General Mohamed Siad Barre (c.1919-1995) was the president of the country from October 1969

until January 1991 when armed oppositions ousted him out of the capital. For more details, refer to *Somalia: Past and Present* by Mohamed Osman Omar.

³ See article 60 of Somali constitution of 1979 and article 65 of constitution of 1990.

⁴ For more details about the backgrounds of Somalia's unicameral legislative branch, refer to the Somalia's constitutions of 1960 and 1979.

⁵ Chapter five of the Provisional Constitution is about the devolution of the powers. In this regard, article 48 affirms that "In the Federal Republic of Somalia, the state is composed of two levels of government: (a) The Federal Government Level (b) The Federal Member States Level, which is comprised of the Federal Member State government, and the local governments."

⁶ The term {levels of the government} refers to the part of the hierarchy through which state power is employed at certain place in the vertical order of the country. Levels can be federal or regional level.

⁷ For more details refer to Dr. Erato Kozakou-Marcoullis: *Understanding Federalism: Different models-Different Challenges Advantages-Disadvantages*, (21 December 2015)

⁸ Clause 3 of article 131 of the Provisional Constitution states, "The President acting on the request of the Council of Ministers may declare a necessary State of Emergency, which shall then be debated, and may be approved, by both Houses of the Federal Parliament within 21 days after that declaration.

⁹ For more details refer to articles 69 & 111 of Somalia Provisional Constitution

¹⁰ For more information about the role of Upper House in approving national budget in the federal countries refer to: Max Planck foundation for international peace and the rule of law: *comparative manual on federalism in Somalia*, (Heidelberg, 2016)

¹¹ See US Senate: powers and procedures available at <https://www.senat.fr/senatsdumonde/etats-unis.html>

¹² For more details, refer to articles 61 & 71 of Somalia Provisional Constitution.

- ¹³ For more about the significance of Member States' participation in the decision making process at the Federal Level through the Second Chamber, refer to: Assefa Fisha; Ethiopian federalism (Justice and legal research institute 2009) and Böckenförde, M. et al., Max Planck Manual on Different Forms of Decentralization, 3rd edn (Heidelberg 2018)
- ¹⁴ See John Law: How Can We Define Federalism, Perspectives on Federalism, (Vol. 5, issue 3, 2013)

List of References

- Böckenförde, M. et al. *Max Planck Manual on Different Forms of Decentralization*, 3rd edn (Heidelberg: Max Planck Institute for Comparative Public Law and International Law, 2008)
- Böckenförde, Markus. *A Practical Guide to Constitution Building: The Design of the Legislature*. International Institute for Democracy and Electoral Assistance (International IDEA), 2011. Available at <https://www.idea.int/sites/default/files/publications/chapters/practical-guide-to-constitution-building/a-practical-guide-to-constitution-building-chapter-5.pdf>. Accessed on 09 May 2019.
- Bulmer, Elliot. *Federalism (International IDEA Constitution-Building Primer 12)*. International Institute for Democracy and Electoral Assistance (International IDEA). Second edition, 2017.
- Carey, J. and Shugart, M. S. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992).
- Fisha, Assefa. *Ethiopian Federalism*. Justice and legal research institute, 2009. Available at <https://chilot.me/wp-content/uploads/2011/06/federalism.pdf>. Accessed on 09 May 2019.

Kassie, Adem, et al. *Comparative manual on federalism in Somalia*. Max Planck Foundation for International Peace and the Rule of Law, Heidelberg 2016.

Kozakou-Marcoullis, Erato. *Understanding Federalism: Different models-Different Challenges Advantages-Disadvantages*, presented at the roundtable discussion organized by the European Parliament Office in Cyprus: "Federal States in the EU: Challenges and Opportunities" 21 December 2015. Available at <http://www.europarl.europa.eu/cyprus/resource/static/files/understanding-federalism--advantages-and-disadvantages.pdf>. Accessed on 09 May 2019.

Law, John. *How Can We Define Federalism. Perspectives on Federalism*, Vol. 5, issue 3, 2013.

Omar, Mohamed Osman. *Somalia: Past and Present*. Somali Publications Pvt. Ltd. Mogadishu, 2006.

Somali Democratic Republic. *The Constitution of 1979*. Mogadishu, Somalia.

Somali Democratic Republic. *The Constitution of 1990*. Mogadishu, Somalia.

Somali Republic. *The Constitution of 1960*. Mogadishu, Somalia.

The Federal Republic of Somalia. *Provisional Constitution*. August 1, 2012 Mogadishu, Somalia.

US Senate. *Powers and procedures*, available at <https://www.senate.gov/history/powers.htm>; accessed on 4 June 2018.

Yohannes, Sileshi and Asrat, Dagnachew, *Constitutional Law I* (Teaching Material, Sponsored by JLSRI, Addis Ababa, 2009 G.C.). Available at <https://ethiolex.com/content/sileshi-yohannes-and-dagnachew-asrat-constitutional-law-i-teaching-material-sponsored-jlsri>, accessed on 09 May 2019.

About the Author

Dahir Mohamed Ali holds a master Degree in law and legal studies. He is a lawyer and runs a law firm in Mogadishu. He is also a members of the Somali Bar Association, He has a number of publications, including recently published books in Somali language: “*Habka Oogista iyo Qaadista dacwadaha Ciqaabta ah*” July 2018 and “*Hawlaha Maxkamadaha Iyo Habka Qaadista Dacwadaha Madaniga ah*” December 2018.

About this Journal

Somali Studies: A peer-reviewed academic journal for Somali studies is a broad scope multidisciplinary academic journal devotes to Somali studies; published annually by the Institute for Somali Studies in print and online forms. ***Somali Studies*** aims to promote a scholarly understanding of Somalia, the Horn of Africa and the Somali diaspora communities around the globe. Special consideration will be given to issues which are critical to the recovery and rebuilding of Somalia, a country emerging from a devastating civil war. ***Somali Studies*** is open access journal and all articles are freely available to read, print and download from the website of the institute, www.isos.so.

Disclaimer: All views and opinions expressed in the article(s) published in *Somali Studies: A peer-reviewed academic journal for Somali studies* are the sole responsibility of author(s) of the article(s). It does not necessarily reflect those of the editors, the Journal, nor the Institute for Somali Studies.

Published by Institute for Somali Studies

Hodan District, Near Km4 Square

Website: www.isos.so

Email: isos@mu.edu.so

Tel/Fax: +252 1 858118

Mogadishu, Somalia