

Elements for a debate:

A Tentative Description of Government Institutions and Program For Somalia's Recovery

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This Note is presented more to *stimulate discussion* (harking back, positively or negatively, to some of what has actually happened in various parts of Somalia) than to present a full blueprint of what to do. The time horizon envisaged in this Note is for a transition of about three years which, if everything went well, would succeed in having these issues discussed more widely and resolved better, or simply fail. Naturally, no one can think of every difficulty, nor of every solution to every problem and that is the reason for seeking to spark a much wider debate, involving Somalis, both in Somalia and abroad, foreigners, and anyone interested in reflecting on the unique predicament of Somalia and the Somali people.

SECTION ONE: Description of Government Institutions

Introduction

A renewed effort towards Somali peace and reconciliation is currently underway. Similar to the past efforts, emphasis is again placed, by the Somali public debate, on filling various governmental positions and clan representation, instead of on the structure of the Constitution and government institutions. Unfortunately, some of the causes driving the recurring reconciliation failures have not been addressed or assessed with any degree of seriousness. This Note, written by two experts who know and love Somalia who in the normal discourse have different interpretations of the Somali political situation, have joined together to attempt to address one serious problem - the structure of the State irrespective of the appointed representatives - and provide an outline for a proposed solution for a successful and sustainable Somali state. It should be highlighted that this Note is presented for mere stimulation of debate and discussion. It is impossible to address all of the problems and their causes in Somalia today, and it is even more difficult to propose solutions. .

Overall, this Note will provide a structure for the proposed State and its institutions.

This framework rests on a decentralized federal state with strong local control. Specifically it highlights the importance of transparency and accountability for a State that traditionally is extremely dependent on external assistance. Support for a central State is based also on the belief that every inhabitant of Somalia has the same rights and responsibilities since they are part of the same Nation. This notion is in obvious contradiction to the current paradoxical, inappropriate, and untimely debate on traditional inhabitancy versus citizenship (“*U Dhasay/Ku Dhashay*”) in southern Somalia.

Within this structure, the Note will define the main characteristics, organs and institutions of the new State, including the nature of community representation, the legislature, judiciary system and executive branch. In doing so, it will first suggest ways of outlining the role and responsibilities of regional and federal authorities and their relationship and interactions with the central authority, on both a financial and political level. It will then shortly describe the countervailing and cooperating civil society institutions, along with the role they should play to ensure a successful, democratic government. Finally, this Note will attempt to calculate the rough operation cost of this proposed system of government.

Using a guideline of a two to three year transitional government, this Note intends to present a succinct but fairly complete description of how, ideally, a transitional government in Somalia ought to behave within the timeframe of its mandate. Namely the central authority will remain limited in its activities, providing essential public goods and services, such as acting as the diplomatic tie between Somalia and foreign governments, supporting a central banking system and other elements traditionally supplied only by the government. This transitional government will regulate economic activity to ensure its continuity and transparency, but without any direct interference. If this limited structure would be followed, priorities, coherence, and limits to government action, as well as the need for

marshaling external assistance, would become clear, something that has been lacking in previous administrations.

Lastly, the issue of creating internal mandates of these government institutions needs to be debated. Although this Note does not specifically deal with this issue, only with their establishment and implementation, it cannot be ignored. A main problem is that the public debate in Somalia has tended to identify politics with individuals and not institutions. Until all protagonists involved take this problem seriously, progress towards the creation of a minimally effective State apparatus will not be achieved.

Representation Versus State Apparatus

The transition from a stateless society into a sovereign, functioning state is difficult to visualize because there are not many precedents, at least in modern times. Nevertheless, the opportunities are abundant in making this a successful state, if one takes into full consideration the realistic abilities of any new state. In the Somali experience, past governments have been paternalistic, in the sense that the government attempted to provide all goods and services for the Somali people. This intent was largely unsuccessful in the past, and would continue to be so today, because before any Somali government can provide for the needs of its people, it must first be able to function and sustain itself as an institutional entity.

In the case of Somalia, two main elements have dogged all previous attempts at recreating a State: first, the question of legitimacy, and second the problem of representation as an embodiment of legitimacy. Since Somalia, as a functioning sovereign State, is merely an idea now and not a reality, it is difficult to ascertain who would be legitimately capable of sponsoring the birth of this new State. As a way of addressing this, past conferences have looked to the notion of representation as satisfying the need for legitimacy. This representation is merely a substitute for actual legitimacy, which has halted successful peace efforts and stalled several previous opportunities at building a true Somali State.

The game has gone too far, as evidenced in the most recent “government” established in Mogadishu. The Transitional National Government had an expanded cabinet, ostensibly to include groups not yet involved, but it merely depressed the already segmented structure, bringing in people from even smaller groupings, such as low-level sub-clans. Although it is obvious that the need to represent must be bounded in some way, using the prerogatives of authorship, we would propose that representation based on clan be limited and other initiatives, such as experience and skill, be utilized as well.

A successful Somali State is based on a three-branch central government: a Parliament, an Executive branch (or ministerial cabinet) and a Judicial branch. Using this representative and merit-based rationale, this Note proposes that the Parliament, the law-making branch, is the true representative branch, maybe partially or totally based on clan if the peace settlement requires it. The Parliament envisioned will be large, and will fully comprise representatives of all members of the Somali society. The Judicial and Executive branches, however, will be based on this notion of merit. This will countenance problems of clan imbalances in government. The qualifications and selections for these jobs will be done through special examinations organized under the supervision of representatives of the

Parliament. If this proposal were adopted, it would avoid the intrusion of “representation” into every crevice of a new government making it easier to react and conform to the changing needs of the people.

Regarding the Judicial system, there will be a Supreme Court, named as such because it will engage in the duties of a Constitutional Court as well as those of the final Court of Appeal. The Court would be composed of seven Chief Justices. Due to the importance of the Supreme Court, one should expect the selection of the Justices to be made very carefully and after full examination and reflection. Internal rules and regulations, such as budget and selection of cases, for the Court would also have to be defined by a Parliamentary committee, thus embodying both the representation and merit aspects of this new government.

Institutional Structure of a Transition Government and Polity

As briefly mentioned in the last section, the three major institutions to be created are:

- Parliament, or national legislative assembly, to create the laws;
- Judicial branch, including on the State level, a Supreme Court to serve as a Constitutional Court and as Court of final appeal;
- Executive branch, including the offices of President and Prime Minister, a cabinet and its staff, the civil servants, to enforce the laws

In addition to these overarching institutions, there are also semi-independent institutions such as a Central Bank, an Environmental Commission, and a Regulatory Agency. To assure their independence, these institutions would report to both the executive and the legislative branches and, although these institutions would be of cabinet rank, their chiefs would have greater security of tenure than a normal cabinet member. For further insurance of independence and quality, both their appointment and dismissal would require concurrence of Parliament.

Regional and federal administrations would exist and within their mandate, would set up local administration structures. They should be charged with the responsibility for the activities attributed to these local structures within any agreed upon in a political settlement. Further, their duties would be enshrined in a Transitional Constitution that could be based on texts adopted in past Conferences if so desired.

Civil society organizations, such as professional, technical, youth, women, economic, and social organizations would also be crucial to a successful State, providing accountability for the State and unifying the objectives of the people. These would need to set themselves up autonomously as many already have. Some encouragement and assistance, from both the government and even from abroad would be welcome to build their strength and capacity.

A. The Parliament

As has been the practice among all recently formed Somali parliament-like bodies, this is the institution *par excellence* where to base representation. Somali politicians can think of many sophisticated ways in which to select the members. Experience shows that these previous parliaments generally might have been successfully representative. Underneath this superficial representation, however, is where the real problem lies. The actual roles of these representatives have been unclear and therefore unproductive. Other than representing, namely being the eyes and ears of their constituents, they have done little more than consume a sizable share of any resources made available to fledgling administrations.

The number of members of Parliament can be obtained with two to three hundred representatives. This seems reasonable, given that the Parliaments in Puntland and Somaliland, which are geographically much smaller and ethnically more homogeneous areas than in southern Somalia, each comprise approximately sixty members.

The role of the Parliament would remain as previously discussed, though we would propose a legislative program that would individually reexamine the laws of the former Somali Republic, amending, updating, or writing anew as deemed necessary, with help from the Supreme Courts Justices. This process would initially be employed only for the laws required for specific operations of the government or the economy that would be urgently required.

In its first session, the Parliament should achieve four major accomplishments. First, it should adopt both a Code of Ethics for all officials, including the Ministers of Parliament (MPs), and would be enforced by the Chief Justices. To enforce this Code properly, there should be an establishment of a special court dealing with the corruption of officials, both at the central and regional/federal levels. Secondly, the Parliament should also define the role and the powers of the regional/federal administrations, in line with the expressed wishes of most Somalis. Third, it should also set up a mechanism enabling the regional administrations/federal States to interact directly with foreign donors, which would be in association with the central State, if and when necessary and useful. **The basic principles to be kept in mind here are that the Somalis want a government close to themselves, and decentralized and, therefore, most powers should remain with the regional governments/federal States, with the central government having only the specific powers granted to it.**

Lastly, the Parliament would also form Committees parallel with the responsibilities in the Executive branch, so as to be able to debate, amend, improve on any initiative, law, or decision that the Executive branch needs to bring to Parliament. In addition, the Parliament would also have a Committee in charge of parliamentary cooperation. This committee would be responsible for coordinating the government with external agencies, such as the Inter-parliamentary Union, or the Association of European Parliaments, that are able to assist in the training and development of the Somali Parliament itself.

Since the Executive branch is divided into five broadly defined sectors, which are superministries, there should also be five Parliamentary Committees in parallel, plus a sixth one in charge of matters of direct parliamentary interest. These Committees could have chairpersons, deputy chairs, and between six and ten members each. These Committees would be:

1. Intergovernmental affairs;
2. Economic Management;
3. Infrastructure (including reconstruction and rehabilitation);
4. Productive sectors;
5. Social Sectors;
6. Parliamentary Relations/Cooperation and Professional Growth.

These Parliamentary committees, could include non-parliamentarian members, such as members of the Somali Diaspora or other genuine expatriates, whose role would be to enhance the technical capabilities of these committees, thereby contributing to the growth of parliamentarian expertise and understanding. Given the poor quality of leadership in most past Somali executive bodies, perhaps most executive decisions should be taken in conjunction with appropriate, reasonably competent Parliamentary Committees. While

responsibilities are different, their ultimate goals are the same: to help rebuild the functions of the State, in a way that may enhance rather than harm the citizens of Somalia.

B. The Supreme/Constitutional and Final Appeal Court and the Judiciary System

The Judicial branch as an institution has a sensitive role because it holds the power to overrule the other branches of government. As such, it must also be seen as legitimate, independent and representative. For this reason, the Supreme Court is made up of seven Chief Justices. The Chief Justice chairing the Court would rotate every year for the first seven years. This would allow all Justices to take a lead position over a reasonably short period of time and, at the same time, provides the Court the basic stability it needs.

All seven Chief Justices would be appointed for ten years. This appointment would be made by the President, with the advice of the legal bar association, civil society groups, and association of magistrates, and confirmed by the Parliament and a majority of the regional governments.

In addition to the Chief Justices, the Court would also have approximately five or six deputy chief justices, who would be appointed for no longer than years on a rolling basis. To ensure a rolling basis, the initial appointments of the deputy justices would be for varying fractions of the ten years, so as to stagger departures and arrivals of the deputies. Both groups of justices would be assisted by a staff of six junior lawyers and judges, whom are experts on all types of laws applicable in Somalia, namely *Xeer*, *Sharia*, the Civil Code and the Penal Code.

The Supreme Court would hold the duties of a Constitutional Court, which involves adjudicating disagreements between different branches, such as Executive versus Parliamentary, and levels, such as local versus regional, of government. They also would be charged with the final interpretation of the Constitution, and would be the instance of final appeal, deciding cases, once selected, brought before it either by lower courts, or by litigants unsatisfied by lower court rulings.

In order to keep judicial standards uniform and national (and equal for all), Regional Courts – i.e. the jurisdiction just below the Supreme Court - would be managed by the Central Government. Since Puntland and Somaliland want to assert their autonomy as much as possible, there would be only one such Court in each Region. Creating such minimal court levels could be repeated in other regions, as the situation requires.

Additionally, the Judiciary System would consist of:

- **“Task Manager” for Justice**, who would be a member of the superministry for Intergovernmental Affairs, to be the legal advisor to the Executive branch, and an
- **Attorney General**, who would not be part of the Executive, but would have the power to prosecute persons, irrespective of their status, for violating the laws of Somalia. This office is essential in protecting the citizenry from oppression by the State (the Attorney General in certain countries really plays the role of Minister of

Justice, e.g. Kenya, USA; this is why a recent Commonwealth Judicial Expert Panel recommended the creation of a “Director of Prosecution” somewhere around the highest Court in Kenya, to make prosecution of government officials independent of the Executive, to which the Attorney general is very much subservient). This official would be responsible for supervising all anti-corruption legal action, whether taken by his office or others.

C. The Executive

The Executive branch would consist of:

- **The Office of the President:** acting as the Head of State, would enjoy limited powers. To assist the President, there would be a secretariat, and a small advisory staff. Initially, the first President would be nominated and then elected by a legitimate, representative body, namely the Parliament. After the transition, he/she could be elected by popular vote of the Somali public.
- **The Office of the Prime Minister:** acting as Head of Government, with a small staff consisting of a general counsel, a spokesperson, and a few key advisors. His/her cabinet would consist of the five heads of the ministerial groupings, the superministers, complemented by the Governor of the Central Bank, the Chief of the Environmental Commission, and the Chief of the Regulatory Agency. The Prime Minister would be appointed by the President, and would serve for as long as that appointment retains the confidence of the Parliament. During the transition period of the initial government, negotiations about forming a majority block to support a government in Parliament would be basically individual, until parties, interest or affinity groups, or factions are working smoothly. In case of a vote of no confidence, which would occur when the Parliament decides that they are unsatisfied with the performance of the government, the President, not the Parliament, would decide whether to give the mandate of forming the new government to the same Prime Minister.
- **The expanded Cabinet** is made up of the five ministerial groupings, each consisting of one “politically-oriented” leader, the Super Minister, and three to five senior persons presumably with substantive knowledge of the sectors or responsibilities of the group in which they work. These latter persons would work as “task managers” or chiefs of task forces, through which all technical work would be administered, immediately under the Super Minister’s authority, and act as an agent for the Super Minister when needed, though without bureaucratic titles, such as deputy minister, director general, etc.

The term “Ministerial groupings” needs some elaboration. We would propose that Somalia not create conventional ministries but instead small teams of senior competent people under a main person, the one responsible for communicating with the Prime Minister and for setting the political agenda. This individual would be called “Super Minister.” These small teams would be composed of experts surrounding the more politically-oriented “Super Minister” and would comprise the entire ministries. To incorporate more divisions and hierarchies would create staffing problems and administrative confusions of which a fledgling government would have no mechanism to cope.

Alongside, and partially intermingled with, the Cabinet would be three semi-autonomous agencies, namely the Central Bank, the Environmental Commission, and the Regulatory Agency. The Chiefs of these institutions would report to both the Executive branch and the Parliament. Their chiefs would be appointed for relatively long periods by the President, but their appointments must be confirmed by the Parliament. Further, their removal can only occur by the advice of President with the concurrence of the Parliament. The reason for the need of greater security of tenure is to buttress the independence they need to show in carrying out their mandates. They also need to be isolated from trivial political necessities, so that they can keep their entire focus on the largely long-term matters that they need to address.

The **Central Bank of Somalia** would resume operations under its Organic Law of 1968, as revised and updated recently. It will serve as banker, cashier, and fiscal agent to the Government, and to lower levels of government, as required and necessary. In this role, it will operate the Government's bank accounts jointly with the Finance group, and receive payments on behalf of the Government. It will make payments on behalf of the government when duly authorized by the Finance group, as jointly with the Finance group, it will also monitor the Treasury balances. Finally, the CBS will act as the independent economic advisor of the Government, setting up its own economic research department to fulfill that mandate.

The new government would set up a competent regulatory agency that will be well-funded and staffed by competent persons, and whose role will be to prevent restrictive trade practices, including, but not limited to, problems of monopoly, restraint of trade, collusion, other non-competitive behavior, and barriers to entry. The agency would also regulate economic activities that require economic regulation, such as electricity grids, water systems, telecommunications, and other industries that have the tendency towards a natural monopoly. The regulatory agency could also participate, at the request of the proper ministries, in the oversight of quality, safety, security, and minimum standards for some products and services. Nevertheless, the main role of this regulatory agency would be to ensure that the drive and energy of the private sector are harnessed in an efficient manner, while the less admirable aspects are kept at bay. Funding this unit could be a positive reinforcement for external donors in supporting Somalia's rebirth.

Environmental damage, as the ultimate market failure, needs to receive special attention, and so the new government will establish an appropriate structure to deal with environmental issues. The environment issues are among the most serious problems that need to be tackled and are an extremely fashionable topic of concern and therefore ought to easily attract the external participation and funding required for a reasonably competent agency to function. As in its other economic policies, Somalia should seek to solve its environmental problems with the support of the market forces, and not against them. For this reason, it would use, wherever possible, appropriate charges or levies (for effluents, discharges, or other damage, which later, could be securitized and made tradable) that permit optimization instead of outright prohibitions. Prohibitions impose high economic efficiency costs and are therefore not productive for a growing economy. Instead, the Somali economy should be aware of the environmental concerns, making expert decisions on how to best deal with the situation, such as either imposing fines, taxes, prohibitions of certain levels, or

create recycling mechanisms. In accomplishing this task, since Somalia has little expertise in this field, it would need to receive assistance in designing such a market-based system of environmental pricing.

This ministerial system would result in a narrow cabinet of nine people (the five Super Ministers and the heads of the three agencies plus the Prime Minister) and a wider cabinet of approximately thirty-five members (the narrow cabinet plus, four senior advisors for each Super ministry along with the Prime minister's office) whenever the Prime Minister or one of the Super Ministers would find it appropriate to consult with the senior Task Managers. The groupings are listed below and briefly described in the following section:

1. Intergovernmental Affairs Group
2. Economic Management Group
3. Infrastructure Group
4. Social Sector Group
5. Production Group

Description of the Ministerial Groupings

1. The Intergovernmental Affairs Group

The composition is broad and includes the departments of Foreign Affairs, Interior, Justice, and Defense. In the areas of Interior and Justice, in addition to ordinary Foreign Affairs tasks, such as maintain communications with foreign countries and institutions, its duties would be to complete the reconciliation process, and to assist in the creation and functioning of regional or federal governments. It would also assist regional governments or federal States in dealing with external matters, and support their relations with donors. Its role would need to be further elaborated and eventually include authority and responsibility for all means necessary and proper to effectively decentralize the new State. This ministerial grouping would assist with internal governance, including the administration of justice locally and to share with regional governments/federal States the authority over police forces. With regards to Defense, this Group would also exert control over the army.

In its core role as the key intergovernmental body, the Group would assist in determining, together with the Economic Management Group, the appropriate mechanism and formula to transfer funds to regional (or federal)/local governments. As such, it will be intimately familiar, from collaborative work, with the real needs and resources required by the regional authorities. With this knowledge, the Group will work hard to fulfill these needs from the central government.

It should be noted that the transition government will largely succeed or fail based on the performance of this grouping. Therefore, it is strongly recommended that the government heavily relies on this group, supporting it with expertise and funding.

2. The Economic Management Group

The Economic Management Group includes the functions of Planning, Finance, Fiscal Affairs, and Revenue Collecting. The competencies of the ministries of Finance, Planning, and Accounting, aided in some matters by the Office of the Prime Minister, would constitute the Economic Management Group. The Central Bank, though a key institution in the substantive work of this Group, would need to work in close association with, but not report to, the Economic Management Group leader. This Group is responsible for the maintenance of macroeconomic balance and for the monitoring of economic trends and variables necessary for the conduct of economic policy. These institutions are the focal points for receiving assistance related to economic policies.

In line with advice received from development partner countries and the UN System, the roles of the Economic Management Group institutions (described as ministerial functions, but really core groups of staff surrounding a senior person acting as a Task Manager) would be confined to two main functions: the planning function and the finance function.

The planning function, in addition to its policy coordination role, will budget all capital and development expenditures, as well as prepare and present to donors development plans and programs, jointly with other levels of government. It will

monitor and evaluate all public investment programs and projects. The Planning task force will also create a statistical department and work on re-establishing national income and expenditure accounts as financial and human resources permit. It will also act as focal point and coordinate external financial and technical assistance.

The Finance Group is responsible for marshaling and accounting for the resources of the State, whether raised from domestic or external sources. To this end, the Group will budget all recurrent expenditures, and control and authorize all State expenditures. It will also assist lower levels of government set-up their own financial budgeting and control systems. In order to encourage transparency and accountability, this Group will monitor the Treasury balances and bank accounts jointly the Central Bank of Somalia, “CBS,” informing the government as necessary. The Group is responsible for establishing and operating a fair, and transparent fiscal system with which to raise revenues for the State. It would be assisted in these tasks by other smaller units such as a “revenue” agency or department, and an comptroller general, or accountant/auditor.

3. The Infrastructure Group

The Infrastructure Group includes the sectors of Road Transport, Ports, Aviation, Telecommunications, Electricity, and Water. In these sectors, since the government will not possess State ownership and control, the Group’s role will be conceptual and regulatory. The government will define long-term development strategies and policies for development of these sectors. Since most of these sectors have national level dimensions or implications, the central government will make sure that the overall infrastructure system is coherent and efficient. It will endeavor to develop these sectors through external assistance, at least in the investment period. This external assistance is necessary because most of these sectors are capital intensive and are therefore beyond any local private investor capability, except for the telecommunication industry and power generation. For example with regards to the power generation industry, distribution of power from large-scale plants through a grid would be a natural monopoly and while it could be owned and operated by private interests, it would need to be regulated by the national government. As for the operation and maintenance of those assets not fully privatized, the new government will develop methods and tools, such as performance-based management contracts, incentive-based leases, to use in the private sector.

4. The Social Sector Group

The Social Sector Group includes Education, Child Welfare, Health, Welfare, including gender and the status and problems of former civil servants, Civil and Human Rights, and Emergency Management. The new government would promote the provision of basic social services to the whole population of Somalia, but it must be recognized that many of these services are paid for by the beneficiaries and often are supplied by private providers, not the State. Therefore, access by the poorest people to these services remains problematic. Initially, the new government should institute mechanisms enabling it to curb abuses. As time progresses, the government can gradually shift from the present situation to a more normal one where quantity and quality of supply can be supervised to some extent, thereby

avoiding excessive exploitation and improving equity and access. Again, the State will have limited resources to intervene directly, through investment and other social benefits, in these sectors, but that does not diminish the importance of this Group's responsibilities.

Regarding human rights more generally, there have been enormous violations, both near the collapse of the State in the 1980s as well as during the acute phase of the civil war and its aftermath. Extra-judicial killings and indiscriminate military action, that killed more innocent civilians than combatants, happened with disturbing regularity. While the most appropriate course of action in relation to the past has not yet been decided, the possibility of setting up a body similar to the Truth and Reconciliation Commissions used in South Africa and in Argentina should be considered.

5. The Production Group

The Production Group includes Agriculture, Industry, Manufacturing, Livestock, Fisheries, and Commerce. Since the central government would not directly own or control the economic and production enterprises, as with the Infrastructure Group, its role in these sectors would be promotional, normative and regulatory. This role would also include the participatory definition, through well-executed studies and dialogue with civil society institutions, of global sector goals and the general strategies and the incentive structures needed, such as taxes, subsidies, other types of support, to reach the stated goals. As its capabilities increase, the new government should also assist the private sector through actions that benefit the private sector as a whole. For example, trade promotion abroad, foreign market intelligence, training and research, would be services that benefit more than one firm, and since it is inefficient for each firm to procure them individually, it would be ideal for the government to assist the sectors in this manner.

The New Civil Service

The civil service will consist of a relatively small group of qualified staff that could be assigned to work on any issue that may arise within the context of the various ministerial groupings. This staff, referred to as the civil service, would need to be minimal in size, in order to function effectively within its limited means. By being small, it also will gain the trust of the people, as the population is generally weary of a big government. This being said, we hesitate to put a number on the total civil service staff, though we would recommend the number to be in the hundreds and not the thousands.

In addition to the civil service staff, there also needs to be a set of professional support staff. This number could total approximately one hundred people, and would be complemented by about 20 support staff, such as clerks, data entry staff, IT support staff, secretaries, messengers. These qualified and well-maintained persons would work for any of the “ministries,” under one of the task managers. Each staff member might work for several of the task managers, sharing their time among several. This type of organization, much favored of recent by corporate Human Resources managers, has been called the “country club approach” in that each staff member is “invited to join” a group working on some specific matter. It has virtue in that it economizes on qualified staff and is therefore well suited to Somalia where such staff is in extremely short supply. Obviously, the more dynamic ministers or task managers would occupy more of the staff, and so a sharing mechanism might also need to be established. There is also no reason why some of this staff could not be made available, in some orderly fashion, to the heads of the parliamentary commissions or to lower levels of government, who would have difficulty finding, recruiting and paying qualified personnel.

In order to further enrich the professional life of this civil service, a number of Somalis from the Diaspora, and perhaps also some genuine expatriates, could be brought to Somalia to work within this staff and assist in refreshing the skills and knowledge of the groups. This area is also one for which some external funding for this possibly expensive mechanism could be worthwhile.

Civil Society Groups

Since Somalia has suffered so much at the hands of its former government, and is justifiably leery of government, intimate, close contact between government and constituents would be strongly required. Further, in a society as fragmented and clan-oriented as Somalia, it would be good to have some organizations that are not clan-based. Civil society organizations could play that role. Similarly, the association of civil society groups would be an easy and effective way of securing the consent of the governed, a key ingredient of legitimate governments. Such association would gain popular support for government policies and decisions, while creating a climate of openness and transparency, helping to demystify government actions, and weakening the Somali penchant for believing that there are conspiracies everywhere. The key message of this section is to urge the new government to integrate civil society groups to their activities. It should be stated at the outset that in order to be effective and to serve their true purposes, these groups must create themselves. If they are created by the government then they would be mere stooges of it.

We will not enumerate all the kinds of organizations that would need to be formed, but just indicate that some are more important than others. Some of the most critical civil society organizations are the various kinds of business organizations, whether by trade, industry, or region. All of these associations are to make sure that the government has adequate interlocutors and to make sure that the opinion of an important segment of Somali society is heard in the halls of government. The normal association of entrepreneurs, businessmen, traders, and industrials usually takes the form of a “Chamber of Commerce,” and Somali business groups should strive to form one, probably as a federation of smaller, more focused associations. Similarly, the associations of lawyers called “Bars” are important in helping to establish and maintain the rule of law by setting standards of education, conduct, and practices among the legal professionals of the country. Other various professions should also form associations and consult the government on matters that either affects these groups or in which they have specific knowledge. Civil servants themselves could also form an association. Labor or trade unions should also play a role, but perhaps not at the very beginning, as the Somali economy will continue to be overwhelmingly informal, through associations of workers in the same fields. Women, youth, sportsmen, and intellectuals, to name a few, should also have their representative organizations, ready to participate in the great debates that need to be engaged as Somali society seeks to rebuild a political, legal, and civic order.

Second section

The Government's role and program

Introduction

The new Somali State would need to design and establish a form of government and institutions which:

- **Perform functions that the people are incapable of performing themselves**, such as embody their sovereignty, represent them abroad, take engagements in their name, provide basic public goods, some fundamental rights such as protection of the weak, and of the environment. Further, in this case, the government ought very much to support, assist, and promote regional and district authorities, given that Somalis, for the moment, if they want a government at all, want a rather small and very decentralized one
- **Articulate societal visions and goals**, as well as the policies, strategies, and incentive structures to reach the goals in participatory fashion; in particular, set development policies in broad terms, and make indicative plans
- **Minimize the opportunities for corruption** by both government officials and private persons. The new State and system of government must make corruption difficult, by avoiding moral hazard and adverse selection. This intent is best accomplished if the government stays removed from economic activities
- **Introduce and facilitate a state of legality**, while providing protection against abuses of power. The legislation should facilitate the obtaining and maintenance of legality, especially in economic and social activities.
- **Introduce an economy based on private investment** and initiative with relatively low taxes and simple economic legislation. The role of the State would be to regulate economic activities that require regulation, such as matters related to economic efficiency, namely externalities, market failures, incomplete markets, monopolistic practices, safety and security, and environment and consumer rights. The State would also leave the market free to function with an essentially free exchange rate within a broadly balanced macroeconomic policy.

Somalia's experience over the period of the dictatorship and subsequent statelessness shows that the main shortcomings of the previous government were: authoritarianism, excessive centralization, and intervention in the economy, under the so-called "command and control system." The excessive intervention in the economy, the maintenance of many artificial administered prices, including the exchange and interest rates, political interference in all spheres of the economy, and widespread corruption, all belonged to a system that created multiple opportunities for corrupt practices. It also shows that the negatives of government may well have outweighed the positives, witnessed by the fact that where a modicum of security has ruled since the collapse of the State, Somali business has flourished. All of these instances are lessons learned to guide the definition of the post-conflict economic policy.

Absolute Economic Priorities

1. Limited Government Programs

While the new government would have virtually no resources at this initial stage and will need technical and economic assistance from abroad, it should be ready in a relatively short period of time, to be as modest as the Somalis can afford to allow it. While this seems far-fetched, it can be envisaged by very carefully circumscribing the tasks to be carried out by the government, hence also circumscribing its need for resources. Also, developing an ability to influence the deployment of external assistance would enable the government to have influence far above what its own resources would permit. The best strategy in order to reintroduce a government in Somalia involves limiting its actions and responsibilities. The new “central” government would have as a major task assisting regional/federal authorities, at their discretion, to obtain external funding for a limited program of infrastructure rehabilitation designed to use labor-intensive methods and create large-scale, even if temporary, employment. The role of the central authorities would be to ensure a coordinated approach where such is needed, such as to make sure that roads are rehabilitated on both sides of regional/federal boundaries.).

The new government will assist private enterprise by allowing it to use productively some of the assets of the former government. While initially the fees for using such assets would be modest, in due course, a fair system of rents and other charges would have to evolve. If this was not evolved, otherwise favored individuals or companies could obtain competitive advantage from access to government-owned facilities more cheaply than others. Talk of privatization as such may be premature, in that external investors, other than the smaller ones used to working in partnership with Somali business people, may not yet have the confidence to bring large-scale resources to Somalia. On the other hand, national investors may not have the resources to buy outright certain sizable State assets. It should be noted that the government should not create or allow enterprises that are partially state run, because these often become vehicles for patronage and corruption, and are not taken seriously as commercial enterprises. Further, these enterprises also crowd out the private industries, causing increased economic problems.

There are also instances in which the government would need to lease currently existing and operating industries, because selling or starting anew is not an option at this point. An example of this is the case of ports and airports. In such cases, the new government would allow private investors to use or operate these assets, perhaps initially at a nominal cost, until the revenue potential is assessed, and a rental, or royalty, related to the profitability of the venture can be set. Meanwhile, the government would levy moderate import/export taxes, with the co-operation of the operators of the facilities. Companies could thus be formed to operate State-owned assets, and, in due course, perhaps finance some of the needed investment from the revenue, thereby acquiring a share in the ownership of the asset, over the long run. The State’s interest would be to get these assets back into use as quickly as possible, with the consequent employment and reactivation of the economy. Similarly, government-owned structures could be rehabilitated by private investors who would then be allowed to use them free in their business for a period related to the cost of rehabilitation. Ultimate outright purchase could be initiated once things settled, and markets could do a better job of setting a stable value on long-lived assets.

2. Macroeconomic Equilibrium

The maintenance of the basic macroeconomic equilibrium would be the first priority for the new government. While this sounds prosaic and repetitive, the damage done by the failure of the former government to maintain this basic equilibrium cannot be overstated. Also, given the limited capacity economic management institutions would have in their early years, it is appropriate to set only the most limited objectives. Macroeconomic balance was maintained by necessity in the period of statelessness because there was no credit, and no budget surplus or deficit to perturb equilibrium, nor taxes or subsidies to distort resource allocation or consumption. The new government would need control over the money supply, to prevent the collapse of the Somali Shilling and maintain reasonable price stability until a currency reform can be undertaken, sooner rather than later.

The Central Bank will be responsible for conducting a currency reform that protects the interests of the population, especially the poor, and to be responsible for monetary policy. It will promote the re-creation of the Financial System and organize itself to supervise it according to state of the art banking regulations that it will develop and put in force. It will also oversee and regulate the foreign exchange trading system, maintaining its freedom and openness, maintaining a basically free-floating exchange rate.

The need to maintain this basic equilibrium is also powerfully manifested by the fact that the experience of Somalia since the collapse of the State is positive in many aspects of economic growth and development. Additionally, the maintenance of macroeconomic balance in future for progress, as opposed to its maintenance by mere necessity as in the past, is essential to the success of the private-sector led strategy the new government would need to follow.

Summary of a concrete initial government program

In short, and in plain words, here is what the new government would need to do within approximately three years:

- **Encourage and assist all communities to create their own regional/district/local government authorities or federal States, without exerting undue influence;** render both technical and financial assistance by influencing what external donors fund in Somalia; be ready to get donors and regional governments/federal States together, and assist regional governments in preparing and presenting projects that can be funded by external donors.
- **Keep the ministerial body (cabinet) small** by attaching to it a small but competent civil service (see above...); have modest offices where some civil servants can be seen working. Keep all salary or salary-like expenditures extremely low: **the first task of government is not to pay its members but to serve the general public who need government services.**
- **Create a Task Force to deal with disarmament, demobilization, and reintegration,** but one that would think of how to solve the problem, not one that just waits for external resources and then sees what foreigners feel like doing...one that leads, that is proactive, that harnesses external talent to its work, rather than following what the donors are doing. This group would also monitor and learn from initiatives in Somaliland, Merka and Mogadishu and elsewhere, so as to be in position to guide external assistance. The staff for this Task Force need not be *ad hoc* since its work would hardly be full-time, the people could be chosen from the small civil service: only the leadership, the co-ordinators of the Task Force might be involved full-time.
- **Set-up and deploy a small police force,** visible, well-armed, (well-paid if possible), recognizable, operational, and ready to act, intervene, and fight only on matters of public interest, under the direct command of the Prime Minister but with the concurrence of a small number of persons (say: the President, the President of the Supreme Court, and the Speaker of the Parliament). When not fighting, this force could be working with citizens to try to improve security generally.
- Create an Attorney General (see earlier.... outside the executive) **with power to initiate legal action, especially against law-breaking organs of the State, as well as against corrupt public officials.** Perhaps a small but well-trained anti-corruption police unit could be put directly under the orders of this magistrate, making him or her, a powerful czar against corruption and a bulwark of respect for the rule of law.
- Set-up a **small army** (even though Somalia really does not need an army) that would include both a border/coast guard and a custodial corps. Try to keep its numbers low, as it is not certain that any Somali army could help deter external threats, while internal security should be the duty of a (civilian-controlled) police force, with special, heavily armed units as needed.

- **Prevent the import of newly printed currency to maintain price and exchange rate stability;** encourage continued use of the Somali Shilling (So.Sh.) as one of the few elements of the Somali common market and monetary union; make and accept payment in Shillings for all transactions between the State and people; start negotiations and reflections for a currency reform to restore the “moneyness” of the Somali Shilling. “Moneyness” means the ability of a currency to serve well the main functions of money, namely a medium of exchange, a standard of value, and a store of wealth. In this context, the Somaliland Shilling could continue to exist if the people there so decide, but could perhaps be pegged at a fixed parity with the So.Sh., thereby remaining distinct, yet, for all intents and purposes, being essentially the same currency in economic terms.
- **Use any resources, even if received from abroad for investing in a few things that would show people that the government has returned and is effective,** whether that would be rehabilitating a hospital, rebuilding a crucial piece of road, participating, elbow to elbow with foreign donors in, say, a vaccination campaign, or other such endeavor. Monitor and learn from all externally financed and managed assistance interventions, first to find out what is going on, and then to be able to influence and direct what is going on.
- **Set-up a small core of people whose role it would be to budget, monitor, and control the foreign resources received by the government.** It would be good if these responsibilities were split so that they would fall under two parts of the government, such as the Finance sector and the Central Bank. A mechanism of this type, even if very simple, is necessary for receiving any external assistance from western donors.
- **With respect to the social sectors, especially health and education,** where the government has an important role to play in spite of the fact that it can finance but a minor share of the expenditures, basic policies should be set by the government, and it should be able also to impose minimal standards of quality. In education, it should set a basic rule that elementary education will be in Somali and coeducational i.e. boys and girls must be socialized together and all Somalis should be able to communicate in their common language. The efforts of other agencies, such as teaching in English, Arabic, Italian, or the creation of educational opportunities for girls alone, are appreciated for now, but would not be acceptable once a logical, overall policy were set. Minimum quality standards could be required and then monitored through a licensing and accreditation procedure both for schools and health facilities. Finally, given the dearth of qualified personnel, a school of public administration should be started, especially to provide staff for the emerging regional administrations or federal States.
- **Establish a simple and basic fiscal policy:** the central government should probably be able to tax imports and exports, while local taxes (sales, markets, and licenses) should be left to accrue to regional authorities. Income and profit taxes could be levied by either level of government, but it would be easier probably, at this stage, to let the central authority levy this tax which should be shared immediately (upon collection) with regional/district governments. However, since the duties of the central government

would be limited, very early on, a formula should be negotiated to start transferring a share of all revenues to local governments.

Annex:
Size and cost of operations of the government as envisaged in this Note

This sketchy budget does not take into account several expenditure components since they are key elements of the political settlement and are still to be agreed upon. Agreements still need to be reached, within the broad outlines of a political settlement, as to which level of government (Regional or Federal/Central....) is to control and/or cover the costs of the local judiciary (i.e. the district courts), the army, and the police forces. However, in order to keep juridical standards uniform and national (and equal for all), Regional Courts – i.e. the jurisdiction just below the Supreme Court- would be financed by the Central Government. Since Puntland and Somaliland want to assert their autonomy as much as possible, the Central Authorities would only cover the costs of one such Court in each Region. So, the Central Government would cover the costs of a maximum of 10 Courts nationally. As for the apportionment of costs for the army and police forces, the Central Government would first of all have to establish/negotiate peace all over Southern Somalia. That is why the budget is incomplete, showing only partial figures. We expect the Somaliland and Puntland Administrations, with support from the international community, to proceed with demobilization and reintegration before forming their regional army and police forces which will eventually be merged with those of the South, through agreements reached at the Peace conference or through legislative actions by the Parliaments concerned....

Parliament

Say, 250 members; 30 staffers; 10 support/service staff

Speaker: 1X \$1000	= \$	1,000.
3 Deputy-Speakers: 3X 800	= \$	2,400.
246 x \$500	= \$	148,000.
30 x \$300	= \$	9,000.
10 x \$100	= \$	1,000
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Total	= \$	161,400. per month.

Supreme Court

7 chief justices; 7 deputy chief justices; 6 assistant judges/lawyers; 5 support staff

7 x \$ 1000	= \$	7,000.
7 x \$ 800	= \$	5,600.
6 x \$ 500	= \$	3,000.
5 x \$ 100	= \$	500.
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Total	= \$	16,100. per month.

Regional/Federal Courts

3 justices x \$800	= \$	2,400.
3 clerks/baillifs x \$300	= \$	900.
3 guards x \$ 100	= \$	300.
Total (rounded)	= \$	3,600. Per month
10 courts x \$ 3,600	= \$	36,000. (per month for 10 Courts)

Executive Branch

Presidency	= \$ 5,000	
<u>Pres. Staff 5 x \$ 500</u>	= \$ 2,500	
Prime Minister's Office	= \$ 3,000.	
<u>PM staff 10 x \$ 500</u>	= \$ 5,000.	
<u>Subtotal 1</u>		<u>\$15,500.</u>
Cabinet (5 ministers + 3 agency heads)		
Ministers/ Ag. Heads 8 x \$ 1,000.	= \$ 8,000.	(Agencies: CBS, ENV, REG)
Senior Staff 10/Ministry x \$ 500.	= \$ 25,000.	
Senior staff/Agencies 6 x \$ 500.	= \$ 3,000.	
Junior staff 5/ministry x \$ 300.	= \$ 7,500.	
Junior staff/Agencies 6 x \$ 300.	= \$ 1,800.	
Support staff/ min. 10 x \$ 200.	= \$ 2,000.	
<u>Support staff/Agencies 5 x \$ 200.</u>	= \$ 1,000.	
<u>Subtotal 2</u>		<u>\$ 48,300.</u>
Total Exec. Branch		\$ 63,800.
<u>Total (leg+ jud+ exec)</u>		<u>\$ 277,300.</u>

Army + Police Force (Benaadir)

Police		
5200 x \$ 100/mo	= \$ 520,000.	
140 officers x \$ 200	= \$ 28,000.	
Subtotal 1	= \$ 548,000.	
Army		
10000 x \$ 75/mo	= \$ 750,000.	
200 officers x \$ 200	= \$ 40,000.	
Subtotal 2	= \$ 790,000.	
Total Army + Police		\$ 1,338,000.
<u>Grand Total (leg+jud+exec+army+pol)</u>		<u>\$ 1,615,300.per month.</u>
<u>Grand Total</u>		<u>\$ 19,383,600 per year.</u>