



Puntland Government Policy Statement on Failed Political Negotiations in Somalia

May 21, 2019

1. Introduction

With reference to the May 13 press conference by President of Puntland State of Somalia, H.E. Said Abdullahi Deni, Puntland Government hereby issues this Policy Statement on the outcome of week-long political negotiation meetings, held in Garowe in May 5 – 11, 2019, and the subsequent actions by Federal Government of Somalia.

2. Garowe Conference: Political Negotiations

The Garowe Conference was borne out of discussions during the Puntland State presidential inauguration, in Jan. 2019, when federal and state leaders agreed to hold a conference in Garowe two months later. After technical delays, it was possible to finally organize the Conference in May.

2.1 The Conference had specific objectives, namely:

1. That it was the first official such meeting since June 2018, after nearly one year without any high-level leadership meetings;
2. For the federal and state leaders, it was an opportunity to meet each other, to discuss and debate, to evaluate the political situation, and the necessity for increased inter-governmental cooperation;
3. To discuss and agree on a working cooperation mechanism, and to resolve existing political disputes; and
4. To ensure that the cooperation mechanism meets standards and expectations of the country's constitutional and legal framework.

2.2 Challenges at the Conference

Inter-Governmental Cooperation: Since the election of Somali President Mohamed Abdullahi Farmajo, in Feb. 2017, high-level talks between Federal Government of Somalia (FGS) and Federal Member States (FMS) were held under the National Security Council (NSC) framework. The NSC is a large body comprising of Somali President; Prime Minister; Federal Ministers of Internal Security, Interior, Finance, Defense and Justice; five State Presidents; and Governor of Banadir Region, among other government officials. FMS leaders during the Garowe Conference proposed a new cooperation council, with a smaller membership of political leaders, decision-making authority and based on Somalia's constitutional and legal framework. Moreover, the FMS leaders appropriately viewed the NSC as a body limited to security policy only, which is clearly stipulated in Article 15 of the National Security Architecture¹. Thus, the NSC lacks the legal authority of decisions that encompass all political matters.

¹ National Security Architecture, Article 15 under the subsection Command and Control, pg 3: "The National Security Council will include the FMS presidents. Similarly, the Prime Minister (PM) and FGS Ministers (Ministers for Internal Security, Foreign Affairs, Interior, Justice, Defense and Finance and the Governor of Banadir Region). In addition, the Heads/Directors of Somali National Forces and National Security Advisors will be technical members of the NSC..."

Conversely, inter-governmental cooperation is a vast area that touches on practically every aspect of governance.

To back their proposition, the FMS leaders cited articles within the Provisional Federal Constitution (2012), in which specific articles call for the formation of a federal-state council that advances political cooperation and federalization of Somalia, including cooperation expectations explicitly set forth in Articles 50, 51 and 53, which also delegate the FMS broader participation and consultation powers, with regard to Somalia's international negotiations and treaties.

Recalling Laws Submitted to Parliament: FMS leaders also requested FGS leadership to recall two laws the Federal Cabinet submitted to the Lower House of Federal Parliament, days before the Garowe Conference, namely: National Electoral Law and revised Petroleum Law. State presidents argued that FMS were not consulted on these two laws, as required by the Provisional Federal Constitution.

- a) **National Electoral Law:** With regards to the process of national elections, during the High Level Partnership Forum (HLPF) in Brussels in July 2018, it was recommended in the Joint Communiqué that the process should be supported to “ensure clarification of all outstanding issues,” which ideally and legally should have occurred before the commencement of the next recommendation in the communiqué, which was “the passage of the electoral law by Parliament by December 2018². The Cabinet approval of the draft Electoral Law is clear indication FGS intentions; to not ensure clarification of outstanding issues. This disregard for a consultative governance process is characteristic of the FGS and its electoral body. These institutions have also failed to develop a conducive environment to enable a stable election, which is a requirement set forth in the National Development Plan and the Provisional Federal Constitution³. Moreover, the Electoral Law was submitted to Federal Parliament despite the FGS failure to adhere to HLPF agreed principles that boldly empathize the importance of a clear plan from the National Independent Electoral Commission (NIEC) to be presented to the Somali public before embarking on the electoral process⁴. Clearly, the process continues to be hurried, further undermining previous political agreements which prioritized “an election that facilitates the further development of a cohesive society”⁵.
- b) **Petroleum Law:** The FGS has been unwilling to adhere to the agreements it has formulated and ratified previously. The unilaterally formulated Petroleum Law, which Federal Parliament passed quickly last week, strongly contradicts constitutional provisions and tenets of the highly speculative and at some instances ambiguous interim agreement, signed in Baidoa (June 2018) with regards to mining and petroleum revenue sharing. Within the Interim Agreement, Article 2 states that the Federal Ministry of Petroleum and Minerals is required to consult FMS petroleum agencies in the “formulation of laws and policies”⁶. State-level

² Somalia Partnership Forum Joint Communiqué, Article 14: “We congratulate the President and Somalia’s leaders both at the Federal and FMS level for charting a path to realize Somalia’s constitutionally guaranteed one-person one-vote elections, as stipulated in the Somali Provisional Constitution. This meaningful process must be encouraged and supported to ensure clarification of all outstanding issues, the passage of the electoral law by Parliament by December 2018,”

³ Somalia National Development Plan, pg 164: “and to collaborate on the upcoming official census to be conducted before the 2020 general elections, as stipulated by the Provisional Constitution.”

⁴ “We call on the National Independent Electoral Commission (NIEC) to present a clear plan for elections” High Level Partnership Forum Joint Communiqué, July 17 2018

⁵ Electoral Model Agreement of Federal Republic of Somalia 2020, Article 3.7: “The election should be one that facilitates the further development of a cohesive society.”

⁶ Interim Petroleum and Mining Sharing Agreement, “Drafting laws, policies, planning and signing of Exploration Licenses related to petroleum and mining at Federal-level shall be the responsibility of Federal Ministry of Petroleum and Mining, after consultations with State-level petroleum agencies”

agencies were not properly consulted before the law was presented to Federal Cabinet and voted on in Parliament. The FGS gave no consideration for opening consultation channels with newly elected State administrations, with regards to the law. The Petroleum Law process was a blatant disregard for political inclusivity, constitutional power-sharing structure and limits State government powers to representative roles with no specified authority. Interim Agreements, signed between FGS and FMS, stipulate political inclusivity and power sharing, as set out in the Provisional Federal Constitution. But FGS actions have proven that these past agreements have been mere illusions of grandeur.

Given these above-cited transgressions and constitutional violations, the FMS demanded their constitutional rights to be consulted on national security and federalization matters. Further, the FMS leaders rejected these laws as conceptually opposed to the spirit of reconciliation, nation building and fundamentals of federalism. The FMS also expressed their concerns and objections about other proposed laws, including National Taxation Law, Fisheries Law, Mining Law, and Civil Aviation Law, which the FGS has been drafting without any transparency, consultation or review by FMS.

Managing Foreign Aid: The FMS called for increased participation in the decision-making processes of managing foreign aid granted in the name of Somalia. The National Development Council, comprised of federal and state-level Ministers of Planning, agreed at their Garowe meeting in May 2019 the necessity for reviewing the architecture and management of foreign aid in Somalia, to ensure a fair sharing model between FGS and FMS. Once again, the FGS leadership was reluctant to recognize the FMS leaders' concerns.

Galmudug Election: Discussions at Garowe Conference also covered the situation in Galmudug State of Somalia, a brotherly and neighborly region south of Puntland State. FMS leaders attempted to reconcile differences between Somali President, Prime Minister on one side, and Galmudug President on the other. Puntland State gives credit to the Galmudug state leadership for implementing the Djibouti Agreement and for reuniting Galmudug and Ahlu Sunna political forces into a single state administration, based in Dhusamareb as state capital. This remarkable political progress was supposed to be augmented by FGS budget support, in the amount of \$150,000 USD per month; however, Galmudug has not received any support. Moreover, FMS leaders viewed the move by the FGS to intervene in Galmudug election process as unconstitutional. The FMS recognized the regional autonomy and political structure of Galmudug, and found the Federal Government's intervention to be escalating political tensions.

2.3 Conference Outcomes

Puntland Government regrets that the Conference ended without the signing of a cooperation agreement between FGS and FMS. It is also unfortunate that the FGS refused to act in accordance with the Provisional Federal Constitution and to engage FMS in broad consultations on issues of federalization and national security, a constitutional requirement. Article 54 of the Provisional Federal Constitution grants the FGS four exclusive federal powers – Foreign Affairs; Defense; Currency; and Immigration – while it calls other powers to be negotiated and agreed upon by the FGS and FMS.

Despite the lack reaching settlement on the issues discussed, the meeting provided an opportunity for federal and state leaders to come together, to engage in face-to-face discussions, in healthy and reasoned debates, to share ideas, and to show respect for diverse opinions on governance and the way forward in Somalia.

3. Puntland Role in Peace and Federalization of Somalia

In 2012, Somalia adopted federalism as an applicable system of government for historically sound and politically valid reasons. The legacy of the Somali civil war was characterized by factional fighting, displacement, social mistrust, and political fragmentation. The feuding political factions and regions of Somalia finally agreed to form a Federal Government: one that protects Somali national unity and sovereignty, and guarantees regional autonomy.

Over the past 21 years, Puntland State benefited immensely from self-government as evidenced by the formation of a state government complete with laws, institutions and security forces; the construction of two international airports; and increased trade, small industries and urban growth in major cities. Puntland State also contributed significantly to the formation of the Transitional Federal Government in 2004, contributing more resources – human, financial and material support – than any other region of Somalia at the time. The international community has also recognized Puntland State’s instrumental role in regional stability. The progress of Puntland State is underpinned by constitutional rule, public service and law and order and it clearly demonstrates the intention and spirit of the federalism.

4. Policy Decisions

1. Puntland Government shall not recognize all new laws approved by Federal Government of Somalia, pending the completion of Federal Constitution in a transparent, inclusive and consultative process with the Federal Member States;
2. Puntland Government hereby suspends all cooperation with the Federal Government of Somalia in the following areas/processes: a) constitutional review; b) federal elections; and c) national security;
3. Puntland Government shall present detailed policy propositions for engagement with FMS and international partners, to manage the new political reality; and
4. Puntland Government calls for continued direct talks and engagement between the FGS and FMS leadership, until a cooperation mechanism is agreed upon.

5. Recommendations for Federal Government of Somalia

1. To respect constitutional rule and adhere to the Provisional Federal Constitution (2012) and all relevant agreements between Federal Government and Federal Member States that do not undermine the Provisional Federal Constitution;
2. To halt submission of laws to Federal Parliament and to focus on completion of the Federal Constitution, harmonization and referendum process; and
3. To engage Federal Member States in a cooperative, comprehensive, consultative and collaborative governance process on reviewing matters related to federal election, federal laws, national security, and foreign aid architecture.

6. Recommendations for Federal Member States of Somalia

1. To increase inter-state communication and cooperation, primarily in areas related to peace, trade, national elections and federalization process;
2. To hold routine high-level conferences and regular technical-level meetings to increase inter-state cooperation and coordination;
3. To propose a model for federal elections 2020/2021, in accordance with the Provisional Federal Constitution of Somalia; and

4. To continue to actively engaging civil society, independent media and the international community to raise awareness about the Federal Government’s constitutional violations, efforts to undermine of federal system, and oppose political interference in state elections.

7. Recommendations for International Community

1. To keep close watch of development of the federalization of Somalia, as required by the Provisional Federal Constitution;
2. To diplomatically engage the Federal Government on meeting requirements set forth in many UN Security Council Resolutions, and other international bodies including IGAD, AU, EU, and the Arab League.
3. To help the Federal Government understanding accountability issues related to the mismanagement of foreign aid architecture and failure to transparently engage with Federal Member States on needs, priorities, policies and implementation;
4. To not openly support laws drafted by FGS, without first reviewing the systems of integrity and understanding its impact on Provisional Federal Constitution and implications for governance, political inclusivity and stability; and
5. To commit to the principles of the Mutual Accountability Framework that should promote an inclusive Somalia rooted in a consultative Federal System.

