

Second Somali National Consultative Constitutional Conference

15 - 17 February, 2012

Garowe, Puntland, Somalia

1. The second national constitutional conference was held in Garowe from 15 – 17 February, 2012. The meeting was convened by the Transitional Federal Government (TFG) of Somalia and hosted by Puntland State Government of Somalia and facilitated by the United Nations, under the auspices of the Special Representative of the Secretary General for Somalia.

2. The meeting brought together the signatories of the Roadmap and members of Civil Society. Among the dignitaries present were (H.E. Sheikh Sharif Sheikh Ahmed, President of the Transitional Federal Government (TFG),) Honorable Sharif Hassan Sheikh Aden, Speaker of the Transitional Federal Parliament (TFP), H.E. Professor Abdiweli Mohamed Ali, Prime Minister of TFG, H.E Dr Abdirahman Sheikh Mohamed Mohamud, the President of Puntland, H.E. Mohamed Ahmed Alin, President of Galmudug, Khalif Abdulkadir Moallin Noor, Representative of Ahlu Sunna Wal Jama'a (ASWJ). The meeting was opened by Hon Sharif Hassan, the speaker of the parliament who underscored the need to agree several principle cornerstones on the completion of the constitutional process.

3. At the conclusion of Garowe I, the Signatories announced that the next Constitutional Consultative Conference would be held in Garowe in early 2012 and would focus on the finalization and adoption of federalism. Because time is of the essence, it was agreed that three critical issues required consideration by the delegates to ensure the completion of the constitution making process and ending the transition on time, by August 20, 2012, as follows:

1. Federalism: The nature of federal structure the country would adopt, including the status of the capital city, Mogadishu;
2. System of Government and Electoral System Design: Consensus on the structure of the federal executive depending on whether the choice of system of government is parliamentary, presidential or hybrid; consensus on the related elements of electoral system design;
3. Operationalizing Garowe 1 Principles related to the constitutional adoption process by the National Constituent Assembly (NCA), including the selection process of the members of the NCA and the new federal parliament and the design of the Upper House of Parliament representing the administrative regions.

4. The participants began the conference in a plenary session where they were addressed by the stakeholder principals; Ambassadors from IGAD & AU; Minister of Endowment & Religious Affairs from Djibouti & the UN SRSG for Somalia. Following this, the participants divided themselves into 3 groups to discuss the following topics: (1) Federalism; (2) System of Government & Electoral System; and (3) Operationalizing the Garowe 1 Principles. Each

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group was co-chaired by a member of the Committee of Experts & a member of the IFCC supported by members of the Joint Constitution Unit. Ground rules were established, that Garowe I Principles were not to be reopened and setting forth a process in the event consensus could not be reached within the time allotted. It was agreed that unresolved issues would be escalated to the principals and that their decision would be respected by all. The conference was concluded via a plenary session celebrating achievements made, and closing with a signing ceremony.

4. Whereas the Participants have considered the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord, the Roadmap, Garowe Principles I and reviewed the Consultative Draft Constitution;

5. Whereas the Signatories reaffirm the unity of the Somali people, the political independence and territorial integrity of the Somali nation, the following principles were agreed by the delegates and signatories of the Roadmap.

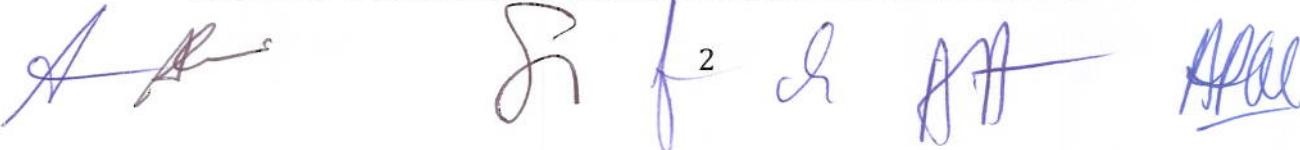
These principles, henceforth to be referred to as ***The Garowe II Principles***, shall guide and direct finalization of the draft constitution and the process of ending the transition including the development and enactment of the legal framework therein.

The Garowe II Principles on Federalism, System of Government and Ending of the Transition through Operationalizing Garowe I

1. Federalism - Establishing the Federal States

The Transitional Federal Charter makes reference to a federal state and the Consultative Draft Constitution refers to the establishment of a bicameral federal legislature. The Garowe I Principles reiterate this but do not specify any details. In Garowe II, the following aspects for establishing a federal system were agreed upon:

- a. We recognize the Puntland State is a founding federal state and was an existing state upon the adoption of the Transitional Federal Charter in 2004. We further recognize that Galmudug State as a state within the federation, and it shall, as soon as is practicable, fulfill all the requirements for becoming a full federal state as stipulated in the Transitional Federal Charter. The TFG and the International Community are called upon to extend all the necessary assistance to the Galmudug authorities in this regard.
- b. The criteria for the formation of new states shall conform to the provisions stipulated in the Charter, which is based on two or more regions coming together.
- c. All states are obliged to ensure equal political rights, access and opportunities for all Somalis, including political participation.
- d. The creation of new states requires a sustainable regional reconciliation process. An independent commission shall assess a state's conduct of



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- such a process and the fulfillment of the above criteria. The new Somali Federal Parliament shall vote on ascension to statehood.
- e. The federal fiscal system shall include financial transfers and assistance based on the principle of equalization and equity among states.
 - f. The federal structure shall respect states' rights in the assignment of competences and responsibilities to the states. The national competences shall include essential issues of national interest, notably, but not limited to, foreign affairs, national defense, national monetary policy, natural resources, wealth sharing, citizenship, and immigration.

Status of Mogadishu

- g. Mogadishu is the capital city. Its status within the federal set-up shall be decided by the new parliament through the enactment of primary legislation.

2. System of Government and Electoral System Design

The Working Group on Systems of Government and Electoral systems considered the issue of which system of government is best suited to Somalia – the Parliamentary or Presidential system – and rigorously deliberated the advantages and disadvantages of both systems.

- a. Somalia shall adopt the Parliamentary system as it provides more accountability of the executive to parliament, and checks and balances to the abuse of power.
- b. The primary task of the executive shall be vested within the Council of Ministers, led by the Prime Minister. The President shall be the Head of State and will stand for the Unity of the State.
- c. The Constitution shall clearly set forth and enumerate the respective powers of the Head of State and the Head of Government.
- d. Council of Ministers shall be drawn from within and outside parliament.

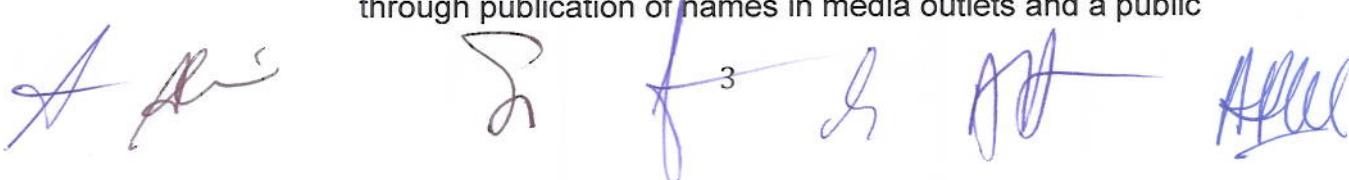
Electoral System Design

- e. The electoral system for the Lower House shall be based on the principle of proportionality. The details of the electoral system shall be defined by legislation. The new federal parliament shall adopt such legislation by the end of the third month of its first sitting.

3. Operationalizing Garowe I Principles

1. Interim Independent Electoral Commission (IIEC)

- a. Mandate:
 - i. The IIEC shall verify nominees for the Constituent Assembly and Parliament against established objective criteria. It shall also engage in raising awareness of the processes for nominating and selecting candidates including ensuring full transparency through publication of names in media outlets and a public



notice and comment period. The IIEC shall not be responsible for selecting members to either body.

b. Membership:

- i. The IIEC shall consist of 15 voting members based on the 4.5 formula (see Garowe I)
 - ii. The IIEC shall consist of at least 5 women members
 - iii. The IIEC shall include the involvement of international actors as non-voting participants.
- c. To ensure trust in the commission, IIEC members must be patriotic, honest, of good standing in Somali society, have no personal political ambitions or loyalties to other states. They must respect and uphold the rights of all Somalis and demonstrate tolerance towards all.
- d. The eligibility criteria for IIEC membership shall be as follows:
- i. Somali citizenship
 - ii. Aged between 21 and 70 years
 - iii. No record of serious crime or crimes against humanity
 - iv. Minimum secondary education
 - v. Experience in elections or related fields
- e. Roadmap signatories assisted by civil society representatives and traditional leaders shall appoint IIEC members based on applications submitted through a public process. The public shall be kept informed of the process through a concerted media campaign.

2. National Constituent Assembly (NCA)

a. Mandate:

- i. The NCA's rules of procedure shall regulate procedures to be followed in the event members cannot reach the required majority for adoption; the rules and procedures shall provide for a process to refer issues back to the drafters based on the vote of a qualified majority; the rules shall further set forth agreed deadlock breaking mechanisms to provide mediation support

b. Membership shall be based on the following:

- i. 1000 members based on the 4.5 formula;
- ii. At least 300 (30%) members shall be women;
- iii. The remaining 700 men and women shall be selected from [a cross section of society, including: youth/students, business people, the Diaspora, religious and traditional leaders, professionals, scholars and existing and emerging regional administrations.

c. Eligibility Criteria:

- i. The criteria noted above for IIEC membership shall apply to NCA nominees except for the following:
 1. Minimum age of 21
 2. No minimum level of education except literacy

3. Relevant experience

- d. Selection Process for members of the NCA:
 - i. Roadmap signatories assisted by traditional leaders and civil society shall nominate 1000 people based on the 4.5 formula and the criteria set out above;
 - ii. Nominations shall be submitted to the IIEC to verify that each nominee meets the above criteria as well as the overall composition;
 - iii. If a nominee or list is determined to not meet the criteria they shall be sent back to the Garowe 1 signatories, traditional leaders and civil society to nominate another person or list meeting the criteria to submit to the IIEC, maintaining the 4.5 formula;
 - iv. To ensure that the minimum quota for women is implemented, women members shall be determined first;
 - v. Nomination lists that do not result in at least 30% women in the NCA must be rejected;

3. The New Federal Parliament

- a. Membership in the Lower House shall comprise 225 members
- b. The Upper House shall be based on the new configurations of future federal states for a maximum of 54 members.
 - i. The selection of the Upper House shall follow the same principles of transparency, inclusivity and representation as govern the selection of other constitutional bodies, with criteria to be elaborated in the new constitution and designed to embody national integration and cohesion, to serve as a "court of second opinion" and custodian of national cultural values and national ethos;
 - ii. The Upper House shall come into effect no later than August 2012 as specified in the Garowe I Principles.
 - iii. The new Constitution and its Implementation Schedules as well as general provisions clauses shall further govern the permanent make up of the Upper House, and shall set out criteria, size, allocation of seats and composition of the Upper House, as well as a mechanism and process for the formation of the sub-national units;
 - iv. After the first term of the new Upper House of the new federal parliament, membership shall be based on the established sub-national units with equal representation.
- c. To ensure trust in the federal parliament, members must be patriotic, honest, and of good standing in Somali society. They must respect and uphold the rights of all Somalis and demonstrate tolerance towards all.
- d. Eligibility criteria for membership in the new federal parliament shall be:



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- i. Somali citizenship
 - ii. Aged between 25-75 years
 - iii. Minimum secondary school education
 - iv. No criminal record
 - v. Not declared mentally incompetent
 - vi. Respect Islamic values
 - vii. Relevant experience
- e. Selection process of the new federal parliament
- i. Recognized traditional elders assisted by prominent civil society members shall nominate two people for every seat based on the criteria outlined above;
 - ii. Nominations shall be sent to the IIEC to verify that they meet the eligibility criteria and overall composition requirements. If they do not, the names must be returned and a new candidate or candidates must be submitted;
 - iii. The names of eligible candidates shall be sent back to the nominating entities to select the individuals who shall become representatives in the new federal parliament;
 - iv. Women will make up at least 30% of the parliamentarians by way of a set aside along 4.5. Civil society and respected women members of the clans will nominate and select the women.

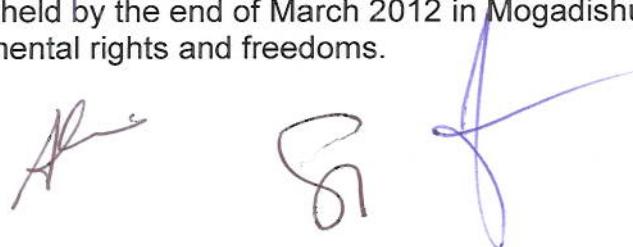
Whereas, the transition must end by August 20, 2012, and therefore no delay or obstruction will be accepted by the Somali people or the International Community. Spoilers will be identified and named, and appropriate joint action by Somali and international stakeholders will be taken against them. The process will proceed.

Whereas the Signatories recommend that a compensation package be provided to members of Parliament who do not become members of the next parliament.

Whereas, time is of the essence and therefore all relevant parties are hereby directed to immediately, in accordance with the Transitional Federal Charter, the Kampala Accord, the Roadmap, Garowe I, Garowe II and other governing instruments:

1. commence finalization of the draft constitution and complete the drafting by 20th of April 2012;
2. complete consultations and civic education on remaining critical issues in the Consultative Draft Constitution;
3. commence formation of the relevant bodies, especially the IIEC and NCA.

The Signatories announce that the next constitutional consultative conference will be held by the end of March 2012 in Mogadishu and will focus on fundamental rights and freedoms.











Signatories:

1. Transitional Federal Government

President of the Transitional Federal Government
H.E. Sheikh Sharif Sheikh Ahmed

2. Transitional Federal Parliament

Speaker of the Transitional Federal Parliament
Hon. Sharif Hassan Sheikh Aden

3. Transitional Federal Government

Prime Minister of the Transitional Federal Government
Hon. Dr. Abdiweli Mohamed Ali

4. Puntland

President of Puntland
Hon. Dr. Abdirahman Sheikh Mohamed Mohamud

5. Galmudug

President of Galmudug
Hon. Mohamed Ahmed Aalim

6. Ahlu-Sunna Wal Jamaaca

Representative of Ahlu Sunna Wal Jamaaca
Hon. Khalif Abdulkadir Moalim Nur

7. Special Representative of the

Secretary General of the UN for Somalia
Hon. Dr. Augustine Mahiga

Saxiixayaasha:

1. Dowladda Federaalka KMG

Madaxweynaha Dowladda Federaalka ku Meel Gaarka ah

Mudane Sheikh Shariif Sheikh Ahmed

2. Baarlamaanka Federaalka KMG

Guddoomiyaha Baarlamaanka Federaalka ku Meel Gaarka ah

Mudane Shariif Xasan Shiikh Adan

3. Dowladda Federaalka KMG

Raysal Wasaaraha Dowladda Federaalka ku Meel Gaarka ah

Mudane Cabdiweli Maxamed Cali

4. Puntland State

Madaxwaynaha Puntland

Mudane Dr. Cabdiraxmaan Sheekh Maxamed Maxamuud

5. Galmudug State

Madaxwaynaha Galmudug

Mudane Maxamed Axmed Caalim

6. Ahlu-Sunna Wal Jamaaca

Wakiilka Ahlu Sunna Wal Jamaaca

Mudane Khalijif Abdulkadi Macallin Nuur

7. Wakiilka Gaarka-ah ee Xoghayaha

Guud ee Qaramada Midoobay

Mudane Dr. Augustine Mahiga