

Interpeace Comments on the ICG Report on Puntland regarding the Constitutional Review Process

This note provides a commentary on the ICG report “The Trouble with Puntland” (12 August 2009) with reference to the section on the constitutional review process. Relevant extracts from the ICG report are annexed at the end of this note for ease of reference.

Key concerns regarding the ICG report section on the constitutional review process are that it demonstrates:

1. ignorance of the Puntland constitutional review process
2. unreasonable criticism of the constitutional review process
3. inherent contradictions

1. Ignorance of the Puntland political and constitutional review process

- Reference to replacing the Charter with a new Constitution when in fact the process was revision of the existing provisional Constitution

The report states: “*The regime’s attempt to replace the 1998 Puntland Charter with a new Constitution also exacerbates the government crisis*” (page 8) and “*The idea of a constitution to replace the Charter was first mooted in 2005*” (page 9).

In fact, Puntland has been under a Constitution (and not a Charter) for the last 8 years: the intention to replace the 1998 Puntland Charter was consummated in June 2001 when Parliament passed a Provisional Constitution, pending a public referendum to approve it. The process initiated in 2007 (NOT in late 2006 as indicated in the report) was a revision of the Constitution, with the body charged with preparing the draft revised Constitution named accordingly as the “Constitutional Review Committee” (CRC).

- Ignorance of the actual constitutional review process that took place

The actual review process differs in critical and significant ways from that presented in the ICG report (see annex). The key steps followed in the review process are as follows:

1. The Constitutional Review Committee was established in February 2007 and began the review of the Constitution in June 2007.
2. In February 2008, a first draft was submitted for the consideration of over four hundred Puntlanders in a series of four 3-day forums (i) for governors, mayors and councillors; (ii) and (iii) for civil society groups, umbrella organizations, and business leaders; and (iv) for over 150 traditional leaders. In preparation for each forum, participants were provided with a copy of the draft revised constitution and encouraged to identify: specific articles for discussion, amendment or suppression; and any important gaps. Each forum opened with a presentation by a member of the Constitutional Review Committee on the general content of the draft and the process through which it had been drafted. The comments and input from participants were tabulated and recorded in a matrix to be used by the Constitutional Review Committee during finalization of the draft, with the oral interventions recorded, summarized and subsequently discussed and analysed by the Committee. Many of the recommendations were incorporated into the Final Draft presented to the Executive in June 2008.
3. The Cabinet forwarded the Final Draft immediately to the Parliament. However, when the Parliament reconvened for its ordinary period of sessions in October 2008, it was agreed that, in order to minimise the risk of politicisation of the review process, the task of discussing and approving the changes should be deferred to the new Parliament, to be inaugurated in January 2009.

4. One of the first acts of the new Puntland government was to recall the Final Draft constitutional text from Parliament and submit it for another revision. The text was then debated by Parliament in a special session throughout May 2009; a team of five Puntland lawyers were appointed as advisers; and the plenary approved the text submitted by the Executive with significant changes.

- Unbalanced perspective with disproportionate and inaccurate attention to the opposition to the constitutional review process

Of the nine references supporting this section of the ICG report, two are from the media and the other seven, containing judgements and no facts, are from government critics, reflecting a lack of analytical balance.

The report refers on several occasions to the growing opposition to the constitutional [review] process. As with any other political process, there is no doubt that the constitutional review has its critics but the weight given to this in the report is not corroborated by concrete facts - with the sole exception of the opposition presented by a group of fourteen traditional leaders. The report presents the public manifesto on 29 June 2008 by the group as follows: “*The response from the dissident clan elders was swift and politically unprecedented. Fourteen prominent Isims (chiefs) signed a widely-publicized petition, condemning the entire exercise and calling for a region-wide conference to <Save Puntland>*” (page 9).

Firstly, the public manifesto refers to the general situation of Puntland and makes only one reference to the Constitutional review process as follows: “4. The submission of the provisional constitution to state organs, prior to public referendum, should be postponed, because it contains serious defects” (see annex of the manifesto). To characterise this as “*condemning the entire exercise*” is both inaccurate and misleading. Closer analysis of the process and events preceding the manifesto would indicate that a key factor might be the refusal by the elders’ consultative forum in February 2008 of the proposal made by the group of fourteen traditional leaders to adopt a bicameral system for the legislature, reserving the upper house for the traditional leaders (similar to the Guurti in Somaliland). The Constitutional Review Committee responded in writing in March 2008, clarifying that their mandate did not include radical reformation of fundamental organs of the state.

Secondly, the manifesto, contrary to what the ICG briefing affirms, was clearly not a “response” to the approval of the Final Draft, by the Cabinet and the Parliament since the manifesto was issued on 29 June 2008 before the Cabinet approved the Final Draft in July 2008, with the Parliament approving it over 6 months later: the letter of the manifesto clearly implies that it has not been submitted to the State’s institutions.

Finally, credible analysis of the assertion of growing opposition to the constitutional process by the clan leaders would require an explanation of why the Final Draft Constitutional text was approved by 49 members of Parliament, with only 2 against and 3 abstentions if, as the report states: “*A regional parliament chosen by clans was established*” (page 5).

2. *Unfair criticism of the constitutional review process*

- Criticism that the [review] process was undertaken in secrecy and without civic participation

“*The constitution was crafted in secrecy, without input from civil society and key clan constituents*” (page 8) and was one in which “*much of the Committee’s work was shrouded in*

secrecy” and footnote “*This did not, however, prevent leaks, and by May 2008, the draft was being openly debated, especially controversial clauses*” (page 9).

The report gives no evidence to support these criticisms. Far from the text being “leaked” by May 2008, 3 months earlier in February 2008, hundreds of copies of the text were distributed by the Constitutional Review Committee to the participants in the forums, electronic versions of the draft revised constitution were distributed to Puntland websites and recordings were transmitted by Puntland radio stations. Civil society groups worked with the Constitutional Review Committee to produce a radio education programme on the draft revised constitution with the aim of ensuring public exposure to key issues well before the planned referendum. This generated a high level of discussion in Puntland, with the constitution and many of the key articles becoming ‘buzz words’. In addition, throughout the review process, members of the Constitutional Review Committee gave media interviews (radio and newspapers). On civic participation, the process is described above (1).

- The issue of the separation of Puntland from the rest of the Somalia Federation

The report presents the constitutional process as part of a strategy to separate Puntland from the rest of the Somali Federation “*Some regime figures see the whole project as an effort to engineer a final break with the south and move Puntland toward secession.*”(page 9) and, more categorically, the report concludes that [the new constitution] “*[It] seeks to put Puntland firmly on the path towards secession*” (page 9)

Firstly, the production of a State Constitution to be approved by referendum was an obligation placed on the government by the Puntland Charter (1998) and one of the criticisms levelled against the Abdulahi Yusuf regime was its failure to produce the State Constitution on time.

Secondly, the proposed Constitution, following the mandates of the Puntland Charter and the Provisional Constitution (as well as the Somali Transitional Federal Charter), defines Puntland’s political regime as Federal: this is a central feature and reflects Puntlanders’ decision to opt for a different system of government due to their negative experience with the unitary system in the past.

Thirdly, the two specific causes for secession from the rest of Somalia appear in Article 4 of the revised constitutional text: the rationale is explained not by a desire for independence but because of:

(i) Inability to develop an effective government in south-central regions of Somalia

As the years pass without any possibility of forming a federation in the absence of any other States, the sense of being a *de facto* independent state becomes more ingrained in the life of Puntland, as the report recognizes in footnote 1 “*At present, the government of Puntland operates wholly autonomous of the Transitional Federal Government*” (page 2)

(ii) Indications of reversion to a unitary government amongst politicians in the south

When the new government was established in Mogadishu after the Djibouti Agreement in early 2009, it appeared to change its name from ‘Transitional Federal Government’ to ‘Government of National Unity’, accompanied by discussions among politicians in the south on reverting to a unitary system of government. This triggered a reaction in Puntland to reaffirm more clearly in the Puntland constitutional text, on the one hand, the need for a federal system of government and, on the other hand, the recognition that, to a great extent, Puntland polity is *de facto* independent from the rest of Somalia.

Nevertheless, the Final Draft Constitution explicitly recognizes that the Federal Constitution is above the State one (Article 138); includes a special procedure to harmonize the State Constitution with the Federal one (Article 140); and secession would require a 2/3 majority in Parliament and approval by popular referendum (Article 4. 5).

Finally, the ‘evidence’ presented in the report of the secessionist drive in Puntland relating to Puntland’s anthem and flag, reflects lack of knowledge about the federal system, in which it is common practice for the different States to have their own anthem and flag.

Other criticisms of the constitutional review process in the ICG report that refer to it the process as “heavily politicized”, “ill timed”, or “badly managed” are unsupported by evidence and appear instead to reflect the opinion of opposition figures.

3. Contradictions

- In analyzing the content of the new constitution, the report recognizes that “*The document has noteworthy features.....It is mostly strong on human rights*” (page 9) but three paragraphs later comments that “*Many individual and civil liberties are limited*”.
- Reflecting on the party system, the report comments “*There is a danger a multiparty system will simply formalize the growing clan schisms, with every clan or sub-clan creating its own party, as happened in southern Somalia in the 1990s.*” (page 8) while the concluding comment on the content of the Constitution states “*The move to a multiparty system and the limits placed on the number of official parties could intensify inter-clan friction*” (page 9).

4. Concluding comment

The ICG report’s assessment of the Puntland Constitutional Process “*The region is now saddled with a basic document that lacks popular legitimacy and is increasingly contested by key segments of society that feel they were deliberately prevented from shaping it*” is untenable on empirical grounds, does not recognise that the process was revision of the existing provisional Constitution, and does not reflect the current reality in Puntland.

Annexes

Public Manifesto by fourteen traditional leaders, 29 June 2008

Puntland State of Somalia

(Interpeace English translation)

Subject: Recommendations issued by Puntland Titled Traditional Leaders on 29 June 2008

A preliminary meeting of a committee of titled traditional leaders of Puntland took place in Garowe for three days.

- Having seen the difficult situation which Puntland is experiencing in respect to the economy and security, and the imminent expiry of the mandate of the incumbent state organs (the executive and legislative);
- Having considered the petitions, proposals and advices from the people;

The titled Traditional Leaders of Puntland reached the following decisions:

1. (a) the formation of consultative committee for the salvation of the regions currently under occupation and the destiny of Puntland, as well as the preparation of National convention for all Puntland region and communities;

(b) The consultative committee shall be composed of:

Nugal Region	13 people
Sool and Ayn	20 “
Sanaag	13 “
Bari and karkar	20 “
Mudug	13 “

Total size of the committee 79 people

(c) The consultative meeting shall take place on 20 July 2008 in Garowe

(d) It is important that all Puntlanders (traditional and religious leaders, business people, intellectuals, etc) commit to the preparatory activities of the consultative meeting.

2. Puntland Diaspora is requested to support the meeting economically and with recommendations.

3. We strongly support the Statement of Puntland President which had spelled out that the period in office of the current administration shall not be extended.

4. The submission of provisional constitutional to state organs, prior to public referendum, should be postponed, because it contains serious defects.

Names of the Titled Elders that signed this statement:

1. Suldan said Mohamed Garse
2. Ugas Hassan Ugas Yasin
3. Garad Abshir Salah
4. Suldan Issa Hassan omar
5. Islan Mohamed Islan Yasin
6. Suldan Said Osman Ali
7. Beldaje Ali Farah

8. Suldan Said Mohamed Mohamud
9. Ugas Abdulqadir Elmi
10. Ugas Farah Mohamed Ali
11. Garad Saleebaan Burale Adan
12. Garad Mohamed Cilmi shirwa'a
13. Imam Nuur Abdullahi Ali
14. Representative Sulub Ali Gaas

Relevant quotes from the ICG report “The Trouble with Puntland” (12 August 2009)

Extracted from the sections titled ‘governance’ and ‘the new constitution’

(Page 8, ‘A. Governance’)

The regime promises a functioning multiparty system by 2010, but this is problematic. Puntland has officially had a “non-party” system since its inception, on the rationale that time was needed to consolidate and institutionalize democracy before introducing multiparty politics. In fact, the regime has been in the hands of ex-SSDF apparatchiks and their clan allies. A transition from the current system of clan representation to meaningful multiparty elections with universal suffrage will face significant challenges. There are also growing fears in the non-Majerten areas that the plan to create a multiparty system may be a ploy to further cement perceived Majerten dominance. There is a danger a multiparty system will simply formalize the growing clan schisms, with every clan or sub-clan creating its own party, as happened in southern Somalia in the 1990s.

Puntland has conducted four presidential elections (1998, 2001, 2005 and 2009). Presidents are elected by the 66-member unicameral parliament, whose members in turn are nominated by their sub-clans and endorsed by clan chiefs and an eight-member electoral commission. Supporters admit this “tradition-based” system is not democratic but argue it has produced healthy changes of leadership.

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Elections are unlikely to serve as a safety valve for long, considering the mounting domestic opposition to the regime. A one-person-one-vote system could see the regime defeated. Indeed, one reason holding the regime back from electoral reform is fear of the opposition’s strength, especially that of the Islamists.

(Page 8, ‘B. The New Constitution’)

The regime’s attempt to replace the 1998 Puntland Charter with a new constitution also exacerbates the governance crisis. The constitution was crafted in secrecy, without input from civil society and key clan constituents. Unveiled in June 2009, it is provisionally in force pending an early referendum. Critics argue the timing is inauspicious and the process deeply flawed, smacking of opportunism.the whole project as an effort to engineer a final break with the south and move Puntland toward secession.

The idea of a constitution to replace the Charter was first mooted in 2005. A committee of experts was set up to oversee the task, and drafting began in earnest in late 2006. Although the authorities promised a transparent, consultative exercise, this did not happen. Though some consultative meetings were held in the main urban centres in early 2008, much of the committee’s work was shrouded in secrecy. A section of the *Isimada*, already angry at what they perceived as the government’s deliberate policy of locking them out, began to openly question the legitimacy of the process. Much of the opposition was led by non-Majerten elders, who argued the exercise was organized by the Majerten to give their political dominance de jure respectability.

Non-Majerten apprehensions were reinforced when the council of ministers quietly adopted the draft in June 2008, immediately followed by the legislature. This was widely interpreted as an attempt to get around significant public opposition. The response from the dissident clan elders

was swift and politically unprecedented. Fourteen prominent *Isims* (chiefs) signed a widely-publicized petition, condemning the entire exercise and calling for a region-wide conference to “save Puntland”. This challenge reflected growing public unease at how the region is governed and the erosion of consensus politics. The regime’s dismissal of opposition to the constitution as insignificant, the work of malcontents and rabble rousers, was another proof for reformists of its growing authoritarian tendencies and – in the word of a prominent clan leader – “its tactless and insensitive response to legitimate public unease and concerns”.

A significant number of prominent leaders admit the constitution process was heavily politicized, ill-timed and badly managed. A less hasty, more transparent and inclusive process might have prevented much of the rancor and suspicion, but the region is now saddled with a basic document that lacks popular legitimacy and is increasingly contested by key segments of society that feel they were deliberately prevented from shaping it.

The trouble with the constitution is not confined to concerns over the drafting process. The document has noteworthy features. It seeks to transform Puntland into a parliamentary democracy with a multiparty system; albeit one that limits the number of parties to three. It is mostly strong on human rights, with a good mix of checks and balances to prevent executive abuses and make government more accountable. However, it also includes illiberal clauses that could ignite serious political and social unrest:

- It seeks to put Puntland firmly on the path towards secession. The region’s name has been changed to the “Puntland State of Somalia” and an anthem and flag have been introduced – symbolic measures that critics see as proof of independence intentions. Article 4 explicitly empowers the government to secede from the federal government on specified grounds.
- The move to a multiparty system (Article 46) and the limits placed on the number of official parties could intensify inter-clan friction.
- Many individual and civil liberties are limited, apparently to curry favor with conservative Muslim groups. For example, Article 9 (4), “any law and any culture that are against Islam are prohibited”; and Article 78(2), the president and vice president must be a “practicing Muslim” and may not be “married to a foreigner, nor marry a foreigner during his/her term”.