

Mabaadii'da iyo Ku Dhaqanka Federaalka

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B. Federaalka

Waxaa jira nidaamyo federal oo ballaaran kalana duduwan oo ka shaqeeya caalamka daafihiisa maanta. Nidaamyadaa kala duwan, ma jiro mid ama hab federal oo ka wanaagsan kuwa kale, ma jiro qaab federal oo la odhan karo kana ugu “wanaagsan” ku dhaqankiisu oo caalamka oo dhan ka meel mari kara. Arrimo siyaasadeed, bulsho, taariikheed iyo kuwo kale ayaa qaabeeya hay’adaha federaalka iyo hababka uu u shaqeeyo. Arrimahaa ama shuruudahaa dalba dalka kale wuu kaga duwan yahay. Haseyeeshee, qaabka asaasiga ah ee nidaamyada federaalku maanta, waa isku mid meel walba. Wuxuu khuseeyaa fulinta, sharci-dejinta iyo garsoorka labada heer ee xukuumadda federaalka ah iyo iyo xukuumadaha dawladdaha xubinta ka ah federaalka. Waa qaab isgu jira laba heer oo dawladeed. Wuxuu isku isku daraa heerka qaranka ka hooseeya (sub-national) ee “is-xukunka” (“self rule”) iyo, marka la gaaro heerka qaran, “xukun-wadaagga”¹ (“shared-rule”) u dhexeeya xukuumadda federaalka ah iyo xukuumadaha xubnaha dawladdaha xubinta ka ah federaalka. Dawlad walba oo xubin ka ah federaalku waxay leedahay xilalkeeda mucayinka ah (is-xukun). Dawladaha xubinta ka ah federaalku waxay ka qayb qaataan nidaamka go’aan gaarista ee heer federal (xukun wadaagga).

Sida loo hebeynayo awoodda waxaa lagu qoraa dastuurka isagoo awoodaha u kala cayima si “qotton” ah (“vertical”) iyo si “gudub” ah (“horizontal”). Heer walba oo xukuumadeed wuxuu leeyahay madaxbannaanidiisa ama is-xukunkiisa siyaasadeed iyo maamul ee u gaarka ah ee loogu cayimay meelaha uu ka talinayo (areas of competence). Madax-bannanidaa waxaa mar walba loo adeegsanayaa in ay ka faa’iideystaan muwaadiniinteeda iyo horuumarkeeda. Dawladda federaalka ah waxaa kaloo looga baahan yahay in ay dhiiri geliso wanaagga iyo danta guud ee federaalka iyo in ay isku wado qaybaha ka hooseeya heerka qaran. Maadaamaa ay tahay unug ka tirsan federaalka, dawladda xubinta ka ah federaalku, waxay ka qayb qaadataa sameynta iyo hirgelinta sharciga xukuumadda federaalka ah².

Nidaam walba oo federal wuxuu leeyahay habab uu ku sahlo iskaashiga xukuumadaha³ ee u dhexeeya xukuumadda federaalka ah iyo xukuumadaha dawladdaha xubinta ka ah federaalka, iyo habab uu ku xalilo khilaafaadka xukuumadaha ka dhex oogma. Maxkamadda Dastuurku waxay leedahay awood gaarka ah oo ay ku dhegeysato, go’aanna kaga gaadho kiisaska la xiriira khilaafaadka u dhexeeya xukuumadda dawladda federaalka ah iyo xukuumadaha dawladdaha xubinta ka ah federaalka⁴.

Habka xukunka hoos loogu daadejiyo/furfuro ee loo yaqaan ‘devolution’ku waa habka ugu sarreeya xukun furfurista dalalka, sababtoo ah habkaasi wuxuu ku wareejiyaa awoodaha, xilalka iyo imkaaniyaadka maaliyadeed hay’ado dadweynuhu soo doorteen, oo kuma wareejiyaan unugyo maamul⁵. Federaalada markaad eegto hay’adaha dadweyne waa dawlado leh dastuuradooda u gaarka ah, sharci dejintooda gaarka ah iyo maamuladooda u goonida ah⁶.

Koox khubaro federal oo reer Switzerland ah ayaa sameeyay “Hagitaano la Xiriira ku Dhaqanka Federaal ee Wanaagsan”⁷ (“Guidelines for Good Federal Practices”). Fikradda ka danbeysa hagitaanadaasi waa in la sameeyo mabaadii’da horseedi kara xukun federal oo caadil ah, loo siman yahay isla markaana wax ku ool ah oo caalamkoo dhami adeegsan karo. Hagitaanadaa waxaa loogu tala galay in ay caawimaan dadka sameeya dastuurada, saraakiisha dawladda, xubnaha bulshada

¹ Watts/Blindenbacher, Federalism in a Changing World – Learning From Each Other – A Conceptual Framework for the International Conference on Federalism 2002, p.23-25.

² Koller/Thurer/Dafflon/Ehrenseller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St.Gall 2012, p.15.

³ J.3 Xiriirka iyo Iskaashiga Dawladaha ka Dhexeeya.

⁴ Dastuurka ku Meel Gaarka ee Somaaliya , tarjumaddii aan rasmiga ahayn ee la ansixiyay August 1, 2012, loona gudbiyayay Golaha Shacbiga Siibtambar 7, 2012, Qoddobka 10 9C, (1d).

⁵ Koller, Thurer/Dafflon,Ehrenseller/Pfisterer/Waldmann. Principles of Federalism, Zurich/St. Gall 2012, p.38.

⁶ Waana in xuduudaha dawladdaha Xubinta ka ah Federaalka si wanaagsan loo qeexaa.

⁷ Koller, Thurer/Dafflon,Ehrenseller/Pfisterer/Waldmann. Principles of Federalism, Zurich/St. Gall 2012. Qaybta B ee Qoraalkani wuxuu tilmaamayaa “Mabaadii’da Federaalka”.

madaniga ah iyo kuwa sharciga adeegsada si ay dib ugu qiimeeyaan, isbeddel ugu sameeyaan amd dib ugu dhisaan nidaamyada siyaasadeed. Soomaaliyawaxay u tari karaan hagitaanadani in la sameeyo nidaam dawlad federal ah oo soomaaliyeed.

Aqoon badan iyo waaya-aragnimo la xidhiidha federaalka waxaa kale oo laga heli karaa “Madasha Federaalada” (“Forum of Federations”) . Madashaa Federaaladu waa hay’ad caalami ah oo dawladnimada ku lug leh. Waa isku-xir waxbarasho oo ujeedadeedu tahay in ay horuumariso wax kala barashada dawladaha ee la xidhiidha caqabadaha dawladnimada ee heerarka kala duwan ee dalalka diimuqraadiga ah⁸. Madashaa Diimuqraadiga ihi uma ololeyso in la qaato qaab gaar ah oo dawladeed. Waxay soo bandhigtaa habab la soo tijaabiyay iyo isbarbar-dhigooda, isku-xidh khubaro oo caalami ah iyo in fursad wanaagsan loo helo la

xidhiidhka saraakiisha dawladaha ee muhiimka ah ee caalamka oo dhan. Waxay ka taageertaa dhisidda diimuqraadiyadda dawladaha iyo gobolada jilicsan ee ku jira xaalad ay markaa uun dagaal ka soo baxeen (Post-conflict situation).

Waxaa jiraa ilaa 25 dal oo federal ah dunida maanta, kuwaasoo marka laysku daro ay ku nool yihiin boqolkiiba 40 dadweynaha adduunka⁹. Waxaa ka mid ah dalalka diimuqraadiyadaha ugu waaweyn uguna kakan qaarkood. Nidaamkooda dawladeed, inkastoo uu noqon karo mid kakan, wuxuu ka dhigay federayshano badan dalalka ugu barwaaqada badan dunida qaarkood isla markaana leh adeegyo xukuumadeed oo heer sare ah. Fikradaha mataana ah ee federaalka iyo furfuraanta (decentralization) waxaa iyaguna adeegsada dalalka Soomaaliya la jaarka ah. Sida uu dhigayo Dastuurka Jamhuuriyadda Federaalka Diimuqraadiga ah ee Itoobiya, dalku waa federayshan u qaybsan sagaal Dawlad Goboleed oo ku salaysan qawmiyad-luqad (ethno-linguistic). Dastuurka Kiiniya wuxuu ku saleysan yahay nidaamka dawladeed ee aadka u furfuran (devolution)¹⁰. Awoodaha. Xilalka iyo maaliyaddabaa waxaa loo wareejiyaa goboladooda loo yaqaan ‘counties’. Xukuumadaha goboladaasi waxay ku saleysan yihiin mabaadii’da diimuqraadiga ah iyo kala saarka awoodaha. Gobol waliba wuxuu leeyahay xukuumad Goboleed, kaasoo ka kooban Baarlamaan Goboleed iyo Fulinta Gobolka¹¹.

Federaalka Soomaaliya¹²

Marka la eego dawladnimada Soomaaliya, Federaalku waa arrin aad ugu cusub. Waaya aragnimada dawladeed ee jirtaa waa mid taariikhdeedu ku eg tahay 25 sanno ka hor waana mid lagu hoos noolaa nidaam awoodiisu si xoog ah u urursan tahay oo milatari, oo ah hantiwaddaaggii xukunkii Siyaad Barre. Markii la qoray Dastuurka ku Meel Gaarka ah ee 2012¹³ Somalia waxay sameysay bilow cusub oo lagu dhisayo dawladnimo dalka oo dhan gaarsan oo Jamhuuriyad Federaala ah. Dastuurka ku Meel Gaarka ihi wuxuu dhigayaa fikradaha aasaasiga ah ee Federaalka, fikradahaasoo imminka u baahan in ay in lagu qaabeeyo laguna saleeyo Dastuurka, sharciga iyo siyaasadaba. Marka la dhisayo federal, fahamka dawladnimada ayaa ah mid muhimad gaar ah leh sbabtoo ah unugyada uu ka kooban yahay waa dawladaha. Dawladda waxaa qeexaya xadkeeda, dadweynaha ku nool iyo sida ay u habeyso awoodeeda¹⁴.

Raad-raaca xaaladda ay Soomaaliya ku dhisayso nidaamkeeda federal waa mid kakan oo aan liicliicaya. Tan iyo markii la riday xukunkii Barre, ka dibna ay burbureen qaababkii dawladdiyo

⁸ The Global Network on Federalism and Devolved Governance: www.forumfed.org.

⁹ Dalalkan soo socdaa waa: “Xubnaha Madasha ee Dalalka Federaalka ah”: Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Pakistan iyo Switzerland.

¹⁰ Nidaamka Furfuran ee Dawladnimo ee Kenya waxaa si buuxda u qoray: Rocaboy Ivor/FrancoisVaillancourt/Rejane hugounenq, Public Finance and Local Government in Kenya, Qoraalka: Bernand Daffjon/Thierry Madies (Eds.), The Political Economy of Decentralization in Sub Sahara Africa, African Development Forum Series, The World Bank, Washington, and the Agence Francaise de Developpment, Paris, 2012.

¹¹ Constitution of Kenya, Revised Edition, 2010, Articles 174, 175, 176.

¹² Cutubka A.3, Dominik Langenbacher, Safiirka Switzerland u fadhiya Somalia, ayaa ku sharraxaya jowiga siyaasadeed ee Dawlad-dhiska Federaalka ee Somalia lagu yagleelayo.

¹³ Dastuurka ku Meel Gaarka ah, Cutubka 5: Hoos u Dejinta Awoodda Dawladeed ee Dawladda Federaalka Somalia.

¹⁴ Shuruudahani wii kuwii caadiga ahaa ee Dawladnimada: Raic, Statehood and the Law of Self Determination, The Hague 2002. P.58.

maamulkii dhexe, sannadkii 1991, Goboladdii iyo Degmooyinkii iyo, tan iyo sannadkii 2000, Dawladdii ku Meel Gaarka ahayd ee Muqdisho ka dhisnayd, waxay dhammaantood u shaqeynayaan si aan isku xirnayn dawladdnimada ahaan iyo hay'ado ahaan. Awoodda habeynta iyo xilkii dawladdnimada labaduba way ka guureen hay'adihii xuduudeed ee gobolada iyo degmooyinka, waxayna u wareegeen qabiilkii. Sannadihii sagaashameeyaddii, Somaliland iyo Puntland waxaa la sameeyay dawlado aan lahayn xuduudo iyo dhul cayiman. Dawladda ahaan, Puntland waxay isu aragtaa qayb ka tirsan Soomaaliya, Somalilandse sidaa isuma aragto. Sannadkii 2012, Dastuurka ku Meel Gaarka ihi wuxuu dib u soo rogay xad ama dhul cayiman oo ka kooban laba gobol iyo wixii ka badan in ay tahay shuruudda dawlad goboleed Xubin ka noqon karto Federaalka Jamhuuriyadda Federaalka ee Soomaaliya¹⁵. Markaa ka dib, Dawladda Khaatumo, oo laga abuuray qaybo aan qeexneyn oo ka tirsan laba Gobol oo ay sheegtaan Somaliland iyo Puntland labaduba, si qabiil ku dhisan, ayaa iyana dooneysa in ay noqoto dawlad ku biirta Federaalka. Bartamaha Soomaaliya, Galmudug ayaa iyana dooneysa in ay ku biirto Federaalka iyadoo qaybo ka mid ah dhulkeeda Woqooyi ay sheeganeyso Puntland si ku dhisan qabiil. Dawlad kale oo Gobol ku saleysan ayaa iyana lagu tala jiraa in la dhiso Bartamaha Soomaaliya, iyadoo maqaamka Gobolka Banaadir, oo Muqdisho ay tahay caasimaddii, ay u baahan tahay in la caddeeyo. Dhinaca Koonfurta, Jubbaland iyo Dawladda Koonfur-Galbeed oo labaduba ah Dawladdo Xubin ka ah Federaalka oo leh maamulo ku meel gaar ah ayaa ka soo baxay, kuwaasoo ku saleysan dhul ka kooban min saddex Gobol. Waxay haatan dhisnayaan hay'adahoodu dawladdnimada. Caqabadda ka hor imanaysa sidii Soomaaliya loogu sameyn lahaa nidaam dawladeed oo federal ah waxay noqoneysaa isu keenidda Dawladdaha Xubinta ka ah Federaalka, 18kooda Gobol iyo 93da Degmo, ayna iskaashi ula sameyn lahaayeen Dawladda Federaalka Soomaaliya, iskaashigaasoo ku dhisan dhul oo aan qabiil ku saleysneyn.

Federaalku waa in uu horseedaa midnimo qaran isagoo adeegsanaya u kala qaybinta awoodaha Dawladda Federaalka ah iyo Dawladdaha Xubinta ka ah Federaalka. Waa in uu sugaa nabadgelyo ku wada-noolaanshaha dadka, isagoo isla markaana aqoonsanaya kala duwanaanshaha. Soomaaliya qawmiyad ahaan waa isku mid oo ma kala duwana inkastoo "kala duwanaanshaha bulsho uu leeyahay miisaankiisa oo uu siyaasadeeyo hadba halka lagu abtirsado iyo qaybsiga khayraadka oo labaduba ka la jaan qaada fikirka qabiilka¹⁶.

Qaadashada nidaamka federaalku Soomaaliya wuxuu ka rarayaa habka aan rasmiga ahayn ee awoodda loo qaybsado ee haatan jira ee ku saleysan qabiilka wuxuuna u rari doonaa qaabka Dastuur ee rasmiga ah oo ah mid ku dhisan federal ku saleysan dawladdo.

Nidaam siyaasadeed oo federaali ah waxaa laga filan karaa in uu dawladda u dhoweeyo dadka uuna ilaaliyo midnimada iyo xasiloonaada. Haseyeesheee, marka uu hannaanka dawlad-dhisidda ee Federaalka ihi sii qoto dheeraadoba, fursadda uu ku dhalan karo khilaafka dawlad dhexdeeda ah ama dawladdo u dhexeeyaaba, si go-goos ah ayuu u badan karaa. Guud ahaan arrintaasi waa mid la aqoonsan yahay, haseyeeshee dib-u-heshiisiinta bulsho iyo tan siyaasadeed ee daruuriga ah in uu noqdo dariiqii loo adeegsan lahaa, waxaa dhici karta in muhimadiisa iyo mudnaantiisa layska hawl yareysto. Intaa waxaa dheer, wargelintii dadweyne iyo doodaha la xidhiidha federaalka ee Soomaaliya sida weyn ugu baahan tahay ilaa iyo imminka lama bilaabin¹⁷.

Iyadoo la raacayo ujeedooyinka Higsiga 2016 iyo Ujeedooyinka Dhisidda Nabadda iyo Dawladdnimada (Peace and State Building Goals [PSG] ee Heshiiska Cusub, Dawladda Federaalka ah ee Soomaaliya waxay xoog badan saartay dhismaha nidaamka dawladeed ee federaalka ee Soomaaliya – shaqo ahaan iyo waqti ahaanba. Marka laga yimaaddo dhismaha-hay'adeed ee dawladdnimada ee heerka Dawladdaha Xubnaha ka ah Federaalka. Gobolada iyo Degmooyinka,

¹⁵ Dastuurka ku Meel Gaarka Soomaaliya, Qoddobada 48 iyo 49.

¹⁶ Zoppi, Federalism: A valid Instrument for Reconciliation in Somalia? Wardheer News, 2013, p. 6.

¹⁷ Heritage Institute for Policy Studies, Federal Somalia: Not if but how, policy brief 02/2015, www.heritageinstitute.org. Sida uu sheegay Afyare Cilmi, Hab midnimo oo ku slaysan nidaam furfuran: Xal Dhexe oo Soomaaliya isugu Iman Karto, Arab Centre for Research and Policy Studies, May 2015, Hab furfuran oolagu midoobaa wuxuu noqon karaa nidaamka dawladeed ee ugu haboon Soomaaliya.

federaalku wuxuu si gaar ah u saameynayaa hawlaha loo baahan yahay in la dhammeystiro ee la xiriira diyaarinta qabashada doorashooyinka 2016.

Marka la dhiso federaalka, dhulalka Dawladaha Xubinta ka ah Federaalka ayaa noqonaya qaybaha ugu muhiimsan ee ka hooseeya heerka qaran. Dhinaca Fulinta ee labada heer, kan Dawladda Federaalka Soomaaliya iyo kan Dawladaha Xubinta ka ah Federaalkuba nidaamka federaalku wuxuu saameyn ku yeelan doonaa habeynta xilalka ay kala leeyihiin ee ay ka midka yihiin arrimaha muhiimka ah sida ammaanka, caddaaladda, hay'adaha dhaqaale, khayraadka iyo maaliyadda, iyo bixinta adeegyadda ay ka midka yihiin caafimaadka iyo waxbarashada. Mabaadii'da iyo ku dhaqanka nidaamka federaalku wuxuu u baahan yahay in sidaa si le'eg loo waafajiyo sharciyada Baarlamaanka eek u saabsan arrimaha aynu soo sheegnay iyadoo, aakhirkana, loo baahan yahay in Dastuurka Jamhuuriyadda Federaalka Soomaaliya la waafajiyo arrimahaas oo dhan, Dastuurkaasoo haatan ku jira dib-u-eegis, lana rabo in afti loo qaado mustaqbalka. Guud ahaan, isku dayga la rabo in Soomaaliya loogu dhiso nidaam dawladeed oo federal ah aad buu ula dhaafayaa waqtiga loo qabtay ee 2016.

T. Shanta Mabda' ee Federaalka

Shanta arrimood ee ugu waaweyn ee loo baahan yahay in uu nidaamka dawladda ee federaalka ihi saameynta ku yeesho waa kuwan:

- Qaybinta Awoodaha;
- Federaalka Maaliyadeed (Fiscal Federalism) iyo Wadaagga Khayraadka;
- Xiriirka iyo Wax-wada Qabsiga u Dhexeeya Dawladaha;
- Dawladda Hoose;
- Xiriirka Dibedda.

Qoraalkani wuxuu soo bandhigayaa mabaadii'da federaalku sida ay kala yihiin iyo ku dhaqanka wanaagsan ee federaalka, qoddobada kala duwan ee Dastuurka ku Meel Gaarka ah ee Soomaaliya iyo hababka kala duwan ee u bannaan in loo raaco dhismaha nidaam federal ah oo Soomaaliya. Qoraalkani wuxuu xoogga saarayaa awoodaha iyo xilalka fulinta.

1. Qaybinta Awoodaha

1.1 Qaybinta awoodaha markay tahay mabda' dastuuri ah

Qaybinta awoodaha waa in laga dhigaa mid aan daah saareyn oo la arki karo, sida ay muujinayaan mabaadii'dan soo socdaa: Waa in ay noqotaa arrin aan mugdi ku jirin oo salka ku haysa kuna dhidban Dastuurka Federaalka ah iyo weliba dastuurada Dawladaha Xubinta ka ah Federaalka¹⁸. Qaybinta awoodaha macnaheedu waa u kala qaybinta, wadaagga iyo gacan ku haynta awoodda xukuumadda iyo weliba wax-wada qabsiga iyo tartanka heerarka kala duwan ee xukuumadda, oo kala Xukuumadda Federaalka ah iyo xukuumadaha Dawladaha Xubinta ka ah Federaalka. Qaybinta awoodaha (kala saarka awoodaha) waxaa kale oo loo adeegsadaa waaxyaha xukuumadda, oo kala ah fulinta, sharci dejinta iyo garsoorka. Xukuumadda Federaalka ihi waa in ay ku ekaataa oo keliya hawlaha u baahan in loo sameeyo qawaaniin isku mid ah (uniform regulations) ama hawlaha dawladaha xubinta ka ah federaalku aanay awoodda u lahayn in ay fuliyaan. Mar walbana, heerarka kala duwan ee xukuumadduhu waa in midiba tan kale ku taageertaa in ay waajibaadkeeda gudato, iyagoo si wadajir ah isu xilsaaraya isla markaana xushmeynaya kala duwanaanshahooda.

Heer walba oo dawladeed waa in uu yeeshaa awood ku filan oo uu ku fuliyo hawlaha loo igmaday¹⁹. Dawladaha Xubinta ka ah Federaalku waa in ay haystaan khayraad iyo dakhli ku filan si ay u fuliyaan

¹⁸ Koller/Thurer/Dafflon/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p.90.

¹⁹ Koller/Thurer/Dafflon/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 100 – 101.

hawlaha lagu wareejiyay (devolved tasks).

Xukuumadda Federaalka ihi waa in ay ka soo dhalaashaa awoodeeda ku saleysan dastuurka ee meel marintoodu wanaagga u soo kordhinayaan federaalka. Awoodda Dawladaha Xubinta ka ah Federaalka waxaa loo baahan in Xukuumadda Federaalka ihi ay ixtiraamto isla markaana ilaaliso. Dawladaha Xubinta ka ah Federaalku waxay sidaa si la mid ah ugu baahan yihiin in ay helaan awoodda aanay uga maarmeyn in ay hawlahooda u fuliyaan si madax bannaan ama iyagoo la kaashanaya unugyada kale ee jira. Dawladaha Xubinta ka ah Federaalku waa in ay haystaan madax-bannaani ballaaran oo ay u leeyihiin hawlaha iyaga loogu igmaday dastuurka federaalka ah ee dalka u dhisan²⁰.

Khilaafaadka ka dhex oogma dawladaha dhexooda waa in, intii suuragal ah, lagu xalilaa wada tashi iyo dhexdhexaadin. Haddii ay soo baxaan khilaafaad dhinaca dastuurka ah oo u dhexeeya xukuumadda federaalka ah iyo unugyada federaalku ka kooban yahay, waa in la helaa nidaam federal oo dastuurka dib loogu eegayo²¹.

1.2 Tilmaamaha Soomaalida

Machadka Hiddaha ee Daraasaadka Siyaasadda (The Heritage Institute for Policy Studies) wuxuu sheegay in aqlabiyad weyn oo Soomaali lagu wareystay daraasad laga qaaday shan magaalo oo waaweyn ku yaal Soomaaliya inay taageersan yihiin nidaamka dawladeed ee federaalka ah, sababtoo ah wusuu sahlayaa in awoodda ay wadaagaan qabaa'ilku, wuxuuna keenaya madax-bannaani goboleed aakhirkana wuxuu horseedayaa yareynta dagaalada iyo khilaafaadka²².

Qoddobka 50 (b), (t) iyo (j) ee Dastuurka Federaalka²³ ihi wuxuu dhigayaa in heerarka kala duwan ee dawladdu u hoggaansamaan saddexdan mabda' ee federaalka ah ee soo socda:

(b) Heer walba oo dawladeed waa in uu helaa kalsoonida iyo taageerada dadka: Hay'adaha iyo qaababka siyaasadeed waa in ay ku saleysnaadaan sharciga ayna noqdaan kuwo qayb ka ah nidaamka dawladeed ee federaalka ah. Dawladda Federaalka ah, Dawladaha Xubinta ka ah Federaalka iyo Degmooyinku waa in ay leeyihiin hay'ado go'aan qaadasho leh oo si diimuqraadi ah lagu doortay.

(t) Awoodda waxaa la siinayaa heerka xukuumadda ee u muuqda in uu yahay kan sida ugu wax ku oolsan awoodda u maamulaya: Qoddobka 54 ee Dastuurka ku Meel Gaarka ah wuxuu dhigayaa in arrimaha dibedda, difaaca qaranka iyo muwaadinnimada iyo socdaalka iyo welib arrimaha maaliyadda inay dhammaan yihiin awood iyo talo uu leeyahay federaalku. Sida awoodaha kale loogu qoondaynayo Xukuumadda Federaalka Soomaaliya ama Dawladaha Xubnaha ka ah Federaalka waa in wada xaajood laga gala ayna heshiis ka gaaraan Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah Federaalka.

(j) Jiritaanka iyo sii waarista xiriir iskaashi iyo istaageeris ku dhisan oo ka dhexeeya xukuumadaha Dawladaha Xubinta ka ah Federaalka, iyo mid ka dhexeeya xukuumadaha Dawladaha Xubinta ka ah Federaalka iyo Xukuumadda Federaalka, oo ku dhisan dareen waddaniyadeed:

Xiriirka ka dhexeeya dawladdu waa in uu ku dhisanadaa wax-wada qabsi u dhexeeya Dawladaha Xubinta ka ah Federaalka iyo Dawladda Federaalka Soomaaliya. Iskaashiga badanaa waxaa lagu gaaraa wax-wada qabsi. Wax-wada qabsigu wuxuu tilmaamaa is-xushmeyn iyo is-xakameyn sahlaya in meeliba meesha kale u oggolaato in ay is-cabbirto doorkeedana ay qaadato. Xukuumadda Federaalka ihi waa in ay ku kalsoonaataa Dawladaha Xubinta ka ah Federaalka, dhinacoodana Dawladaha Xubinta ka ah Federaalku waa in ay danahooda ka dhigaan kuwo la jaan-

²⁰ Koller/Thurer/Dafflon/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 101.

²¹ Koller/Thurer/Dafflon/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 102.

²² Heritage Institute for Policy Studies, Federal Somalia: Not If but How, Policy Brief02/2015, www.heritageinstitute.org.

²³ Dastuurka Jamhuuriyadda Federaalka ah ee ku Meel Gaarka ah. Waxaad kaloo eegtaa Qoddobada 51 – 54.

qaada Xukuumadda Federaalka ah. Shucuurtaa wax wada qabsiga ku dhisan waxay wax ka tarayaan xalinta khilaafaadka, xalalkaasoo ay haboon tahay in lagu sameeyo wada-xaajood iyo dib-u-heshiisiin²⁴.

Saddexdaa mabda'ee Dastuurka ku Meel Gaarka ihi dhigaya waxay si toos ah u muujinayaan hagitaanada dhaqamada wanaagsan ee federal. Waxay ka caawimayaan Jamhuuriyadda Federaalka Soomaaliyeed in ay abuurto haykaladeeda dhinacyada sharciga, hay'addo sameynta iyo nidaam abuurka, kuwaasoo dhidibaddu ugu aasan yihiin Dastuurka iyo xeerka.

1.3 Khiyaaraadka kala Duwan ee la Qaadan Karo

In si cad awoodaha loogu qaybiyo Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah Federaalka waa arrin daruuri ah oo aanu ka maarmin federal. Sida ku cad qoraalka "Hagitaanada Dhaqamada Wanaagsan ee Federaalka" qaybinta awooduhu waa in ay noqotaa mid aan madmadow ku jirn oo ku saleysan Dastuurada Federaalka iyo kuwa Dawladaha Xubinta ka ah Federaalka. Waxaa arrin walba ka sii muhiimsan in aan awood qaybsiga loo deyn oo lala sugin go'aan-qaadasho siyaasadeed oo arrin walba goonideed loo eego.. Haseyeeshee, Dastuurka Soomaaliya waa ku meel Gaar, wuxuuna ku jiraa dib-u-eegis, Dawladdaha Xubinta ka ah Federaalkana weli si sharci ah looma aasaasin. Markay xaaladdu sida tahay, mabaad'iida iyo ku dhaqanka wanaagsan ee federaalka ayaa si toos ah u hagi kara Xukuumadda Federaalka ee Soomaaliya maadaama ay ka ciyaareyso door hormuud ah sameynta nidaamka dawladnimada federaalka ah ee Soomaaliya.

1.3.1 Wadajirka Qaranka (Integrity of the Nation)

Marka la habeynayo awoodaha federaalka, xilka aasaasiga ah ee Xukuumadda Federaalka Soomaaliya waa in uu noqdaa in ay ilaaliso wadajirka iyo dabeecadda ama qaabka federaalka ah ee Qaranka. Xukuumadda Federaalka ah ee Soomaaliya waa in ay dhiiri gelisaa wanaagga guud iyo danaha la wadaago ee federaalka iyo Dawladaha Federaalka Xubinta ka ah ee jira, kuwa ku meel gaarka ah iyo kuwa sameysmayaba.

1.3.2 Federaalku waa nidaam dawladnimada meel walba taabanaya (Cross Cutting Issue)

Xukuumadda Federaalka Soomaaliyeed waa in ay Federaalka u aragtaa in uu taabanayo ama isga gudbayo arrimaha oo dhan. Xukuumadda Federaalka ah, gaar ahaana Fulinteedu waa in ay xisaabta ku darsato in Federaalku uu saameeyo ficlan dhammaan dhinac walba oo ka mid ah waajibaadka iyo adeegyada dadweyne. Awoodaha iyo maamulada Dawladaha Xubinta ka ah Federaalka waxaa loo baahan yihiin in Xukuumadda Federaalka Soomaaliya ay xushmeyso. Doorka aasaasiga ah ee Dawladda Federaalka Soomaaliya waa in ay kormeerto in Dawladaha Xubinta ka ah Federaalku ay u dhaqmeen si waafaqsan heshiiskii lagu qaybiyay awoodaha iyo xilalka, iyo sharciga federaalka. Haddii aanay sidaa u dhaqmin waa in ay qaaddo tallaabooyin lagu sugayo in ay sidii la rabay u dhaqmaan. Tallaabooyinkaasi waa in ay noqdaan kuwo ku haboon halka khilaafku ka yimi, marka la eego nooca tallaabada iyo heerka ay gaarsan tahayba.

1.3.3 Xidhiidhada iskaashiga ku dhisan (Collaborative relationships)

Xukuumadda Federaalka Soomaaliya waa in ay la sameysataa xidhiidho iskaashi ku dhisan Dawladaha Xubinta ka ah Federaalka. Shirar wada tashi oo joogto ah waa in loo diyaariyaa hoggaamiyayaasha labada heerba ee Xukuumaddaha/Madaxweynayaasha²⁵ iyo Fulinta/Wasiirada²⁶.

1.3.4 Dhisidda Dawladaha Xubinta ka ah Federaalka

Qayb muhiim ah oo Federaalka ka mid ihi waxay ku saleysan tahay in Dawladaha Xubinta ka ah

²⁴ Qoddobka 50 (r) ee Dastuurka ku Meel Gaarka ah soomaaliya.

²⁵ Qoddobka 52 ee Dastuurka ku Meel Gaarka ah soomaaliya; Madasha Hoggaamiyayaasha.

²⁶ Qoddobka 52 Dastuurka Ku Meel Gaarka Soomaaliya; Nuspliger, Qoraalkiisii " Shirweynaha Dawladaha Xubinta ka ah Federaalka", hoos.

Federaalku ay xor u yihiin sida ay isu habeynayaan. Dhisidda Hay'adaha ee Dawladaha Xubinta ka ah Federaalku waa nidaam kakan oo waqtigiisa u baahan. Jilayaasha cusub ee siyaasadeed iyo shaqaalaha maamulkaba waa in la tababaraa. Waxaa intaa sii dheer, in lagu daro qaababka cusub ee haydeed nidaamka dawlad-dhisku waa arrin muhiim ah oo saameyn ku leh sida guul loo hanan karo.

2. Federaalka maaliyadeed iyo Wadaagga Khayraadka²⁷

2.1 Federaalka maaliyadeed waa u muhiim federaalada oo dhan

Xukuumadda Federaalka ah iyo xukuumadaha Dawladaha Xubinta ka ah Federaalka waa in ay leeyihiin ilo dakhli oo ku filan si ay kharash ugu helaan hawlhooda. Adeeg walba oo dadweyne waa in ay kharashkiisa bixisaa heerka dawladeed ee ugu dhow in uu adeegaa u siiyo sida ugu wanaagsan dadka halkaa deggan. Xukuumadda Federaalka ihi waa in ay siisaa Dawladaha Xubinta ka ah Federaalka imkaaniyaad maaliyadeed oo weyn oo ay iyagu iska leeyihiin.

Iyadoo la raacayo xad uu sharcigu dhigayo, xukuumadaha Dawladaha Xubinta ka ah Federaalku waa in ay awood u yeeshaan in ay go'aansadaan oo soo rogaan cashuuro si ay ugu noqdaan ilahooda dakhliga.

Haseyeeshee, lacagahaa la soo wareejinayaa waa in aanay noqon kuwo u beddela oo u gala halkii cashuurta ay qaadeyso xukuumadda qaranka ka hooseysaa. Lacagaha la dirayaa waa in ay noqdaan kuwo daah furan kuna saleysan shuruuddo cad²⁸ oo aan marba sidii la doono loo dhigeyn.

2.2 Tilmaamaha Soomaalida

Qoddobka 50 ee Dastuurka ku Meel Gaarka ah wuxuu qorayaa mabaadii'dan soo socota:

(x) Qayb walba oo ka tirsan Jamhuuriyadda Federaalka Soomaaliya waxay ka heleysaa dawladda heerar adeeg oo la mid qaybaha kale iyo heer taageero dawladeed oo la mida kuwa qaybaha kale:

Baahiyaha Dawladaha Xubinta ka ah Federaalku way kala duwan yihiin marka la eego waxyaabaha ay sida gaarka ah u door bidayaan dadka degaan waliba, arrimo juqraafi iyo kuwo dhaqan-dhaqaale iyo nooca iyo dabeecadda alaabta iyo adeegyada sharci ahaan laga doonayo in ay bixiyaan. Tallaabooyin toosin ama sixid ah oo lagu saxayo sinaanta maaliyadeed ayaa dabooli kara farqiyadaa aynu soo sheegnay.

(kh) Khayraadka oo si caddaalad ah loo qaybiyo:

Xukuumadda Federaalka ihi waxay leedahay imkaaniyaad loo hayo in lagu taageero Dawladaha Xubinta ka ah Federaalka. Lacagta ay u wareejiso Xukuumadda Federaalka ihi Dawladaha Xubinta ka ah Federaalka waa in ay ku saleysnaataa shuruudo si mawduuci ah loo cabbiri karo oo aan cidna u eexaneyn, waana in aanay ku xirneyn cidda siyaasadda dawladda u daacad ah, ama duruufo deegaameed. Lacagahaa la wareejinayaa waa in aanay noqon mid beddesha, oo gasha halkii cashuurtii Dawladda Xubinta ka ah Federaalka.

(d) Xilka cashuur qaadista waa in la siiyaa heerka dawladda ee ugu dhow in loo adeegsado sida ugu wax ku oolsan:

Guud ahaan, Xukuumadda Federaalka ihi waxay ururisaa cashuur ka qayb qaadata horuumarinta dhaqaale iyo cashuuraha iibabka waaweyn kuwaasoo suga in la helo midnimo dhaqaale oo wadajir ah. Cashuuraha waa in habka loo xisaabinayaa uu ku fadhiiyaa shuruudo ay ka mid yihiin khayraadka

²⁷ Koller/Thurer/Dafflon/Waldmann, Principles of Federalism, Zurich/St. Gall 2013, p. 103-106; Dafflon, The political economy of decentralization: Fiscal Federalism in practice, Conference on IGAD Economies and Federalism in Somalia, 23-25 October 2014, Addis Ababa, Ethiopia.

²⁸ Wareejinta lacagtu waa in ay sida badan ahaataa mid aan shuruudi ku xidhnayn si loo ixtiraamo in Dawladaha Federaalka xubinta ka ah ay u madax bannaanaadaan kharashyadooda. Wareejimaha gaarka ah ee shuruuduhu ku xiran yihiin waa in ay ku koobnaadaan siyaasadaha caamka ah ee xukunkooda la furfuray, marka ay Dawladda Dhexe rabto in ay dhiiri gelin/abaal-marin siyaasadeed sameeyso.

la filayo in la helo iyo baahida kharashaadka la gelayo iyo sicirada aan la bed-beddeli Karin. Weliba waa in aanay yeelan qaab ah kabis deymo hore loo bixiyay.

Qoddobka 122 ee Dastuurka ku Meel Gaarka ah wuxuu dhigayaa in mabaadii'da maaliyadda caamka ah loo baahan yahay in ay ka wada hadlaan Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah Federaalka iyadoo la raacayo tilmaamaha ku qoran dastuurka.

2.3 Khiyaaraadka la Qaadan Karo

Tilmaamaha ugu waaweyn ee federaalka maaliyadeed iyo wadaagga khayraadka waa in lagaga wada hadlaa shirar wada tashi oo dhexmara hoggaamiyayaasha Xukuumadda Federaalka ah iyo hoggaamiyayaasha Dawladaha Xubinta ka ah Federaalka ee jira, ku meel gaarka ah iyo kuwa abuurmayaba, iyadoo mabaadii'dan soo socota xisaabta lagu darsanayo²⁹.

2.3.1 Ka Faa'iideysiga Khayraadka Dabiiciga ah

Ka faa'iideysiga khayraadka dabiiciga ihi waa arrin weyn oo kakan. Dalalka badankooda, khayraadka dabiiciga ah "si gaar ah looma leh", waxaase gacanta loo geliyaa "dawladda" – waxay noqon kartaa dawladda qaranka ama mid ka hooseysa. Waqtigan Soomaaliya. Xukuumadda Federaalka Soomaaliya iyo Dawladaha Xubinta ka ah Federaalka waa in lagu daraa heshiisyada la xiriira soo saaridda khayraadka macaadiinta marka lala gelayo shirkadaha shisheeye, sida baatrootka, ama la diyaariyaa heshiisyo ku saabsan wadaagga wax soo saarka. Dakhliga ka soo baxa khayraadka dabiiciga ah waa in si lagu qanci karo ay u wadaagaan Xukuumadda Federaalka ah iyo Dawladda Xubinta ka ah Federaalka ee khayraadka laga soo saaray dhulkeeda. Kharashyada ka yimaadda soo saarka waa in si buuxda loo magdhebaa. Kharashyadaa waxaa ku jira kuwa ku baxaya mushahaaroyinka saxa ah iyo xaaladaha shaqo ee shaqaalaha iyo wixii tallaabooyin la qaadayo si loo ilaaliyo degaanka.

2.3.2 Lacagta La Wareejiyo (Financial Transfers)

Lacagaha ay u wareejiyo Xukuumadda Federaalka ihi Dawladaha Xubinta ka ah Federaalka waa in ay ka taageeraan in ay buuxiyaan farqiga ama is-dhinka miisaaniyadda ee ka soo dhex baxa fulintii xilalka loo igmaday iyo dakhliga. Habka loo xisaabinayo lacagaha la wareejinayaa waa in uu ku saleysnaadaa shuruudo ay ka mid yihiin khayraadka la filayo in la helo.

Kala duwanaanshaha cashuuraha degaamada kala duwan waxaa sabab u ah haddii meeli leedahay khayraad dabiici ah (macdan, baatroot) amase xaalad juqraafi oo u sahaha horuumar dhaqaale. Tusaalaha hore, waa su'aal furan in dakhliga ka yimaadda soo saarka khayraadka dabiiciga la siman yahay iyo haddii kale. Tusaalaha labaad, sinaansha abuurka (equalization) ayeey tahay in xuquuq dheeraad ah Dawladaha Xubinta ka ah Federaalka ee awoodooda dakhli ay yar tahay.

2.3.3 Cashuuraha

Dawladaha Xubinta ka ah Federaalku waa in aanay qaadan cashuuro caqabad ku noqonaya ganacsiga xorta ah ee Jamhuuriyadda Federaalka Soomaaliya. Dhinaca kale, waa in aanay jirin wax cashuur ah oo Xukuumadda Federaalka ihi ka qaadata suuqyada degaamada.

²⁹ Bernard Dafflon, The political economy of decentralization: fiscal federalism in practice, HESPI Conference on Federalism in Somalia, 23-25 October 2014, Addis Ababa, p.13.

3. Xiriirka iyo Iskaashiga Dawladaha ka Dhexeeya

3.1 Wada Shaqaynta Dawladaha ka Dhaxaysa

Xiriirka ka dhexeeya Xukuumadda Federaalka iyo xukuumadaha Dawladaha Xubinta ka ah Federaalka maaha mid maamul, waa xiriir dawlado dhexdood ah dabeecad ahaan.

Xiriirka dawladaha dhexdooda ah iyo iskaashigooda waa in laga dhex abuura Xukuumadda Federaalka ah iyo xukuumadaha Dawladaha Xubinta ka ah Federaalka. Abuuritaanka haykal shaqo iyo mid sharci oo si wanaagsan u taabba qaada oo la xiriira xiriirka iyo iskaashiga xukuumadaha dhexdooda waxaa loo arki karaa ‘dufanka ama saliidda’ sahli karta dhaqaajinta injiinka nidaamka federaalka ah. Xiriirka wada shaqneed ee xukuumadaha ka dhexeeya waxaa loo fahmi karaa isku-xidh jilayaal isku xiran ikuna tiirsan oo ka kooban labada heer ee Xukuumadda Federaalka ah iyo Dawladsaha Xubinta ka ah Federaalka. Xiriirka xukuumadaha ka dhexeeyaa wuxuu koobayaa dhammaan falgalada rasmiga ah iyo kuwa aan rasmiga ahayn, kan u dhexeeya laamaha sharci sameynta iyo fulinta ee heerarka kala duwan ee xukuumadda³⁰. Xiriirka xukuumadaha ka dhexeeyaa waa in uu weliba la ku lug yeeshaa fulinta xilalka federaalka iyo sharciga federaalka.

Xiriirka xukuumadaha u dhexeeya iyo iskaashigoodu waa in loo habeeyaa qaab hay’adeed iyadoo la raacaya nidaam sugaya ka qayb qaadashada Dawladaha Xubinta ka ah Federaalka inay lug ku yeeshaan go’aan qaadashada xukuumadda federaalka ah, taasoo ay ku jirto hannaanka qoraalka sharciyada federaalka ama wax ka beddelka dastuurka federaalka ah. Waxay muhimad gaar ah leeyihiin marka awoodaha iyo xilalka Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah Federaalku aana kala soocnayn oo ay wadaagaan xukunka (overlap in shared rule.)

3.2 Tilmaamaha Soomaalida

3.2.1 Fulinta

Qoddobada 51 iyo 52 ee Dastuurka Federaalka ee ku Meel Gaarka ah waxay dhigayaan in xiriir iskaashi ku disani dhex maro Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah ah Federaalka, haddii ay ahaan lahaayeen kuwa siyaasad ahaan isku heerka ah ama heerarka kala duwan. Marka ay noqoto dhinaca Madaxweynayaasha iyo sraakiisha sare ee fulinta, waxaa lo diyaarinayaa kulamo ay kaga wada hadlaan arrimaha saameeya dhulalka ay xukumaan Dawladaha Xubinta ka ah Federaalka³¹. Wada hadaladaa waa in lagu daraa xidhiidhada iyo wada xaajoodka hoggaamiyayaasha dhaqanka iyo ilaalinta iyo horuumarinta xeer dhaqameedka³². Wakiilada Xukuumadda Federaalka ah iyo kuwa Dawladaha Xubinta ka ah Federaalka waa in ay iyana kulmaan ugu yaraan sannadkiiba hal mar si ay uga wada xaajoodaan arrimaha qaranka³³. Qoddobadaasi waa kuwa muujinaya sida ay muhiimka u tahay in iskaashiga loo habeeyo hab hay’adseed oo rasmi ah oo u dhexeeya Dawladaha Xubinta ka ah Federaalka iyo kan ka dhexeeya Dawladaha iyo Xukuumadda Federaalka ah³⁴.

3.2.2 Sharci Dejinta

Qoddobka 80 (1) (b) ee Dastuurka ku Meel Gaarka ah wuxuu qorayaa in mashruuc sharci oo heer qaran ah au soo diyaarin karaan Golaha Wasiiradu:

Federaalo badan, waaxda fulinta ee xukuumadda federaalka ah ayaa si weyn ugu lug leh hannaanka diyaarinta sharciyada cusub, hindisayaasha sharciyadaana waxaa qoraalkooda sameeya maamulka

³⁰ Koller/Thurer/Dafflon/Waldmann, Principles of Federalism, Zurich/St. Gall, p. 112; Haller, The Swiss Constitution in a Comparative Context, Zurich/St. Gall 2009, p.84.

³¹ Arrimahan soo socda ayaa laga wada hadli karaa: khayraadka biyaha, beeraha, xannaanada xoolaha, daaqa iyo seeraha, ka hortagg a nabaad-guurka, iyo ilaalinta degaanka, caafimaadka, dhallinyarada iyo waxbarashada.

³² Qoddobka 52 (1) (b) (viii) Dastuurka ku Meel Gaarka Soomaaliya.

³³ Qoddobka 51 (3) Dastuurka ku Meel Gaarka Soomaaliya: (b) Xoojinta Midnimada Qaran; (t) Ammanka iyo nabadda dalka; (j) Horuumarinta qaran ee dhaqan-dhaqaalaha, iyo siyaasadda suuqa la wadaago ee dalka; (g) wadaagga xogta.

³⁴ Qoddobka 51 (5) Dastuurka ku Meel gaarka Soomaaliya.

federaalka ah isagoo la tashanaya Dawladaha Xubinta ka ah Federaalka. Marka ay arrimuhu muhimad gaar ah sii leeyihiin, fulinta waxaa gacan siiya guddiyo khubaro ah, Dastuurka ku Meel Gaarka ah kuma jiraan qoddoba hawshan diyaarinta sharciyada ku daraya in ay ka qayb qaataan Dawladaha Xubinta ka ah Federaalku. Haseyeeshee mabaadii'da iyo dhaqanka federaalka ee wanaagsan ayaa tilmaamaya in lagaga daro heerka fulinta marka uu marayo hannaankan sharci sameyntu.

Qoddobka 80 (1) (t) ee Dastuurka ku Meel Gaarka ihi wuxuu qorayaa in mashruuc sharci ay soo jeedin karaan ugu yaraan 10 xubnood oo ka tirsan Golaha Shacbiga ee Federaalku. Marka 10 xubnood oo Baarlamaanka ihi ay soo jeediyaan mashruuc Sharci, lama sii arki karo sida ay ay ugu lug yeelan karaan Dawladaha Xubinta ka ah Federaalku hannan la tashi oo ka sii horreeya soo jeedintaa. Si walba ha ahaatee, in ay hawshan sharci dejinta ku lug yeehshaan Aqalka Sare ee Baarlamaanka Federaalka ah waxay sugeysaa in Dawladaha Xubinta ka ah Federaalka la ilaaliyo danahooda.

Ugu danbeyntii, Qoddobka 80 (2) ee Dastuurka ku Meel Gaarka ah ayaa qoraya in ay soo jeedin karaan mashruuc sharci Aqalka Sare kaasoo metela Dawladaha Xubinta ka ah Federaalka laftooda.

Sida uu dhigayo Qoddobka (79) ee Dastuurka ku Meel Gaarka ah , mashruuc sharci wuxuu ka kooban yahay hindise qoraal sharci, oo ay ku jiraan: (b) Dib-u-eegista, beddelaadda iyo soo jeedinta wax ka beddelka Dastuurka; (t) Qorista iyo diyaarinta qoraal sharci cusub; (j) Soo jeedinta qoraal sharci cusub; (x) Dib u eegista sharci hore u jiray.

Haseyeeshee, waxaa jira weji kama danbeysta loogu soo darayo Dawladaha Xubinta ka ah Federaalka: Hirgelinta Sharciga Federaalka ah³⁵.

Abuuritaanka xiriir iyo iskaashi xukuumadaha u dhexeeya oo si habsami ah u shaqaynaya oo ay ku jiraan Dawladaha Xubinta ka ah Federaalka waa mid daruuri u ah diyaarinta iyo hirgelinta xilalka federaalka ah iyo sharciyada federaalka ah.

3.3 Khiyaaraadka la Qaadan Karo

3.3.1 Doorqa Hormuudka ah ee Xukuumadda Federaalka Soomaaliya

Dhismaha nidaam dawladeed oo federal ah oo Soomaaliya loo sameeyo wuxuu u baahan yahay tilmaan iyo jihayn qaran iyo heshiis loo dhan yahay, taasoo lagu hanan karo oo keliya hab federal oo dhinac walba taabanaya (cross-cutting) oo baahsan, isu dhammeys-tiran. Fulinta Xukuumadda Federaalka ah ee Soomaaliya ayaa leh doorqa hormuudka ah ee hannaankan. Marka uu meesha ka maqan yahay haykal sharci oo kama danbeys ah oo uu leeyahay dhismaha nidaamka federaalka Soomaaliya, hannanku waa in uu raaca oo lagu hagaaga mabaadii'da iyo dhaqamada wanaagsan ee federaalka. Hannaankaa waa in lagu daraa Dawladaha Xubinta ka ah Federaalka hannaanka go'aan gaarista ee federaalka ee labada heer ee fulinta iyo sharci-dejintaba.

3.3.2 Kulamada Xukuumadaha Dhexdooda ah

Kulamo wada tashi ah oo dhex mara hoggaamiyayaasha Dawladaha Xubinta ka ah Federaalka ee jira, kuwa ku meel gaarka ah iyo kuwa imminka la yagleelayo waa in la diyaarshaa kuwaasoo ah heerar Dawladaha/Madaxweynayaasha iyo Fulimaha/Wasiirada.

Heerka Dawladaha/Madaxweynayaasha, Madasha Hoggaamiyayaasha (Leadership Forum) oo uu Madaxweynaha Jamhuuriyadda Federaalku bilaabay, kaasoo lagu kulmay bilihii February iyo May ee 2015, ayaa laga dhigi karaa madal qaab hay'adeed leh (institutionalized) oo noqota Shirweyne Qaran oo Joogta ah. Madashaa, tilmaamaha ugu waaweyn ee habka hay'adeed ee laysu kaashan karaa³⁶ waa Guddiga Dawladaha ka Dhexeeya³⁷ (Interstate Commission, shirweynaha sannadlaha

³⁵ Fleiner/Misic/Topperwien, Swiss Constitutional Law, La Hague 2005, 256, Article 46 of the Swiss Constitution.

³⁶ Qoddobka 51 (5) Dastuurka ku Meel Gaarka Soomaaliya.

ah ee hoggaamiyayaasha Fulinta ee Xukuumadda Federaalka iyo Xukuumadaha Dawladaha Xubinta ka ah Federaalka iyo kulamada dhex mara Madaxweynayaasha Dawladaha Xubinta ka ah Federaalka iyo saraakiisha sare³⁸ iyo shir mustaqbalka ah oo ay yeeshaan Dawladaha Xubinta ka ah Federaalka ayaa lagu qaabeyn karaa hab waafaqsan mabaadii'da iyo dhaqamada federaalka ee wanaagsan.

Heerk Fulimaha/Wasiirada, abuuritaanka Shirweyne Joogto ah oo ay yeeshaan Dawladaha Xubinta ka ah Federaalka³⁹ ayaa isna noqon kara arrin muhiim ah sababtoo ah waxay saamaxaysaa shirar mawduucodu cayiman yahay oo dhex mara Xukuumadda Federaalka ah iyo Dawladaha Xubinta ka ah Federaalka . Iyadoo ku xiran hadba mawduuca laga shirayo, shirweynayaashaa wasiiradu waxaa la qaban karaa markii la doono (ad hoc) ama waxaa laga dhigi karaa shirweyne joogto ah.

Si wadajir ah, Madasha Hoggaamiyayaasha iyo Shirweynaha Dawladaha Xubinta ka ah Federaalku waxay adeegsan karaan Guddiga Dawladaha ka Dhexeeya (Inter-State Commission) iyo shirweynayaasha iyo kulamada ay dhigayaan Qoddobada 51 iyo 52 ee Dastuurka ku Meel Gaarka ah.

3.3.3 La Tashiyada Hannaanka Sharci Dejinta

Xukuumad waliba waa in ay u heelanaataa in ay xiriir iskaashi ku dhisan la yeelato xukuumadaha kale, ha ahaadeen xukuumado la heer ah ama heer kale oo xukuumadeede⁴⁰. Xukuumadda Federaalka ihi waxay ku adeegsan kartaa fikraddan aasaasiga ah ee iskaashiga hannaanka diyaarinta sharciyada iyadoo, intaanay u gudbin sharci qoraal ah Baarlamaanka, la tashaneysa Dawladaha Xubinta ka ah Federaalka, heerka wasiirada/fulinta⁴¹. Wada tashigaa hore eel ala sameeyo laamaha fulinta wuxuu ku soo gabagaboobayaa hindise ay xukuumaddu u gudbiso baarlamaanka, kaasoo ka kooban hindise iyo weliba aragtiyo iyo sharraxaad ka tarjumeysa natiijaddii la tashiyada⁴².

3.3.4 Madasha Guddoomiyayaasha Baarlamaanada

Si loogu sii fidiyo xiriirka iyo iskaahiga ka dhexeeya xukuumadaha dhinaca Baarlamaanka Federaalka ah iyo Baarlamaanada Dawladaha Xubinta ka ah Federaalka, waxaa la sameyn karaa Madasha Baarlamaanada kulmisa. Si loo sugo jiritaanka iyo horuumarinta xiriir federal oo iskaashi ku dhisan, baarlamaanadu waa in ay ku jiraan falgalkaa dhexmaraya heerarka kala duwan ee xukuumadda.

4. Dawladda Hoose

4.1 Dawladda Hoose waxay lama huraan u tahay in federaalku si wanaagsan u shaqeeyo

Dawlad hoose oo si fiican loo dhisay waxay daruuri u tahay in federaalku si fiican u shaqeeyo⁴³. Maamulada Dawladaha Hoose waxay muhiim u yihiin in la helo shaqo hufan oo dadweynaha maskaxda ku haysa oo ay yeeshaan xafiisyada iyo shaqooyinka dadweyne. Waa in ay maamuladdaasi abuuraa hay'ado si diimuqraadi ah loo doortay oo leh madax-bannani weyn iyo awooddii maaliyadeed ee ay waajibaadkooda ku fulin lahaayeen.

Xukuumadda Federaalka ah, Dawladaha Xubinta ka ah Federaalka iyo Dawladaha Hoose waa in ay si sokeeye isu kaashadaan dhammaantood, gaar ahaan dhinacyada hawl gal ee la xiriira heerarka xukuumadaha oo dhan.

³⁷ Qoddobka 111F Dastuurka ku Meel Gaarka Soomaaliya.

³⁸ Qoddobka 51 iyo 52 Dastuurka ku Meel Gaarka Soomaaliya.

³⁹ Nuspliger, Qoraal ku saabsan "Shirweynwhw Dawladaha Xubinta ka ah Federaalka", Feb. 19, 2015, p.9.

⁴⁰ Qoddobka 51 ee Dastuurka ku Meel Gaarka Soomaaliya.

⁴¹ Marka loo baahdo, Wada-tashiga waxaa loo soo rari karaa heerka Madasha Hoggaamiyayaasha/Shirweynaha Qaranka.

⁴² Dalka Switzerland, qoraalka ugu horreeya waa in la mariyaa nidaam wada tashi, halkaasoo Kantoonadu (Cantons [Dawladaha Xubinta ka ah Fed.]), xisbiyada siyaasadeed iyo kooxaha kale ee dan gaara leh ayaa lagu casumo inay aragtidooda dhiibtaan. Marka laga yimaaddo aqoonta xeel dheerayaasha la helayo, nidaamka la tashigu wuxuu fulinaya hawl qaran oo muhiim ah: in laga wada hadlo sidii meel dhexe laysugu iman lahaa. Halle, *The Swiss Constitution in a Comparative Context*, Zurich 2009, p. 317.

⁴³ Koller/Thurer/Dafflon/Ehrenzeller//Waldmann, *Principles of Federalism*, Zurich/St. Gall 2012, p. 100-113. Linder, *Swiss Democracy, Possible Solutions to Conflict in Multicultural Societies*, Second Edition, New York 1998, p. 49-52.

Khilaafka dhex mara dawladaha hoose iyo Xukuumadda Federaalka ah ama Dawladaha Xubinta ka ah Federaalka waa in lagu xalilaa wada hadal ama dhexdhexaadin.

4.2 Tilmaamaha Soomaaliyeed

4.2.1 Dawladda Hoose

Qoddobka 48 ee Dastuurka ku Meel Gaarka ah wuxuu dhigayaa laba heer oo xukuumadeed: (b) Heerka Xukuumadda Federaalka ah; iyo (t) Heerka Dawladaha Xubinta ka ah Federaalka, kuwaasoo ka kooban xukuumadda Dawladda Xubinta ka ah Federaalka iyo dawladda hoose.

Qoddobka 51 ee Dastuurka ku Meel Gaarka ah wuxuu dhigayaa in xukuumad walba loo baahn yahay in ay ku dadaasho in ay xiriir iskaashi ku dhisan la lahaato xukuumadaha kale, haddii ay ahaan lahaayeen isku heer ama heer kale oo xukumadeed: Dhammaan heerarka xukuumaduhu waa in ay waafaqaan dastuurka qaran, iyadoo aanay xukuumadina isa siinayn awoodo ka badan kuwa uu Dastuurku u qoondeeyay.

Waxaa intaa sii dheer, sharci uu ansixiyay Baarlamaanka Federaalka ihi ayaa la filayaa in uu habeeyo: (b) Dhismaha hay'adaha iyo hagitaanada loo adeegsanayo falgalka heerarka kala duwan ee xukuumadda; iyo (t) Asaasidda hagitaanada loo raacayo xalinta khilaafaadka u dhexeeya heerarka kala duwan ee xukuumadeed iyadoo aan maxkamad laysla tegin.

Dawlad-dhisid meel mar ah oo ay Soomaaliya heshaa waxay u baahan tahay xukuumad sharci ah, taasoo iyana ku sii xiran in la helo hannaan saamaxaya lahaansho deegaameed oo weyn kaasoo horseedaya nidaamyada isla-xisaabtan oo adag, kalsooni dadweyne oo weyn, iyo xukuumado si wanaagsan uga jawaaba baahida dadka⁴⁴.

4.2.2 Gobolada iyo Degmooyinka

Soomaaliya waxay si rasmi ah ugu qaybsan tahay 18 maamul Goboleed, kuwaasoo iyana u sii qaybsan sagaashan iyo sadde Degmo. Nidaamyada federaalka ah, maqaamka gobolada iyo degmooyinku waa arrin ku saleysan oo la xidhiidha dastuurada Dawladaha Xubinta ka ah Federaalka. Waa unugyada uu ka koobmo federaalku ee ugu dhow dadweynaha. Maadaamaa Goboladu yihiin unugyo maamul, Dastuurada Dawladaha Xubinta ka ah Federaalku waxaa laga yaabaa in ay u sii odorosaan in Xukuumadda Dawladdahaasi ay magcaabayaan Badhasabyada ama Guddoomiyayaasha Gobolada

Soomaaliya, Dastuurka Dawladda Puntland ee Soomaaliya wuxuu dhigayaa in Puntland ay ku dhaqanto mabaadii' da maamulka furfuran (decentralization). Heerka Degmo, kooxaha beesha ayaa doorta Golayaasha Sharci Sameynta. Golaha Degaanku wuxuu leeyahay xilal uu ku fuliyo siyaasadaha dhinacyo ama mawduucyo kala duwan⁴⁵. Guddoomiyaha Degmada waa awoodda ugu sarreysa ee Degmada wuxuuna guddoomiyaa shirarka Degmada ee guddiyada horuumarinta iyo ammaanka. Waxaa dooran kara Guddoomiyaha Degmada Golaha Sharci Sameynta ee Golaha Degmada ama dadweynaha Degmada⁴⁶.

Dastuurka Jamhuuriyadda Somaliland wuxuu tibaaxayaa in maamulada Gobolada iyo Degmooyinku ay yihiin qayb ka tirsan maamulka Dawladda Somaliland. Gobolada iyo Degmooyinka Somaliland waxay leeyihiin golayaal sharci dejin, awoodooduse ay ku kooban tahay in ay ansixiyaan sharci hoosaadyo aan ka horimanayn sharciyada Jamhuuriyadda, iyo golayaasha fulinta. Guddoomiyaha Gobolka waxaa magcawda Xukuumadda wuxuuna doorkiisu yahay wakiilka xukuumadda dhexe ee Gobolka iyo Degmooyinka hoos yimaadda⁴⁷.

⁴⁴ Menkhaus, If Mayors ruled Somalia, Policy Note for the Nordic Africa Institute. May 2014: www.nai.uu.se.

⁴⁵ Dastuurka Dawladda Puntland ee Soomaaliya, 18ka April 2012, Qoddobka 81-88. Golaha Degmooyinka ayaa leh xilka fulinta.

⁴⁶ Dastuurka Dawladda Puntland ee Soomaaliya, 18ka April, 2012, Qoddobka 86.

⁴⁷ Dastuurka Jamhuuriyadda Somaliland, Qoddobka 111.

4.3 Khiyaaraadka la Qaadan Karo

4.3.1 Dawladda Degmada

Tilmaamaha ugu waaweyn ee xukuumadda degmada waxaa lagaga wada hadli karaa kulamada wada tashiga ee u dhexeeya hoggaamiyayaasha Xukuumadda Federaalka ah iyo hoggaamiyayaasha Dawladaha Xubinta ka ah Federaalka ee jira, kuwa ku meel gaarka ah iyo kuwa imminka la yagleelayo. Waxaa intaa sii dheer, hoggaamiyayaasha degmada waa in lagu ayna qayb firfircoon ka qaataan wada hadalada. Weji labaad waa in lagaga wada hadlaa tilmaamaha u gaarka ah xukuumadda degaanka iyo degmada, wada hadalkaasoo ay isugu imanayaan hoggaamiyayaasha Dawlad walba oo Xubin ka ah Federaalka iyo hoggaamiyayaasha degaamadooda hoose.

4.3.2 D oorshooyinka

Waxaa jira mushkilad soo dhow: Sannadka 2016, doorashooyinka qaran waa in la diyaariyaa. Haseyeeshee, doorashooyinku, kama dhacaan heerka qaran oo keliya balse heerka Dawladaha Xubinta ka ah Federaalkana way ka dhacaan. Sharci dejinta mid walba oo ka mid ah Dawladaha Xubinta ka ah Federaalka ayaa laga doonayaa in ay go'aansadaan tilmaamaha iyo habka nidaamkooda doorsho kaasoo weliba khuseyn doona doorashooyinka qaran. Degmooyinka ka tirsan Dawladaha Xubinta ka ah Federaalka ayaa noqon kara goobaha ama xarumaha codbixinta (constituency).

5. Xiriirka Dibedda

5.1 Dhinaca xiriirka dibedda, xilalka Federaalka iyo Dawladaha Xubinta ka ah Federaalka labaduba wey soo gelayaan

Xukuumadda Federaalka ah ayaa leh masuuliyadda koowaad ee xiriirka dibedda abuuristiisa, qaabeyntiisa iyo ka shaqayntiisa. Xukuumadda Federaalka ah ayaa ah jilaha koowaad ee federaalka marka laga hadlayo xiriirka dibedda. Dawladda Federaalka ihi waa in ay si buuxda iyo waqtiga loo baahan yahay ay ku wargelisaa Dawladaha Xubinta ka ah Federaalka wixii la xiriira siyaasadda arrimaha dibedda. Waa in ay ula tashataa hadba sida haboon. Dawladaha Xubinta ka ah Federaalka waa in la siiyaa fursadaha ay kaga qayb qaadan karaan siyaasad-abuurka federaalka eek u lugta leh umuuraha siyaasadda arrimaha dibedda ee iyaga khuseeya⁴⁸. Waa in la sameeyaa dadaalo wanaagsan oo la xiriira in gudaha dalka laga hirgeliyo sharciyada caadi ahaan caalamku ku dhaqmo.

5.2 Tilmaamaha Soomaaliyeed

Sida uu dhigayo Qoddobka 54 ee Dastuurka ku Meel Gaarka ihi , arrimaha dibeddu waa arrin federal. Arrintan waxaa ku jirta awoodda ay Xukuumadda Federaalka ihi u leedahay in ay soo gasho heshiisyada caalamiga ah. Qoddobka 53 ee Dastuurka Federaalka ah wuxuu dhigayaa in Xukuumadda Federaaliga ah ay waajib ku tahay in ay kala tashato Dawladaha Xubinta ka ah Federaalka “wada hadalada la xiriira caawimada dibedda, ganacsiga, heshiisyada, ama arrimaha kale ee muhiimka ah ee la xiriira heshiisyada caalamiga ah.” Marka wada hadaladu ay si gaar ah u saameynayaan danaha Dawlad Xubin ka ah Federaalka, wakiilo ka socda xukuumadaha Dawladaha Xubinta ka ah Federaalka waa in lagu daraa wafdiga wada-hadalka gelaya ee Xukuumadda Federaalka ah. Marka lagu jiro wada –hadalka, Xukuumadda Federaalka ihi waa in ay isu aragtaa ilaalayaha danaha Dawladaha Xubinta ka ah Federaalka.

Mabaadii’daa Dastuurka ku Meel Gaarka ihi waa kuwo la jaan qaadaya “Hagitaanada Dhaqanka Wanaagsan ee Federaalka”.

⁴⁸ Koller/Thurer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of federalism, Zurich/St. Gall 2012, p. 144-116; Feiner/Misic/Topperwien, Swiss Constitutional Law, La Hague 2005, p 103.

5.3 Khiyaaraadka la Qaadan Karo

5.3.1 Wada Tashiga Xukuumadaha Dhexdooda

Tilmaamaha ugu waaweyn ee arrimaha dibedda waa lagaga wada hadli karaa kulamada wada tashiga ee u dhexeeya hoggaamiyayaasha Xukuumadda Federaalka ah iyo hoggaamiyayaasha Dawladaha Xubinta ka ah Federaalka ee jira, kuwa ku meel gaarka ah iyo kuwa haatan la yagleelayo, ee heerka Xukuumadaha/ Madaxweynayaasha.

5.3.2 Sahrci Dejinta

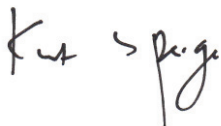
Hawlaha iyo awoodaha hannaanka hordhaca ah ee heshiisyo gelista wey u kala qaybsan yihiin fulinta iyo sharci dejinta. Sharci dejinta Baarlamaanka Federaalka ah wuxuu habeyn karaa qawaaniina u sameyn karaa mabaadii'da Arrimaha Dibedda ee Jamhuuriyadda Soomaaliya.

J. Aragti Guud

Nidaamka Federaalku waa mid ka hanaqaaday oo guuleystay caalamka daafihiis tariikhddii foogeyd iyo taariikhihii dhowaanahan danbe ahaa. Federaalada muddada soo jiray waa kuwo – dhinacyada degananshaha, xorriyadda iyo barwaaqadaba – dawladahoodu ka mid yihiin kuwa ugu horreeya ee ugu guusha badan maanta. Federaalada hadda soo baxayaa waxaa muuqata in ay yihiin kuwa calaamado yididiilo leh oo dhinaca horuumarka ah laga arki karo. Ugu yaraan, federaalku wuxuu muujiyay in uu yahay nidaam si dhab ah loogu adeegsan karo dhinaca ka wada xaajoodka lagu diyaarinayo laguna gaarayo xalal dhex mara danwadaagta dawlad ku wada jira⁴⁹.

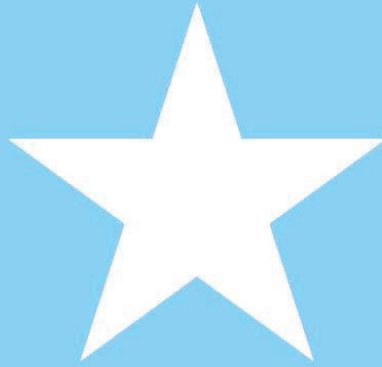
Bishii Siibtambar ee 2013, Dawladda Federaalka ah ee Soomaaliya iyo qolyaha ay shuraakada kula tahay xagga horuumarinta waxay saxeexeen Nidaam Heshiis Cusub (New Deal Compact) oo lagu hirgelinayo Higsiga Soomaaliyeed ee 2016. Nidaamka Heshiiska Cusubi wuxuu ku qaabeysan yahay shan Ujeedo oo Nabad-iyo Dawlad Dhisid ah ([Peace-and State-Building Goals (PSGs)]. Qaybaha hannaanka heshiiskan oo dhami waxay noqonayaan kuwo Soomaalidu iska leedahay, loo wada dhan yahay, daah-furan isla markaana waafaqsa Dastuurka ku Meel Gaarka ah ee Federaalka Soomaaliya. Marka laga tago tilmaamaha horeba uu u dhigayay Dastuurku, mabaadii'da iyo dhaqanka federaalku waxay gacan ka geysan doonaan qaabeynta nidaamka dawladnimo ee Soomaaliya ee cusub federal oo cusub kaasoo leh isu dheeli tir ku saleysan federal u dhexeeya Dawladaha Xubinta ka ah Federaalka iyo Xukuumadda Federaalka ah, oo qaran ahaan u mideysan.

Dawladnimada federaalku waa in ay noqotaa mid ku saleysan dhaqan is aamin iyo is xushmeyn ah. Dhaqanka wanaagsan ee Federaalkana waxaa u calaamad ah in uu noqdo mid waaqiciga ku saleysan iyo weliba hal-abuurka, curinta afkaarta cusub iyo wax-ka barashada wadciga.



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⁴⁹ Koller/Thurer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of federalism, Zurich/St. Gall 2012, p. 93. See also The Forum of Federations, the Global Network on Federalism and Devolved Governance: www.forumfed.org.



Principles and Practice of Federalism

Paper prepared for the Office of the Prime Minister of the Federal Republic of Somalia by Prof. Kurt Nuspliger, University of Berne, sponsored by the Embassy of Switzerland

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A. Federalism

There is a wide range of differing federal systems in place around the world today. Amongst these systems, there is no one ideal model of federalism, no one template of "best" practices valid worldwide. Political, social, historical and other conditions shape federal institutions and processes. These conditions vary by countries. The basic structure of federal systems today is, however, the same everywhere. It implies the executive, the legislative and the judiciary at the two levels of the federal government and the governments of the federal member states (FMS). It is a composite structure of two orders of government. It combines sub-national "self-rule" and, at the national level, "shared rule"¹ between the federal government (SFG) and the governments of the FMS. Each FMS has its own area of responsibility (self rule). The FMS participate in the decision-making process at the federal level (shared rule).

This organization of power is laid down in the constitution that assigns powers "vertically" and "horizontally". Each order of government has its own political and administrative autonomy in its assigned areas of competence. This autonomy is always to be used for the benefit of its citizens and development. The federal government is also to promote the general good of the federation and to integrate sub-national entities. As constituent units of the federation, the FMS participate in the making and implementation of law by the federal government².

Every federal system has mechanisms to facilitate intergovernmental cooperation³ between the federal government and the governments of the FMS, and to resolve intergovernmental disputes. The Constitutional Court has the exclusive power to hear and decide cases arising out of disputes between the FGS and the FMS governments, and between the FMS governments⁴.

Devolution is the most advanced form of decentralization, since it transfers powers, responsibilities and resources to elected public bodies, not administrative units⁵. In a federation these public bodies are states with their own constitutions, their own legislation and their own elected authorities⁶.

A group of Swiss experts on federalism has established "Guidelines for Good Federal Practices"⁷. The idea behind the guidelines is to draw up principles for the just, equitable and effective governance of federations worldwide. The guidelines are intended to help the framers of constitutions, government officials, members of civil society and those who apply the law to reassess, reform or rebuild political systems. For Somalia these Guidelines could be of use to develop a Somali federal governance system.

Much knowledge and experience about federalism can also be found in the "Forum of Federations". The Forum of Federations is an international governance organization. It is a learning network concerned with promoting intergovernmental learning on governance challenges in multi-level democracies⁸. The Forum of Federations doesn't advocate for any particular structure of government. It brings a tested, comparative approach, a global network of experts and excellent access to key government officials around the world. It assists in democracy building in fragile states or regions in post-conflict situation.

¹ Watts/Blindenbacher, Federalism in a Changing World - Learning from Each Other, A Conceptual Framework for the International Conference on Federalism 2002, Langendorf 2002, p. 23-25.

² Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p.15.

³ See B.3. Intergovernmental Relations and Cooperation.

⁴ Provisional Constitution of the Federal Republic of Somalia (SOMPC), unofficial translation of the text adopted August 1, 2012, and submitted to the House of the People of the Federal Parliament on September 7, 2012, Article 109C, (1d).

⁵ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St.Gall 2012, p. 38.

⁶ Moreover, the boundaries of the Federal Member States have to be properly defined.

⁷ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012. Part B of this paper refers to the "Principles of Federalism."

⁸ The Global Network on Federalism and Devolved Governance: <www.forumfed.org>.

There are roughly 25 federal countries in the world today, which together represent 40 per cent of the world's population⁹. They include some of the largest and most complex democracies. Their system of government, while it can be complex, has made many federations amongst the most prosperous countries in the world with high standards of government services. The twin concept of federalism and decentralization is also applied in the neighbouring countries of Somalia. As per the Constitution of the Federal Democratic Republic of Ethiopia, the country is a federation of nine ethno-linguistically divided Regional States. The Constitution of Kenya is based on the system of devolved government¹⁰. Powers, responsibilities and resources are transferred to the Counties. County governments are based on democratic principles and the separation of power. There are County governments for each County, consisting of a County Assembly and a County Executive¹¹.

Federalism in Somalia¹²

For the governance of Somalia, federalism is a very recent feature. What experience of governance exists dates back 25 years and was lived under the strongly centralized military and socialist regime of Siad Barre. With the Provisional Constitution of 2012 (SOMPC)¹³ Somalia takes a new start to establishing countrywide governance as a Federal Republic. The Provisional Constitution sets out basic elements of federalism, which now require design and embodiment in the Constitution, in legislation and in politics. For the establishment of a federation the understanding of statehood is of central importance because the constituting units are states. A state is defined by its own territory, its own population and its own organization of power¹⁴.

The background against which Somalia is building its federal order is complex and fluid. Since the overthrow of the Barre regime and following the collapse of the central governmental and administrative structures, in 1991, the Regions and the Districts and, since 2000, the Transitional Government in Mogadishu had all been acting more or less in governmental and institutional disconnect. The organizational power and responsibility of governance had moved from the territorial institutions of the Regions and Districts to clan. In the 1990ies, in Somaliland and Puntland, states were formed without defined territory and borders. As states in their own right, Puntland considered itself to be part of Somalia, Somaliland not. In 2012, the Provisional Constitution re-introduced the defined territory of two or more Regions as a criterion of statehood for a Federal Member State (FMS) of the Federal Republic¹⁵. Since then, Khatumo State, in undefined parts of two Regions claimed by both Somaliland and Puntland based on clan, seeks statehood and integration into the Federation. In Central Somalia, Galmudug seeks integration into the Federation with parts of its territory in the North being claimed by Puntland based on clan. One further Region-based state in Central Somalia is in the making and the status of Benadir Region with the capital Mogadishu seeks clarification. In the South with Jubbaland and the 'South-Western State', two Federal Member States with interim-administrations have emerged on the basis of territory defined by three Regions each. They are building their governance institutions. The challenge of establishing a federal governance system in Somalia will consist of bringing together these FMS, their 18 Regions and 93 Districts, into cooperation with the FGS based on accepted delimited territories rather than clan.

⁹ The following countries are "Forum Partner Federal Countries": Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Pakistan, and Switzerland.

¹⁰ The decentralized governmental system of Kenya is fully documented in: Rocaboy Ivon/François Vaillancourt/Réjane Hugounenq, Public Finances and Local Government in Kenya, in: Bernard Dafflon/Thierry Madiès (Eds.), *The Political Economy of Decentralization in Sub-Saharan Africa*, African Development Forum Series, The World Bank, Washington, and the Agence Française de Développement, Paris, 2012.

¹¹ Constitution of Kenya, Revised Edition 2010, articles 174, 175, 176.

¹² In chapter A.3, Dominik Langenbacher, Ambassador and Special Envoy of Switzerland to Somalia, sets out the political context within which the federal state-building takes place in Somalia.

¹³ Provisional Constitution (SOMPC), Chapter 5: Devolution of the Powers of Government in the Federal Republic of Somalia.

¹⁴ These are the traditional criteria for Statehood: Raic, *Statehood and the Law of Self-Determination*, The Hague 2002, p.58.

¹⁵ Provisional Constitution (SOMPC), Articles 48 and 49.

Federalism should accomplish national unity through the distribution of powers between the Federal Government and the Federal Member States. It should ensure the peaceful coexistence of people, while recognizing their diversity. Somalia is ethnically homogenous whereby "the social differentiation has its pivot in the politicization of genealogical affiliation and on the distribution of wealth which both respond to the logic of the clan¹⁶." Adopting federalism will move Somalia from the prevailing informal distribution of power based on clan into the formal constitutional architecture of a federation based on states.

A federal political system is expected to bring government closer to the people and safeguard unity and stability. As the federal state-building process deepens, the potential of inter- and intra-State conflict will, however, intermittently grow. This is generally recognized but the necessary social and political reconciliation as its prerequisite risks to be neglected. Also, public information and debate on the federalism Somalia is striving for have so far not been launched¹⁷.

With the objectives of Vision 2016 and the Peace and State-building Goals (PSG) of the New Deal Compact, the FGS has put much pressure on the formation of a federal governance system for Somalia – in substance and in time. Beyond the institutional state-formation at the level of the Federal Member States, Regions and Districts, federalism will particularly affect the work to be accomplished with regard to the organization of the elections in 2016. Following a federal build-up, the territories of the Federal Member States will become the most important sub-national constituencies. For the executives at both levels of the FGS and the FMS federalism will affect the organization of responsibilities in such important areas as security, justice, economic foundations, resource sharing and finance, and service delivery in health and education. The principles and practice of federalism will equally need to be instilled into the legislation of Parliament on these issues and, ultimately, all needs to be reflected in the Constitution of the Federal Republic of Somalia, which is under review and for which a referendum is foreseen. Overall, the endeavor of establishing a federal governance system will take Somalia well beyond the deadline of 2016.

B. The Five Principles of Federalism

The five main issues a federal governance system needs to address are the following:

- Distribution of Powers;
- Fiscal Federalism and Resource Sharing;
- Intergovernmental Relations and Cooperation;
- Local Government and
- Foreign Relations.

This paper presents the respective principles of federalism and good federal practices, the respective provisions of the Somali Provisional Constitution and options for the development of a Somali federal governance system. The emphasis of this paper lies on the powers and responsibilities of the executive.

1. Distribution of Powers

1.1 The distribution of powers as a constitutional principle

The distribution of powers should be made clear and visible, in accordance with the following principles: It should be unambiguous and anchored in the Federal Constitution as well as in the

¹⁶ Zoppi, Federalism: A valid instrument for reconciliation in Somalia?, Wardheer News, 2013. p.6.

¹⁷ Heritage Institute for Policy Studies, Federal Somalia: Not If but How, Policy Brief 02/2015, www.heritageinstitute.org. According to Afyare Elmi, Decentralized Unitary System: A Possible Middle Ground Model for Somalia, Arab Center für Research and Policy Studies, Mai 2015, a decentralized unitary system would be the most suitable governance model for Somalia.

constitutions of the Federal Member States¹⁸. Distribution of powers refers to the division, sharing and control of government authority as well as the cooperation and competition among the Federal Government and the governments of the Federal Member States. Distribution of powers (separation of powers) also applies to the branches of government, i.e. the executive, the legislative and the judiciary.

The Federal Government should only undertake tasks that require uniform regulation or those the Federal Member States cannot fulfill. In all cases, the different orders of government should support each other in carrying out their duties, being mutually considerate and respectful of diversity.

Each order of government must enjoy sufficient power to fulfill the tasks assigned to it¹⁹. The Federal Member States should have sufficient resources and revenue in order to fulfill devolved tasks.

The Federal Government should dispose of the constitutionally based authority necessary to act for the general good of the federation. The authority of the FMS needs to be respected and protected by the Federal Government. Federal Member States should equally enjoy the authority necessary to fulfill their tasks autonomously or in cooperation with other constituent units. The FMS should enjoy substantial autonomy over those powers assigned to them within the framework of the federal constitution²⁰.

Intergovernmental disputes should to the extent possible be resolved through consultations and mediation. In case of constitutional disputes between the federal government and constituent units, a federal system of constitutional review should be available²¹.

1.2 Somali Elements

The Heritage Institute for Policy Studies notes that a significant majority of Somali surveyed across five cities in Somalia support a federal system of governance, because it facilitates power sharing among clans, enables regional autonomy and ultimately leads to a reduction of conflict²².

Article 50 (a), (b) and (c) of the Provisional Constitution (SOMPC)²³ stipulates that the various levels of government should observe the three following principles of federalism:

(a) Every level of government shall enjoy the confidence and support of the people:

Political institutions and structures must be based on law and incorporated in the federal system of government. The Federal Government, the Federal Member States and the Districts should have democratically elected decision making bodies.

(b) Power is given to the level of government where it is likely to be most effectively exercised:

Article 54 of the SOMPC stipulates that foreign affairs, national defense, citizenship and immigration as well as monetary policy are competencies of the federation. The allocation of other powers to the FGS or the FMS will have to be negotiated and agreed upon by the Federal Government and the Federal Member States.

(c) The existence and sustainability of a relationship of mutual cooperation and support between the governments of the Federal Member States, and between the governments of the Federal Member States and the Federal Government, in the spirit of national unity:

¹⁸ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p.99.

¹⁹ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 100-101.

²⁰ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 101.

²¹ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism; Zurich/St. Gall 2012, p.102.

²² Heritage Institute for Policy Studies, Federal Somalia: Not If but How, Policy Brief 02/2015, <www.heritageinstitute.org>.

²³ The Federal Republic of Somalia Provisional Constitution (SOMPC). See also Articles 51-54.

Intergovernmental relations should be based on partnership among the FMS and the FGS. Cooperation is realized mainly through partnership. Partnership implies mutual respect and the self-restraint needed to allow others to express themselves and play their roles. The Federal Government must have confidence in the Federal Member States, and the Federal Member States must align their interests with the Federal Government's. This cooperative spirit extends to the resolution of disputes, which should be through dialogue and reconciliation²⁴.

These three principles of the SOMPC implicitly reflect the guidelines for good federal practices. They will help the Federal Republic of Somalia establish its legal, institutional and regulatory frameworks to be anchored in the Constitution and in legislation.

1.3 Options for Action

A clear distribution of powers between the Federal Government and the Federal Member States is essential to a federation. According to the "Guidelines of Good Federal Practices" the distribution of powers should be unambiguous and anchored in the Constitutions of the Federation and the FMS. Above all, the distribution of powers should not be left to political decision-making in each particular case. – However, the Constitution of Somalia is provisional and under review, and the FMS are not yet legally established. Under these circumstances, the principles and good practices of federalism could directly guide the Federal Government of Somalia (FGS) as it plays the lead role in developing the federal governance system for Somalia.

1.3.1 Integrity of the Nation

In the organization of the powers in the federation, the prime responsibility of the FGS has to be to preserve the integrity and the federal character of the Nation. The FGS should promote the general good and common interests of the federation and the existing, interim and emerging FMS.

1.3.2 Federalism as a Crosscutting Issue

The FGS should address federalism as a crosscutting issue. The Federal Government and particularly its Executive have to take into consideration that federalism affects practically all aspects of public responsibilities and services. The powers and authority of the FMS need to be respected by the FGS. The prime role of the FGS is to supervise whether the FMS act in compliance with the agreed distribution of powers and responsibilities, and federal law. If not, it is to take measures to ensure that they do so. Such measures should be appropriate to the respective conflict of interests, in kind and degree.

1.3.3 Collaborative relationships

The FGS should develop collaborative relationships with Federal Member States. Regular consultative meetings should be organized for leaders at both levels of the Governments/Presidents²⁵ and the Executive/Ministers²⁶.

1.3.4 Building Federal Member States

A vital federation is based on Federal Member States having freedom of own organization. Institution building in emerging FMS is a complex process, which needs its time. New political actors and staff in administrations have to be trained. Moreover, the inclusion of local structures into the state-building process is an important prerequisite for the achievement of success.

²⁴ Article 50 (g) SOMPC.

²⁵ Article 52 SOMPC; Leadership Forum.

²⁶ Article 52 SOMPC; Nuspliger, Paper on "Conference of the Federal Member States", February 19, 2015. See Intergovernmental Relations and Cooperation, below.

2. Fiscal Federalism and Resource Sharing²⁷

2.1 Fiscal federalism is crucial for all federations

The Federal Government and the governments of the Federal Member States should have sufficient sources of revenue in order to finance their tasks. Each public service should be provided by the order of government that is most likely to supply the service best to residents. The Federal Government should provide the Federal Member States with substantial financial resources of their own.

Within statutory limits, the Federal Member State's governments should be able to determine tax rates for their own sources of revenue. Transfers from the Federal Government to the Federal Member States must contribute to filling budget gaps between their functions and revenues. Financial transfers should not, however, substitute for sub-national taxation. Financial transfers must be transparent and based on clear criteria²⁸ that cannot be manipulated.

With fiscal decentralization, sub-national governments face differing challenges when it comes to needs and costs of providing public services as well as the territorial distribution of potential revenue sources. These disparities call for equalization. Within their financial autonomy, the Federal Member States must follow sustainable fiscal policy and respect budget discipline.

2.2 Somali Elements

Article 50 of the Provisional Constitution (SOMPC) provides the following principles:

(d) Every part of the Federal Republic of Somalia shall enjoy similar levels of services and a similar level of support from government:

The needs of the Federal Member States vary according to the particular preferences of residents, geographic and socio-economic factors and the type and nature of goods and services that they are legally required to provide. Corrective measures in the form of fiscal equalization should compensate in part of these differences.

(e) Fair distribution of resources:

The Federal Government has resources available to support the Federal Member States. Financial transfers from the Federal Government to the Federal Member States should be based on objective criteria of measurement and not be dependent on political allegiance, local circumstances or logrolling. Financial transfers should basically not substitute for Federal Member State's taxation.

(f) The responsibility for the raising of revenue shall be given to the level of government where it is likely to be most effectively exercised:

Generally, the Federal Government collects taxes that contribute to economic development and major consumption taxes that secure an integrated internal economic union. The taxes should be calculated on criteria such as potential resources and expenditure needs and costs that cannot be manipulated. Also they should not take the form of ex post bailout subsidies.

Article 122 of the SOMPC stipulates that the principles of the public finance should be discussed between the Federal Government and the Federal Member States in accordance with the elements outlined in the constitution.

²⁷ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, *Principles of Federalism*, Zurich/St. Gall 2013, p.103-106; Dafflon, *The political economy of decentralization: Fiscal federalism in practice*, Conference on IGAD Economies and Federalism in Somalia, 23-25 October 2014, Addis Ababa, Ethiopia.

²⁸ Financial transfers should be largely unconditional in order to respect the autonomy of FMS in their expenditure choices. Specific conditional transfers should be explicitly targeted and limited to a small number of decentralized public policies where the national government wishes to give policy incentives.

2.3 Options for Action

The main elements of fiscal federalism and resource sharing should be discussed in consultative meetings between the leaders of the Federal Government and the leaders of existing, interim and emerging Federal Member States, whereby the following principles should be taken into account²⁹:

2.3.1 Natural Resources Exploitation

The exploitation of natural resources is a huge and complex issue. In most countries, natural resources are not "privately owned", but vested in the "state" – this can be national or subnational. At this stage in Somalia, the FGS and the FMS should be involved when deals with foreign companies about access to mineral resources, such as oil, or production sharing agreements are prepared. Revenues from natural resources must be adequately shared between the FGS and the FMS in which the resources are exploited. Costs arising there from exploitation must be fully compensated. These costs include correct wages and working conditions for the labour and measures for the preservation of the environment.

2.3.2 Financial Transfers

Transfers from the FGS to the FMS must contribute to filling budget gaps between the assigned responsibilities and revenues. Transfers should be calculated on criteria such as potential resources. Disparities in the territorial distribution of tax bases are the result of the presence of natural resources (mining, oil) or of a geographic situation conducive to economic development. In the first case, it is an open question whether revenues from exploitation should be considered for equalization. In the second case, equalization should compensate FMS with fewer revenue capacities.

2.3.3 Taxes

The Federal Member States should not collect taxes which are an obstacle to free trade in the Federal Republic of Somalia. On the other hand, there should be no taxation of local markets by the Federal Government.

3. Intergovernmental Relations and Cooperation

3.1 Intergovernmental Partnership

The relations between the Federal Government and the governments of the Federal Member States are not administrative, they are intergovernmental in nature.

Intergovernmental relations and cooperation should be established between the Federal Government and the governments of the Federal Member States. The establishment of a well-functioning institutional and legal framework for intergovernmental relations and cooperation can be considered "the drop of oil" that smoothes the operation of the federal system. Intergovernmental relations are best understood as a network of interrelated and interdependent actors at both levels of the Federal Government and the Federal Member States. Intergovernmental relations encompass all formal and informal interactions between legislative and executive branches of the different orders of government³⁰. Intergovernmental relations have also to deal with the implementation of federal responsibilities and federal law.

Intergovernmental relations and cooperation should be institutionalized in a way that ensures the

²⁹ Bernard Dafflon, The political economy of decentralization: fiscal federalism in practice, HESPI Conference on Federalism in Somalia, 23-25 October 2014, Addis Ababa, p.13.

³⁰ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 112; Haller, The Swiss Constitution in a Comparative Context, Zurich/St. Gall 2009, p. 84.

participation of the Federal Member States in the decision making process of the federal government, including the process of drafting federal legislation or amending the federal constitution. They are especially important when the powers and responsibilities of the Federal Government and the Federal Member States overlap in shared rule.

3.2 Somali Elements

3.2.1 The Executive

Articles 51 and 52 of the Provisional Constitution (SOMPC) stipulate collaborative relationships between the Federal government and the Federal Member States, be it at the same political level or at another level. For the Presidents and senior officials of the executives, meetings are provided to discuss issues that affect the territories of the Federal Member States³¹. Such discussions should include relations and dialogue amongst traditional leaders and the protection and development of traditional law³². Representatives of the Federal Government and the Federal Member States should also meet at least annually for the discussion of national issues³³. These provisions make it all the more important to start institutionalizing the cooperation among Federal Member States and between them and the Federal Government³⁴.

3.2.2 Legislation

Article 80 (1) (a) of the SOMPC provides that a legislative project at national level may be initiated by the Council of Ministers:

In many federations, the executive branch of the federal government is significantly engaged in the process of preparing new legislation and the bills are drafted by the federal administration in consultation with the Federal Member States. In more important cases, the executive is also assisted by expert committees. In the SOMPC, there are no provisions for the involvement of the Federal Member States in the preparation of legislation. The principles and good practice of federalism would, however, imply their inclusion in the process at the executive level.

Article 80 (1) (b) SOMPC provides that a legislative project may be initiated by at least 10 members of the House of the People of the Federal Parliament:

When 10 members of Parliament propose a legislative project, it is not foreseen to involve the Federal Member States in a preliminary consultation procedure. Nevertheless, the involvement of the Upper House of the Federal Parliament in the legislative process ensures that Federal Member State interests will be safeguarded.

Article 80 (2) SOMPC, finally, provides for the initiation of legislation by the Upper House, which is the representation of the Federal Member States themselves.

According to article 79 of the SOMPC, a legislative project consists of the proposal of draft law, including: (a) Reviewing, replacing and proposing amendments to the Constitution; (b) Writing and preparing a new draft law; (c) Proposing a new draft law; (d) Reviewing an existing law.

There is, however, a final phase in which the Federal Member States will be involved: the implementation of federal law³⁵.

The establishment of well-functioning intergovernmental relations and cooperation, which include

³¹ The following issues could be discussed: water resources, agriculture, animal husbandry, pasture and forestry, the prevention of erosion and the protection of the environment, health, youth and education.

³² Article 52 (1) (a) (viii) SOMPC.

³³ Article 51 (3) SOMPC: (a) Strengthening national unity; (b) Security and peace of country; (c) National socio-economic development, and common market policies of the country; (d) Promotion of the wealth of the people; (e) Information sharing.

³⁴ Article 51 (5) SOMPC.

³⁵ Fleiner/Misic/Töpperwien, *Swiss Constitutional Law*, La Hague 2005, p. 256, Article 46 of the Swiss Constitution.

the FMS, is essential for the preparation and the implementation of federal responsibilities and federal law.

3.3 Options for Action

3.3.1 Leading Role of the Federal Government of Somalia

The creation of a federal governance system in Somalia requires national direction and consensus, which can only be achieved through a comprehensive and integrated approach to federalism as a crosscutting issue. The executive of the Federal Government of Somalia has a leading role to play in this process. In the absence of a final legal framework for the federal governance system to be established, the process should be guided by federal principles and good practices. The Federal Member States should be included in the process of federal decision-making at both the executive and the legislative level.

3.3.2 Intergovernmental Meetings

Consultative Meetings for leaders of existing, interim and emerging Federal Member States and representatives of the Federal Government should be organized at the levels of Governments/ Presidents and Executives/Ministers.

At the level of Governments/Presidents, the Leadership Forum, which the President of the Federal Republic has initiated and which has met in February and May of 2015, could be institutionalized as a standing National Conference. In this Forum, the main elements of the institutional arrangements for cooperation³⁶, the Interstate Commission³⁷, the annual conference of the Executive heads of the Federal Government and the Federal Member State Governments and meetings between the Presidents of Federal Member States and high ranking officials³⁸ and a future Conference of the Federal Member States (CFM) could be shaped in line with federal principles and practice.

At the level of Executives/Ministers, the establishment of a permanent Conference of the Federal Member States (CFM)³⁹ could become an important element because it allows for subject-specific meetings between the Federal Government and the Federal Member States. Depending on the issue to be addressed, such ministerial conferences could be convened ad hoc or established as standing conferences.

Together, the Leadership Forum and the Conference of the Federal Member States could consume the Inter-State Commission and the provided conferences and meetings of Articles 51 and 52 of the Provisional Constitution (SOMPC).

3.3.3 Consultations in the Legislative Process

Every government should strive for a cooperative relationship with other governments, whether at the same level or at another level of government⁴⁰. The Federal Government could apply this basic idea of cooperation to the process of preparing legislation and, before presenting a draft law to Parliament, consult the Federal Member States. Such subject-specific discussions of proposed legislation could take place in the Conference of the Federal Member States, at the ministerial/executive level⁴¹. This preliminary consultation conducted amongst the executive branches would conclude with a governmental proposal to Parliament, consisting of a bill as well as

³⁶ Article 51 (5) SOMPC.

³⁷ Article 111F SOMPC.

³⁸ Articles 51 and 52 SOMPC.

³⁹ Nuspliger, Paper on "Conference of the Federal Member States", February 19, 2015, p.9.

⁴⁰ Article 51 SOMPC.

⁴¹ Where necessary, the consultation could be brought to the level of the Leadership Forum/National Conference.

a commentary reflecting the results of the consultations⁴².

3.3.4 A Speakers' Forum

To extend the intergovernmental relations and cooperation to the Federal Parliament and the Parliaments of the Federal Member States, the establishment of a Speakers' Forum could be considered. In order to ensure the existence and development of cooperative federal relations, parliaments have to be involved in the interaction between the various levels of government.

4. Local Government

4.1 Local Government is essential for the good functioning of a federation

Well-established local government is necessary for the good functioning of a federation⁴³. Local authorities are important for an effective and public-minded performance of public functions. They should dispose of democratically elected decision-making bodies that have extensive autonomy and the fiscal means to fulfill their responsibilities.

All political institutions and structures must be based on law and incorporated in the federal system of government. The Federal Government, Federal Member States and local governments should cooperate closely with one another, particularly in fields of activity concerning all orders of government.

Disputes between local governments and the Federal Government or the Federal Member States should be resolved through negotiation or mediation.

4.2 Somali Elements

4.2.1 Local Government

Article 48 of the Provisional Constitution (SOMPC) provides two levels of governments: (a) The Federal Government Level; and (b) The Federal Member States Level, which is comprised of the Federal Member State government and the local government.

Article 51 SOMPC stipulates that every government has to strive for a cooperative relationship with other governments, whether at the same level or at another level of government: All levels of government must comply with the national constitution, without any government assuming more powers than the Constitution allocates.

Moreover, a law passed by the Federal Parliament is expected to regulate: (a) The establishment of institutions and guidelines that should facilitate interaction between the various levels of government; and (b) The establishment of guidelines that will facilitate the resolution of disputes between the various levels of government without resorting to court.

Successful state-building in Somalia requires legitimate government, which in turn depends on greater local ownership of processes leading to strong accountability mechanisms, greater public trust, and more responsive governments⁴⁴.

⁴² In Switzerland, a first draft is subjected to a consultative procedure, whereby the Cantons (Federal Member States), the political parties and other groups with a particular interest are invited to express their views. Apart from making expert knowledge available, the consultation procedure fulfills an important political function: to negotiate a compromise. Haller, *The Swiss Constitution in a Comparative Context*, Zurich 2009, p. 317.

⁴³ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, *Principles of Federalism*, Zurich/St. Gall 2012, p. 110-113. Linder, *Swiss Democracy, Possible Solutions to Conflict in Multicultural Societies*, Second Edition, New York 1998, p. 49-52.

⁴⁴ Menkhaus, *If Mayors ruled Somalia*, Policy Note for the Nordic Africa Institute. May 2014: <www.nai.uu.se/>

4.2.2 Regions and Districts

Somalia is officially divided into eighteen administrative Regions (gobollada), which in turn are subdivided into ninety-three Districts (degmooyin). In a federation, the status of the regions and the districts is basically a matter of the constitutions of the Federal Member States. Districts have an important role to play in all Federal Member States. They are the constituting units of the federation closest to the people. The Regions being rather administrative units, the constitutions of the Federal Member States may foresee that the State Government appoints Regional Governors.

In Somalia, the Constitution of Puntland State of Somalia stipulates that Puntland exercises the principles of decentralization. At the level of the Districts, the community groups elect Law Making Councils. The Council of District has responsibilities of implementing policies in different fields⁴⁵. The District Commissioner is the highest authority in the District and chairs the District meetings of the development and security committees. He may be elected either by the Law Making Council of the District Council or by the District population⁴⁶.

The Constitution of the Republic of Somaliland states that the administration of the Regions and the Districts is part of the administration of the Government of Somaliland. The Regions and the Districts of Somaliland have legislative councils, whose powers are however limited to passing by-laws which do not conflict with the laws of the Republic, and executive councils. The Chairman of the Region is appointed by the Government and acts as the representative of the central government in the Region and the Districts that come under it⁴⁷.

4.3 Options for Action

4.3.1 District Government

The main elements of district government could be discussed in consultative meetings between the leaders of the Federal Government and the leaders of the existing, interim and emerging Federal Member States. Moreover, district leaders should be involved and take an active part in these discussions. In a second phase, the specific elements of local and district government should be discussed between the leaders of each Federal Member State and its local leaders.

4.3.2 Elections

There is one imminent challenge: In 2016, national elections will have to be organized. Elections, however, not only take place at the national level but also at the level of the Federal Member States. Legislation in each Federal Member State is required to determine the elements of their electoral system, which will come into play also for the national elections. The Districts within a Federal Member State could become its constituencies.

⁴⁵ Constitution of Puntland State of Somalia, 18th april 2012, Articles 81-88. The Councils of Districts have the responsibility to implement policies in the fields of social services, education, intermediate and elementary school, livestock, agriculture, security, water, electricity, communication, health care, water, environmental safeguard and development according to their resources.

⁴⁶ Constitution of Puntland State of Somalia, 18th april 2012, Article 86.

⁴⁷ The Constitution of the Republic of Somaliland, Article 111.

5. Foreign relations

5.1 In the area of foreign relations, the responsibilities of both the Federation and the Federal Member States are involved

The Federal Government is primarily responsible for establishing, shaping and conducting foreign relations. The Federal Government is the leading actor in the federation as regards foreign relations. The Federal Government should inform the Federal Member States about foreign policy matters comprehensively and in due time. It should consult them as appropriate. The Federal Member States must be given the opportunity to participate in federal-policy making on foreign policy matters concerning them⁴⁸. Adequate arrangements must be made for domestic implementation of international legal norms.

5.2 Somali Elements

According to article 54 of the Provisional Constitution (SOMPC), foreign affairs are a federal matter. This includes the power of the Federal Government to conclude international treaties.

Article 53 of the SOMPC stipulates that the Federal Government has to consult the Federal Member States "on negotiations relating to foreign aid, trade, treaties or other major issues related to international agreements." Where negotiations particularly affect Federal Member State interests, representatives of the Federal Member State governments should be included in the negotiating delegation of the Federal Government. In conducting negotiations, the Federal Government should regard itself as the guardian of the interests of the Federal Member States.

These principles of the Provisional Constitution (SOMPC) are in accordance with the "Guidelines for Good Federal Practices".

5.3 Options for Action

5.3.1 Intergovernmental Consultation

The main elements of foreign affairs could be discussed in consultative meetings between the leaders of the Federal Government and the leaders of existing, interim and emerging Federal Member States, at the level of Governments/Presidents.

5.3.2 Legislation

The tasks and competencies in the treaty-making process are distributed between the executive and legislature. Legislation by the Federal Parliament could regulate the principles of the foreign affairs of the Republic of Somalia.

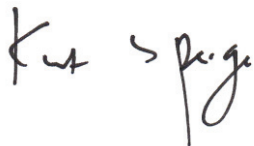
⁴⁸ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 114-116; Fleiner/Misic/Töpperwien, Swiss Constitutional Law, La Hague 2005, p. 103.

C. Outlook

Federalism has been successful around the world in both the remote and recent past. Long-standing federations are - in the terms of stability, liberty and prosperity - among the most successful states today. Emerging federations show real promise for development. At a minimum, federalism has proven itself to be a practical device for negotiating arrangements and for finding solutions between partners in a common state⁴⁹.

In September 2013, the Federal Government of Somalia and its development partners endorsed an ambitious New Deal Compact for the implementation of the Somali Vision 2016. The Compact is structured around five Peace- and State-building Goals (PSGs). All aspects of the process should be Somali-owned, inclusive, transparent and consistent with the Provisional Constitution of Somalia as a Federation. Beyond the elements already in the Constitution, the principles and practice of federalism will contribute to the shaping of the new Somali governance system in federal balance between the Federal Member States and the Federal Government, in national unity.

Federal governance must be based on a culture of mutual trust and respect. And good federal practice is characterized by pragmatism as well as by imagination, innovation and learning.

A handwritten signature in black ink, appearing to read 'Kurt Nussli'.

Prof. Dr. Kurt Nuspliger

⁴⁹ Koller/Thürer/Dafflon/Ehrenzeller/Pfisterer/Waldmann, Principles of Federalism, Zurich/St. Gall 2012, p. 93. See also the Forum of Federations, The Global Network on Federalism and Devolved Governance: <www.forumfed.org>.

