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# THE CONSTITUTIONAL TRILEMMA: EXECUTIVE OVERREACH, POLITICAL MISTRUST, AND THE SUPREMACY OF INFORMAL POWER-SHARING IN SOMALIA

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## I. ABSTRACT

*This research article provides a critical legal analysis of the protracted constitutional crisis in the Federal Republic of Somalia, currently exacerbated by the unilateral transition from the 2012 Provisional Constitution to a newly amended framework. While the 2012 document enjoyed a degree of broad-based political consensus, the study posits that the current review process is trapped in a "Trilemma" involving Executive Overreach, systemic Political Mistrust, and a profound Crisis of Federal Consensus. A primary focus of this paper is the recent constitutional amendments initiated by the Federal Government, which signify a fundamental shift in the Somali governance model. The study examines the legal implications of these amendments, which have encountered significant Statutory Resistance from key Federal Member States (FMS), specifically Puntland and Jubaland. From a jurisprudential perspective, the article argues that the exclusion of these sub-national entities undermines the principle of Cooperative Federalism and violates the spirit of Article 142, which safeguards the status of existing states. This unilateralism has resulted in a state of Legal Fragmentarity, where the amended constitution lacks universal legitimacy across the federation. Furthermore, the paper explores how this institutional deadlock is reinforced by the persistent dominance of the 4.5 clan-based power-sharing formula, which functions as the de facto Grundnorm over the written law. The research demonstrates that while formal constitutional articles are frequently bypassed, any breach of the informal clan equilibrium triggers immediate systemic instability. The article concludes that for Somalia to achieve Constitutional Supremacy, it must reconcile the tension between central executive ambitions and the autonomy of Federal Member States. Without a comprehensive political settlement, the new amendments risk deepening the national divide rather than providing a stable legal foundation.*

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## II. KEYWORDS

Constitutionalism, Federalism, Executive Overreach, 4.5 Power-Sharing System, Cooperative Federalism.

## III. INTRODUCTION

The Federal Republic of Somalia is currently facing a major constitutional crisis. Since 2012, the country has operated under a Provisional Constitution, which was intended to be a temporary roadmap toward a stable and permanent democracy. However, more than a decade later, the process of finalizing this document has become a source of deep political division rather than national unity. This article examines the "Constitutional Trilemma" facing Somalia today: the push for centralized power by the executive, the deep mistrust from political opponents, and the continued dominance of the 4.5 clan-based system over the written law.

Recently, the Federal Government initiated significant amendments to the constitution, moving the country toward a centralized presidential system. While the government views these changes as necessary for stability, they have triggered a major standoff with Federal Member States, particularly Puntland and Jubaland. These states argue that the amendments were made unilaterally (one-sided) and violated the original federal agreement. This conflict has created a Legal Deadlock, where the central government and some regional states no longer agree on the basic rules that govern the country.

Furthermore, this crisis highlights a unique challenge in Somali governance: the conflict between formal laws and informal traditions. In theory, the Constitution is the supreme law of the land. In practice, however, the 4.5 power-sharing formula often acts as the real "Basic Norm" (Grundnorm). While legal violations often go unpunished, any threat to the clan-based balance leads to immediate political instability. This article analyzes these dynamics to show that a permanent constitution cannot succeed without a genuine political consensus and a clear respect for the federal rights of all member states.

### A. Research Objectives

This study seeks to achieve the following objectives:

1. To examine the constitutional legality of the recent amendments to the 2012 Provisional Constitution of the Federal Republic of Somalia, with particular reference to the amendment procedures prescribed under Articles 132, 136, and 142.
2. To assess whether the constitutional reform process reflects executive overreach and undermines the principles of constitutional supremacy, separation of powers, and procedural legitimacy.
3. To evaluate the constitutional and political implications of the exclusion of key Federal Member States, particularly Puntland and Jubaland, from the amendment process.
4. To analyze the role of the 4.5 clan-based power-sharing formula as a de facto constitutional order influencing governance and political legitimacy in Somalia.
5. To propose legal and institutional measures necessary to promote an inclusive, legitimate, and sustainable constitutional settlement in Somalia.

## **B. Research Questions**

This study is guided by the following research questions:

1. Do the recent constitutional amendments in Somalia comply with the procedural requirements for constitutional amendment set out under Articles 132, 136, and 142 of the 2012 Provisional Constitution?
2. To what extent does the amendment process reflect executive overreach and undermine the principles of constitutional supremacy, separation of powers, and cooperative federalism?
3. What are the constitutional and political consequences of excluding Puntland, Jubaland, and other key stakeholders from the constitutional reform process?
4. Does the 4.5 clan-based power-sharing formula function as a de facto Grundnorm shaping the practical operation of the Somali constitutional order?

### **C. Research Methodology**

This study employs a qualitative doctrinal legal research methodology, supplemented by contextual and analytical approaches, to examine the constitutional crisis in the Federal Republic of Somalia. The primary objective is to critically assess the legality, legitimacy, and political implications of recent constitutional amendments, particularly in relation to federalism, executive authority, and informal power-sharing structures.

At its core, doctrinal legal research focuses on the systematic analysis of legal rules, principles, and institutional frameworks. In this study, such an approach is used to evaluate whether the recent constitutional amendments conform to the procedural and substantive requirements set out in the 2012 Provisional Constitution. Particular attention is given to key provisions governing constitutional amendment procedures, including Articles 132, 136, and 142, which establish the legal framework for constitutional change, parliamentary approval, and the protection of federal member states' status. By closely examining these provisions, the study assesses whether the current reform process adheres to the principles of constitutional supremacy, rule of law, and procedural legitimacy.

In addition to doctrinal analysis, the study adopts a critical analytical framework to explore the interaction between formal legal structures and informal political realities. This is particularly relevant in the Somali context, where the 4.5 clan-based power-sharing system operates as a *de facto* governing mechanism alongside the formal constitution. The research therefore goes beyond a purely legalistic interpretation and engages with the concept of "law in practice", recognizing that constitutional norms in Somalia are often shaped by political bargaining and clan dynamics rather than strictly by written provisions.

To structure this analysis, the study develops and applies the concept of a "Constitutional Trilemma," consisting of three interrelated dimensions: Executive Overreach, Political Mistrust, and the supremacy of informal power-sharing systems. This framework serves as the central analytical lens through which the constitutional crisis is examined.

Executive overreach is analyzed through the expansion of presidential powers and the corresponding reduction of the Prime Minister's authority, raising concerns about the concentration of power and the erosion of checks and balances. Political mistrust is explored in the context of resistance from Federal Member States, particularly Puntland and Jubaland and the broader breakdown of cooperative federalism. The third dimension, informal supremacy, focuses on the continued dominance of the 4.5 system, which often overrides formal constitutional provisions and shapes political outcomes.

The study relies exclusively on secondary data sources, ensuring both depth and credibility of analysis. These sources include the 2012 Provisional Constitution of Somalia, official constitutional amendment drafts, governmental and intergovernmental reports, and a wide range of academic literature on Somali politics, federalism, and constitutional development. Scholarly works by authors such as Lewis (1961), Menkhaus (2016), and Ingiriis (2018) are used to contextualize the historical and sociopolitical significance of clan structures, while more recent studies provide insight into contemporary debates on governance and power-sharing. In addition, reports from international organizations and policy institutions are used to support the analysis of constitutional practice and political developments.

Furthermore, the research incorporates a context-sensitive approach, acknowledging that Somalia's constitutional framework cannot be fully understood without reference to its unique historical and sociopolitical context. Clan identity, historical patterns of conflict, and the legacy of state collapse all play a crucial role in shaping contemporary governance structures. By situating the constitutional reform process within this broader context, the study avoids overly formalistic conclusions and instead provides a nuanced understanding of the interaction between law and politics.

While the study is primarily doctrinal, it also draws on limited comparative insights from other post-conflict and federal systems where informal political arrangements coexist with formal constitutional frameworks. These comparisons are not intended to establish direct parallels but rather to highlight broader theoretical debates on constitutional

legitimacy, federal bargaining, and hybrid governance systems. Such insights enhance the analytical depth of the study and situate Somalia within a wider global context.

#### **D. Background**

The constitutional landscape of Somalia has undergone significant evolution since the adoption of the Provisional Constitution in 2012. While the 2012 Provisional Constitution marked a critical milestone in the country's post-conflict state-building efforts, it was inherently temporary and subject to refinement. Its provisional nature allowed for adaptive governance but also generated ambiguities in the delineation of powers and the participation of federal member states in constitutional amendments.

In 2024, the Federal Government undertook substantive amendments to the constitutional framework, with the first round of amendments to Chapters 1–4 approved by the Federal Parliament on 30 March 2024 and signed into law by President Hassan Sheikh Mohamud on 31 March 2024. These reforms were presented as measures to address perceived constitutional gaps and to restructure executive authority. A second and final round of amendments to Chapters 5–15 was subsequently approved on 4 March 2026. However, these amendments met with resistance from several federal member states, notably Puntland and Jubaland, as well as significant factions of the political opposition. The primary contention revolved around the exclusion of these stakeholders from meaningful participation in the amendment process, raising concerns regarding the legitimacy of the reforms under both domestic and international legal standards of participatory constitutionalism.

The opposition argued that the 2012 Provisional Constitution, despite its provisional status, remained the legitimate constitutional instrument and that any unilateral modifications without inclusive consultation undermine federal principles and violate the procedural safeguards designed to ensure equitable power-sharing among the constituent states. This constitutional trilemma executive overreach, political mistrust, and supremacy of informal power-sharing mechanisms thus epitomize the ongoing challenges in reconciling central authority with federal representation in Somalia.

According to Mondey and Beeri (2024), clans are not just a holdover from earlier societies; they are an important part of modern political environments. Despite being frequently ignored in scholarly discourse, the clan has historically been one of the most important groups, according to Blum (2023). clan structures have long been a fundamental component of Somali society, acting as the main vehicle for political power and social organization (Solomon, 2014). According to lewis (1961), the Somali clan is an extended family that is divided into groups according to a male ancestor's genealogy. this lineage, which comprises 500–1,000 individuals who share a male ancestor spanning up to 15 generations, is the most important component of clan organization, he emphasized.<sup>2</sup>

#### IV. CONSTITUTIONAL FRAMEWORK FOR CONSTITUTIONAL AMENDMENT

The 2012 Provisional Constitution of the Federal Republic of Somalia establishes a detailed legal framework governing constitutional amendment and promulgation. Articles 132, 136, 137, 138, and 139 prescribe the procedures for proposing, reviewing, approving, and bringing constitutional amendments into force. These provisions require formal parliamentary approval by a constitutionally prescribed majority and contemplate a structured review process intended to ensure legal continuity and procedural legitimacy. In addition, Article 142 protects the status and boundaries of existing Federal Member States, thereby reinforcing the principle of cooperative federalism and limiting unilateral constitutional changes that may affect the federal balance. Taken together, these provisions indicate that constitutional reform must be conducted through an inclusive and legally regulated process rather than through executive initiative alone.

From a doctrinal perspective, the constitutional amendment procedure is designed to safeguard constitutional supremacy by ensuring that amendments reflect broad

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<sup>2</sup> Mohamed Bile Hashi, Ahmed Nor Mohamed Abdi, and Yu Hock Oo, "Beyond the 4.5 Clan Quotas: Evaluating the Feasibility of a Merit-Based and Inclusive Federal Power-Sharing Model in Somalia," *Cogent Social Sciences* 11, no. 1 (2025): 1, <https://doi.org/10.1080/23311886.2025.2544066>.

institutional and political consensus. Any reform undertaken without meaningful participation from Federal Member States or in disregard of constitutionally mandated procedures raises serious concerns regarding legality, legitimacy, and compliance with the federal compact established under the Provisional Constitution.

Accordingly, the constitutional framework itself supports the conclusion that recent amendments must be assessed not only by their substantive content but also by the extent to which they conform to the procedural safeguards prescribed by the Constitution.

During the first term of the Federal Parliament of the Federal Republic of Somalia, the Parliament may propose amendments to any part of this Constitution. Such proposals require a two-thirds majority vote of all members of the House of the People, and any amendments shall take effect only if approved by a two-thirds majority of the Federal Parliament.

Any constitutional declaration concerning amendments to the provisions of the Constitution shall be adopted during the first term by the House of the People, and such declarations shall align with the transitional provisions and the objectives of the new Constitution and shall not contravene the Constitution itself.

Promulgation of the Constitution: After the completion of the first term of the Federal Parliament of the Federal Republic of Somalia, the Parliament shall form a committee to finalize the draft and review the Constitution of the Federal Republic of Somalia. Upon approval in accordance with Article 136, the Constitution shall take effect without further ratification and shall be publicly promulgated.

The committee shall complete its work within six months of its establishment and submit the draft to the House of the People, the Federal Parliament, and Federal Parliament and in accordance with constitutional procedures.

The Federal Parliament shall have exclusive authority over the approval or amendment of any provisions in accordance with Article 132 of the Constitution.

Any amendments contrary to the procedures outlined in paragraph (4) shall render the Constitution void, and it shall remain the Constitution of the Federal Republic of Somalia.

#### **A. General Provisions**

Entry into Force of the Constitution. This Constitution shall take effect on the first day after the House of the People approves it, ensuring full compliance with peace, security, and stability provisions, both domestically and internationally, including in Garowe I & II, Galkacyo, Addis Ababa, and other designated locations.

The implementation of provisions relating to the Upper House of the Federal Parliament shall commence once members are selected in accordance with the relevant legal framework. The House of the People shall approve all matters concerning the Upper House, including appointments, responsibilities, and oversight of federal institutions, in line with the Constitution.

#### **B. Transitional Provisions**

All institutions established prior to the promulgation of this Constitution shall continue to function and shall adhere to the transitional arrangements. Any modifications, amendments, or repeals of laws and regulations that conflict with the Constitution shall be addressed gradually while ensuring legal continuity and stability.<sup>3</sup>

### **V. EVOLUTION OF 4.5 CLAN IDENTITY IN SOMALIA FEDERAL SYSTEM AND ITS CURRENT STRENGTHS**

in Somalia, the hawiye, dir, darod, and digil & Mirifle are the four biggest clans. Additionally, a coalition of smaller clans of Arabs, Baravans and Bantu people exists (Lewis, 1994). there is continuous discussion on the emergence of the 4.5 clan power-sharing formula in Somalia. While some claim it originated from internal Somali talks during the Arta peace conference, others credit it to the influence of the international community and neighboring countries. A third viewpoint contends that it was first

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<sup>3</sup> "Somali Federal Constitution (Final Somali Version)," n.d., article 136,137,138,139.

developed during the Southern conference in Ethiopia and then put into practice in Arta, Djibouti. However, Dahir and Ali (2024) revealed that after the 1991 military<sup>4</sup> takeover and multiple failed attempts at reconciliation, Djibouti established a transitional government in 2000, in which for the first time, a '4.5' model of power sharing has been initiated, giving the four major clans equal political seats and reserving extra MPs for under-represented groups. Nevertheless, the efficiency of this power-sharing arrangement in federal institutions has not yet been investigated.

Much debate has been sparked on the advantages and disadvantages of Somalia's 4.5 clan power-sharing model. Supporters contend that it guarantees representation for all major clans, fostering inclusivity, and preventing the domination of any one group. The 4.5 clan-based system makes local governance easier and enables communities to meet their own requirements; by offering a framework for resource sharing and conflict resolution, this system can also promote societal stability and cohesion (Mukhtar, 2007; Warsame, 2024). Given that clans have always been the main political groups in Somalia, Ingiriis (2018) highlights how their historical relevance helps with power dynamics negotiations. Nonetheless, research by Hashi and Oo (2024) found that some respondents think the 4.5 system has still permitted some representation in parliament, which is essential in a country where clan differences are deeply ingrained, despite concerns of injustice, favoritism, and discrimination.

The main focus of this study is the 4.5 model's long-term viability and the lasting effects of clan identity inside the federal system, which are still up for debate despite the fact that academics like Menkhaus (2016) and Elmi (2010) see it as a temporary step towards more democratic administration.

While existing scholarship on Somalia has largely framed constitutional reform as a necessary step toward state-building and institutional consolidation, this study departs from that perspective by arguing that the current reform process itself constitutes a source

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<sup>4</sup> Hashi, Abdi, and Hock Oo, "Beyond the 4.5 Clan Quotas: Evaluating the Feasibility of a Merit-Based and Inclusive Federal Power-Sharing Model in Somalia," 3.

of political and constitutional instability. Rather than resolving structural challenges, the recent amendments to the Constitution have intensified existing tensions by prioritizing executive interests over inclusive governance. Some contend that abandoning clan-based structures could result in a more inclusive national identity that promotes harmony and lessens disputes between clans. However, in order to prevent upsetting communities who depend on clan systems for administration and support, this shift needs to be handled carefully. While clan identity plays an important role in Somali politics, others contend that placing too much focus on clans could impede the formation of a unified national identity (thompson & Matshanda, 2023).

According to this viewpoint, promoting a more comprehensive sense of Somali unity may be crucial for long-term stability and governance, upending the deeply ingrained clan-based structures. Integration can be used to control less-mobilized cleavages, which suggests that when societal divisions are not firmly established or politically mobilized, they can be addressed by including disparate groups into common institutions.

In order to minimize any conflict, this method entails making sure that every group is represented and has equal access to the political process. When social differences are well-established, widely acknowledged, and linked to particular geographical areas, it is more efficient to manage them by acknowledging and accommodating them in the structure of governmental institutions (clapham, 2023). However, some academics contend that depending too much on clan-based systems could actually widen the rifts rather than bring people together, and that other forms of government might be investigated to improve national development and cohesion (elmi, 2015; ingiriis, 2018).<sup>5</sup>

Other academics stated that stability can be enhanced and legitimacy issues can be lessened by carefully examining the federal structure to make sure it fits with local governance requirements and cultural settings (Zoppi, 2018). Both modern governance and traditional clan dynamics can have a substantial impact on Somalia's political

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<sup>5</sup> M. Hashi, A. Abdi: cogent social sciences 2025, 11, 1 p,5

stability, thus striking a balance between them is still a difficulty, even though these systems offer intriguing possibilities.<sup>6</sup>

In particular, the reconfiguration of executive authority marked by the expansion of presidential powers and the reduction of the Prime Minister's role has altered the balance of power in a manner that lacks broad-based consensus. This shift has not only generated political contestation but has also raised fundamental concerns regarding the legitimacy of the reform process.

Contrary to the dominant view that constitutional reform represents progress, this paper contends that the manner in which the Constitution has been amended has deepened divisions and reinforced exclusionary dynamics. In this sense, the problem lies not merely in the existence of the 4.5 power-sharing system, but in the failure of the current reform process to address its structural inequalities.

Accordingly, this study argues that recent constitutional changes in Somalia should be understood not as a solution, but as part of the problem exacerbating issues of representation, legitimacy, and political inclusion rather than resolving them.

Despite its strengths, the study has certain limitations. The reliance on secondary data means that it does not incorporate primary empirical evidence such as interviews or field-based observations. Additionally, the dynamic nature of Somalia's political environment means that constitutional developments may evolve rapidly, potentially affecting the timeliness of certain findings. Nevertheless, these limitations are mitigated by the use of diverse and authoritative sources, as well as a rigorous and transparent analytical framework.

Finally, the research adheres to established ethical standards of academic integrity and objectivity. All sources are appropriately acknowledged, and the analysis is conducted in a neutral and scholarly manner. While the study advances a critical argument regarding

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<sup>6</sup> M. Hashi, A. Abdi: *cogent social sciences* 2025, 11, 1 p,6

the shortcomings of the current constitutional reform process, it does so based on evidence and reasoned legal analysis rather than personal or anecdotal claims.

## **VI. FINDINGS AND ANALYSIS**

### **A. Constitutional Supremacy and the Crisis of Amendment Legitimacy**

The Provisional Constitution of the Federal Republic of Somalia, adopted in 2012, was intended to serve as the supreme law of the land and a transitional framework guiding the country toward a permanent constitutional order. As a foundational legal instrument, the Constitution establishes the principles of constitutional supremacy, the rule of law, and the procedural requirements governing constitutional amendment. In theory, any amendment to the Constitution must follow a rigorous and inclusive process, requiring broad political consensus, parliamentary approval, and adherence to constitutionally prescribed procedures.

However, the findings of this study indicate that the current constitutional amendment process has deviated significantly from these foundational principles. Rather than embodying a consensual and participatory approach, the process has been characterized by unilateral executive action and the exclusion of key federal stakeholders. This deviation raises serious concerns regarding the legality and legitimacy of the ongoing constitutional reforms.

From a doctrinal legal perspective, constitutional amendment is not merely a political exercise, but a legally regulated process constrained by procedural and substantive safeguards. Relevant provisions particularly those governing amendment procedures and the protection of federal member states impose clear limitations on the exercise of constitutional reform powers. The apparent disregard for these safeguards undermines the principle of constitutional supremacy and transforms the Constitution from a binding legal framework into a politically negotiable instrument.

The findings therefore suggest that the Somali constitutional order is currently experiencing a legitimacy deficit. While the Constitution formally remains the highest

legal authority, its practical authority is weakened by the manner in which it is amended and applied. This tension between formal supremacy and practical erosion constitutes a central dimension of the constitutional crisis.

### **B. Executive Overreach and the Erosion of Separation of Powers**

A central finding of this study is the progressive expansion of executive authority at the expense of other branches of government. The Somali constitutional framework formally adopts the doctrine of separation of powers, dividing state authority among the executive, the legislature, and the judiciary. In principle, this structure is designed to ensure checks and balances and prevent the concentration of power in a single branch.

In practice, however, this separation remains largely ineffective. The executive branch has increasingly assumed a dominant role, often encroaching upon the functions of both the legislature and the judiciary. This concentration of power is particularly evident in the context of constitutional reform, where executive initiatives have proceeded without adequate parliamentary deliberation or federal consultation.

The erosion of judicial independence further exacerbates this imbalance. The judiciary, which is constitutionally mandated to act as an impartial arbiter of legal disputes, appears to operate under significant executive influence. This undermines its ability to enforce constitutional limits and to provide effective checks on governmental power.

A notable illustration of this institutional dysfunction can be observed in the legal and political dispute involving Jubaland that emerged in November and December 2024. Following Jubaland's suspension of cooperation with the Federal Government, the re-election of President Ahmed Mohamed Islam (Madobe), and subsequent judicial and executive measures including arrest warrants issued by the Banadir Regional Court institutions at both federal and regional levels produced conflicting legal orders directed at high-ranking political actors. Tensions continued into 2025, but these developments were a continuation of a crisis that originated in late 2024. The issuance of such orders by

courts with questionable jurisdictional authority highlights the fragmentation of judicial power and the politicization of legal processes.

More critically, the subsequent resolution of the dispute through political negotiation rather than judicial adjudication demonstrates the limited autonomy of the judiciary. The withdrawal or reversal of judicial decisions following executive intervention raises fundamental concerns regarding the integrity and independence of the judicial system. It suggests that courts may function less as independent institutions of justice and more as instruments within broader political struggles.

From a doctrinal standpoint, this situation represents a clear violation of the principle of separation of powers. Where the executive exercises *de facto* control over judicial outcomes, the constitutional balance collapses, and the rule of law is replaced by rules by discretion.

### **C. The Absence of an Effective Constitutional Adjudication Mechanism**

The study further finds that Somalia lacks a robust institutional mechanism for resolving constitutional disputes. In established constitutional systems, such disputes are typically adjudicated by a specialized constitutional court or a supreme court vested with constitutional jurisdiction. Such institutions play a critical role in safeguarding constitutional supremacy, interpreting constitutional provisions, and resolving conflicts between different levels of government.

In the Somali context, however, the absence of a fully functional and independent constitutional court has created a significant institutional gap. As a result, disputes between the Federal Government and Federal Member States are often resolved through political bargaining rather than legal adjudication. This undermines the predictability and stability of the constitutional order.

The findings indicate that the establishment of a constitutional court, or alternatively a specialized administrative court with constitutional jurisdiction, is essential for addressing this deficiency. Such an institution would provide a neutral forum for

resolving disputes, enhance legal certainty, and reinforce the authority of the Constitution as the supreme law of the land.

#### **D. The Supremacy of Informal Power-Sharing: The 4.5 System as a De Facto Constitutional Order**

One of the most significant findings of this study is the dominance of the 4.5 clan-based power-sharing system over the formal constitutional framework. Although the Constitution represents formal legal order, the 4.5 system operates as an informal yet highly influential mechanism for political organization and resource allocation.

In practice, the enforcement of constitutional provisions appears to be inconsistent and selective. Violations of constitutional rules often do not generate immediate or significant consequences. In contrast, any perceived disruption of the 4.5 power-sharing arrangement tends to provoke strong and immediate reactions from political actors and clan constituencies. This disparity indicates that the informal system possesses greater practical authority than the formal legal framework.

From a theoretical perspective, this phenomenon can be understood as a form of legal pluralism, in which multiple normative systems coexist within a single political order. In the Somali case, however, the relationship between these systems is not complementary but conflicting. The formal Constitution is grounded in principles of individual rights, equality before the law, and institutional governance. By contrast, the 4.5 system is based on collective identity, clan representation, and negotiated power distribution.

The findings therefore support the argument that Somalia operates under a dual constitutional structure:

1. A written constitution, embodying formal legal norms and institutional arrangements.
2. An unwritten constitution, represented by the 4.5 system, which governs political practice.

These two systems are inherently incompatible. While the formal Constitution seeks to establish a unified legal order based on citizenship, the informal system reinforces fragmentation along clan lines. As long as the 4.5 system remains the primary determinant of political legitimacy, efforts to establish constitutional supremacy are likely to face significant obstacles.

#### **E. The Constitutional Trilemma in Practice**

The interaction between executive overreach, political mistrust, and the supremacy of informal power-sharing mechanisms constitutes the core of Somalia's constitutional trilemma. The findings demonstrate that these three elements are deeply interconnected and mutually reinforcing.

Executive overreach undermines trust among political actors and federal member states, leading to resistance and non-cooperation. This, in turn, reinforces reliance on informal mechanisms such as the 4.5 system, which are perceived as more reliable guarantors of political inclusion. At the same time, the dominance of informal power-sharing arrangements weakens the authority of formal constitutional institutions, creating space for further executive expansion.

This cyclical dynamic creates a self-reinforcing crisis in which legal reform efforts are unable to produce meaningful stability. Without addressing all three dimensions of the trilemma simultaneously, constitutional reform is unlikely to achieve its intended objectives.

### **VII. SUGGESTIONS AND RECOMMENDATIONS**

Based on the foregoing analysis, the following legal and institutional recommendations are proposed to address Somalia's constitutional crisis and strengthen the legitimacy of its constitutional order:

- 1. Establishment of a Functional Constitutional Court:** Somalia should operationalize an independent constitutional court with clear jurisdiction to

interpret the Constitution and adjudicate disputes between the Federal Government and Federal Member States.

2. **Inclusive Constitutional Amendment Process:** Any future constitutional amendments should be undertaken through a genuinely consultative process requiring the meaningful participation and consent of all Federal Member States, including Puntland and Jubaland, in accordance with the principles of cooperative federalism.
3. **Strengthening the Separation of Powers:** Institutional safeguards should be adopted to protect judicial independence and prevent undue concentration of executive authority, thereby restoring effective checks and balances.
4. **Phased Electoral and Governance Reform:** The Federal Government should develop a gradual and consensual roadmap for transitioning from the 4.5 clan-based power-sharing formula toward a more inclusive democratic system grounded in equal citizenship and universal suffrage.
5. **National Constitutional Dialogue:** A broad-based constitutional conference involving federal institutions, regional administrations, political opposition, civil society, and traditional leaders should be convened to rebuild trust and achieve a sustainable constitutional settlement.

## VIII. CONCLUSION

This study has critically examined the constitutional crisis in the Federal Republic of Somalia through the lens of a “constitutional trilemma” defined by executive overreach, political mistrust, and the supremacy of informal power-sharing mechanisms. The analysis demonstrates that the ongoing constitutional reform process, rather than resolving structural governance challenges, has instead deepened existing institutional and political fractures.

From a doctrinal legal perspective, the findings reveal a significant departure from the principles of constitutional supremacy and procedural legitimacy. The unilateral nature of recent constitutional amendments, coupled with the exclusion of key Federal Member

States such as Puntland and Jubaland, undermines the foundational principles of cooperative federalism and calls into question the legal validity of the reform process. The Constitution, while formally recognized as the supreme law of the land, is increasingly weakened in practice by political contestation and selective application.

Furthermore, the study highlights the erosion of the doctrine of separation of powers, particularly the diminished independence of the judiciary. The inability of judicial institutions to operate autonomously and to resolve constitutional disputes effectively has contributed to a broader crisis of legality, where political negotiation frequently replaces legal adjudication. In the absence of a functional constitutional court, the enforcement and interpretation of constitutional norms remain inconsistent and vulnerable to executive influence.

Most critically, the research establishes that the 4.5 clan-based power-sharing system functions as a *de facto* constitutional order, often superseding the authority of the written Constitution. This duality between a formal, rights-based constitutional framework and an informal, clan-based political system creates a fundamental incompatibility at the heart of Somali governance. While the written Constitution aspires to establish a unified legal order grounded in citizenship and equality, the informal system reinforces fragmentation and group-based entitlement. As long as this contradiction persists, the realization of genuine constitutional supremacy remains elusive.

The constitutional trilemma identified in this study is therefore not merely a theoretical construct but a practical reality shaping the Somali state. Executive overreach fuels political mistrust; political mistrust reinforces reliance on informal power-sharing; and the dominance of informal mechanisms, in turn, weakens formal constitutional institutions. This cyclical dynamic perpetuates instability and undermines prospects for sustainable constitutional development.

In conclusion, the study argues that Somalia's constitutional crisis cannot be resolved through formal legal reform alone. Although the Federal Parliament approved the final round of constitutional amendments on 4 March 2026, thereby formally concluding the

fourteen-year review of the Provisional Constitution, this development did not produce a universally accepted constitutional settlement. Instead, the amendments intensified objections from Puntland and Jubaland and further entrenched competing claims regarding the legitimacy of the constitutional order. Any meaningful progress toward a stable and legitimate constitutional framework therefore requires a comprehensive political settlement that reconciles central authority with federal autonomy, restores judicial independence, and re-evaluates the role of the 4.5 system within the broader governance framework. Without such an inclusive and balanced approach, even formally completed constitutional reforms risk deepening division rather than fostering unity, leaving the promise of constitutionalism unfulfilled.

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