

Curbing Corruption

December 9

2019

While major issues remain, some steps were taken in the past year in ensuring Somalia moves towards creating accountability at the federal level. Corruption levels worsened at the federal member state (FMS) level due to elections.

Minor gains

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Executive summary

The period since our last report of September 2018 saw elections held in the Federal Member States (FMS) of Puntland (8 January 2019), Jubbaland (August 2019), and Southwest State (19 December 2018). As predicted in that report, the Federal Government of Somalia (FGS) was heavily involved in said elections, trying to promote a candidate in line with its vision of Somalia. The result was a tightening of FGS influence in the FMSs nearest to the capital and further losing influence in Jubbaland and Puntland.

In Mogadishu, the government took modest steps to improve transparency and accountability. It increasingly shared data on government reports and published expenditure reports from 2018 and the first two quarters of 2019.

On accountability, the Auditor General released his first report. The report provided a useful outline of the institutional weaknesses of various government departments. It showed an utter lack of bookkeeping in some departments; lack of an internal audit; misspending of funds for goods and services not included in the budget; lack of transparency in contracting; poor and illegal procurement procedures; and millions in missing funds. It was a brave and important step in building credible institutions.

As we head into an election year in 2020 and as anticorruption mechanisms remain weak and unimproved, incidences of bribery and vote-buying are expected to continue being a problem. Likewise, the lack of an electoral model so close to when elections are supposed to take place means there will be a delay that has the potential to cause political instability and a further weakening of the FGS relations with Puntland and Jubbaland.

Introduction

This year's anticorruption report focuses on the continuing obstacles to institution-building in Somalia. While accountability indicators show an improvement, other important dimensions required for a modern democratic state, such as rule of law and political pluralism, continue to be lacking. This report focuses on the main issues since our last report in September 2018, including government's failure to address some of the issues brought up in that report. This report also includes a review of corruption during the FMS elections and what we can glean for the federal process in 2020/21 as a result. Finally, the report provides recommendations based on these learnings.

Methodology

The findings in this report are based on information gathered by the marqaati-run Somalia Accountability Feedback Mechanism, which has received almost 200 verified reports from office holders and members of the public in all corners of Somalia since our last report. marqaati also received a similar amount of unverified reports. Reports were received from the public via three main methods: the first is through the marqaati mobile application, which is available on Google Play Store, and which we promote on Facebook; the second is through the Report Corruption page on our website, marqaati.org, which we also promote on Facebook; and the third method is by in-person reporting by the public.

A report is considered verified when: 1) it is a public fact, such as a known illegal money-collection checkpoint; 2) there is corroborating evidence that is supplied by the reporter; or 3) multiple reliable sources report it. In addition to the Feedback Mechanism, more than 150 key informants were interviewed in events held by marqaati, helping to verify some of the reports already collected and providing a picture of the state of accountability in Somalia.

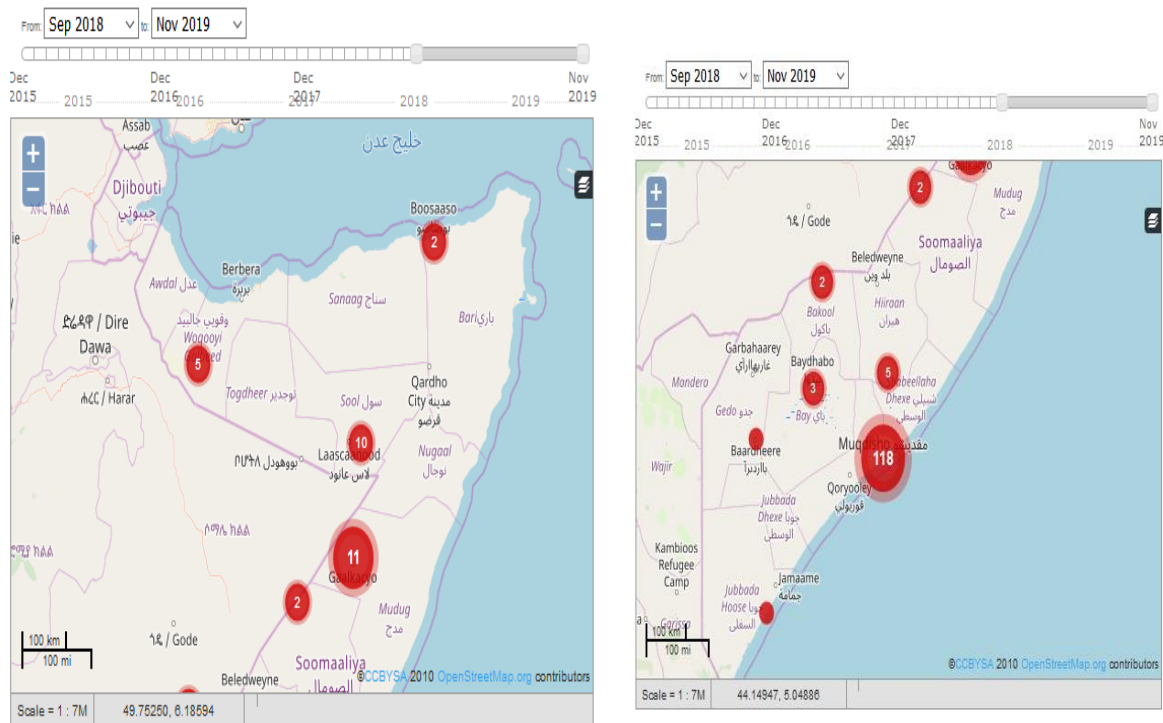


Figure 1 and 2: Verified corruption reports by region

The highest number of reports in Mogadishu concerning the FGS stems from two main factors: First, Mogadishu is the single most active city on the internet in Somalia. Second, is that the FGS is the biggest polity in the country and has the most institutions with which the public interacts. Polities that exist mostly in name and have non-existent institutions, such as HirShabelle, therefore, registered the fewest complaints.

Reports sometimes increased in number in response to current events. Moments of political instability and infighting saw an uptick in reports that were not specific to corruption and government services but of a general commentary on the sorry state of Somali politics; and terrorist attacks were followed by complaints about the incompetence of the security forces.

The reports

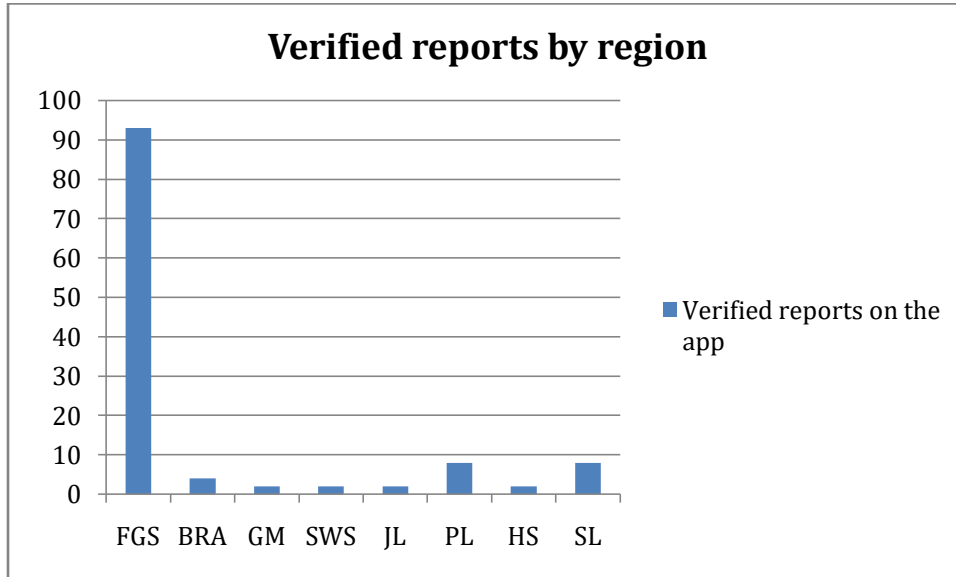


Figure 1 Verified reports from across Somalia

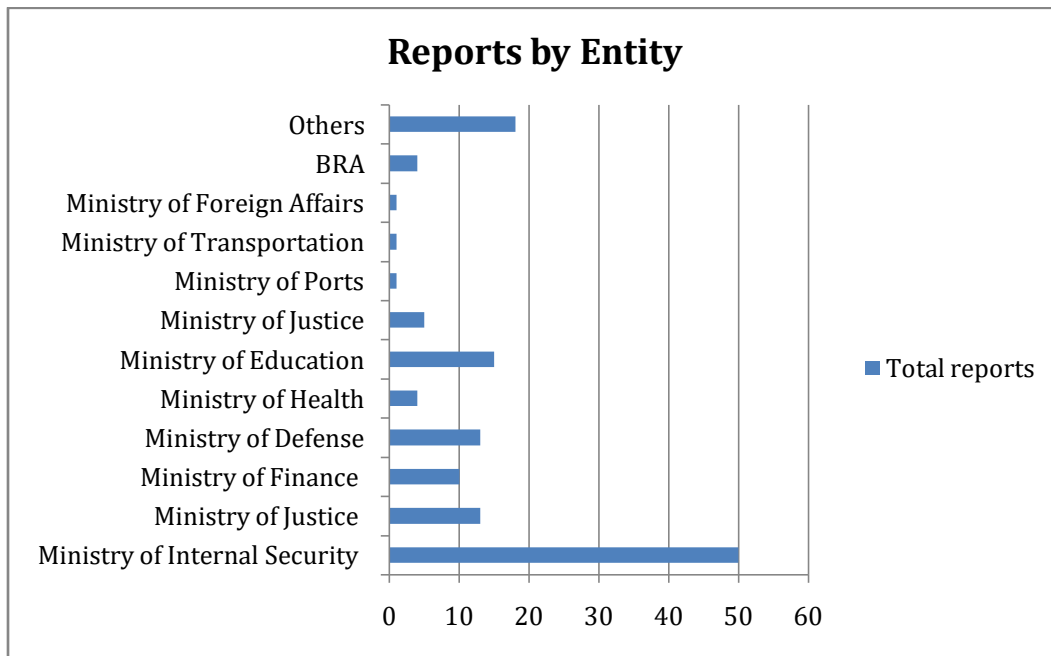


Figure 2 Verified reports by institution

"I am a student at Omar Samatar Secondary School in Galkayo. I had come back from watching a match a few nights ago when I was detained by the police. They took my phone; I was held for

five nights. My parents had to pay a bribe for my release. Additionally, my phone was never returned. The police said to me that my clan was nothing and that they would shoot me if I ever returned. Is the clan greater than the law? I want my possession returned to me if there is any semblance of justice in this town." ¹

"Land is being grabbed from us by a local politician. The land has belonged to our family for over 100 years; we got the title deed for it in 1984. The land grabber has four technicals at his disposal; he also has the support of the local district commissioner and his deputy. The land is in Kaaraan district, Nageyle area." ²

"I would like to report an increase in extortion checkpoints in the outskirts of Mogadishu and within the city itself. In Bakara Junction, passenger vans pay 12,000 SoShs in bribes; 25,000 at Danwadagaha Junction; 12,000 in Bulo Hubey near Ulusow Mosque." ³

"There is a widespread corruption at the tax collection office in Wadajir district." ⁴

"I have seen massive corruption at the CID. My advice is that everyone that works there should be fired. It is a humiliation that the CID should be at such a state." ⁵

"The roads in Mogadishu should be opened in order to encourage trade. I came from abroad and bought a car; after finding out that I could not drive it anywhere, I had to sell it." ⁶

"As the residents of Elasha Biyaha, we have a problem with the SNA troops that open fire at us indiscriminately when they pass through our area on motorbikes. Sometimes people are killed in these shootings. We therefore ask that our leaders take action against those soldiers." ⁷

¹ M in Galkayo, April 2019.

² M in Mogadishu, Sept 2019.

³ M in Mogadishu, Sept 2019.

⁴ Male in Mogadishu, Sept 2019.

⁵ M in Mogadishu, Aug 2019.

⁶ M in Mogadishu, Aug 2019.

⁷ M in Elasha Biyaha, Aug 2019.

"During the transitional governments' era, squatters with false papers grabbed our land, and the courts ruled in their favour after being bribed. We opened the case again a year ago; we are now hopeful that we would have our land returned to us by a more-just judge." ⁸

"Vehicles coming into Mogadishu from Elasha Biyaha have to go through Galmudug neighbourhood because of ongoing road construction. I have witnessed government troops extorting passenger vehicles in return for allowing them to use the road." ⁹

"Greetings. I have seen troops at Bakara Junction shaking down passenger vehicles for money that is not a tax. The moment the vehicle starts moving, the occupants started insulting the state and all its security organs; the cause is the officer who blatantly extorted the driver in broad daylight." ¹⁰

"Bribery is accepted at the Immigration Directorate; paying extra bribes will make you jump the queue and get your passport sooner than people who had applied earlier." ¹¹

"I would like to report corruption in Garasbaley [on the outskirts of Mogadishu), specifically the subdivision of Sheikh Ibrahim. The commissioner of X district is at the forefront of this corruption. He has land that he bought from the Bank during the days of the Central Government [pre-1991]. His land is 40 pieces [of 20mx15m each]; he has grabbed 80 pieces owned by others next to his land. While no one has stopped the construction that he begun on the land, a court had ordered him to stop. The governor of the region [BRA] has not spoken about this injustice. He has no documents; he wants to steal more than the land he got from the Bank. Do something about this. Thank you." ¹²

"Concerning the Ministry of Security: I am a young girl. I want to complain about the security situation in the district of Afgooye; it has no security because we cannot freely walk at night because there are robbers on the streets. Some people have been shot in front of their homes; we

⁸ M in Mogadishu, Aug 2019.

⁹ M in Mogadishu, Aug 2019.

¹⁰ M in Mogadishu, Apr 2019.

¹¹ M in Mogadishu, Aug 2019.

¹² M in Mogadishu, Jun 2019.

cannot talk as freely as we want. I don't know what the other people are complaining about, but I want to complain about the fact that, when we are at school or in the neighbourhood, we cannot tell one another anything because every student is afraid of the other. We are afraid of talking about/of the government; if we talk of another group [Al-Shabab], we are also afraid. Why are the troops stationed at the bridge walking among the public with the safety unlocked in their guns? It was supposed to be that we [the public] and the troops intermingle, but we are afraid of them."¹³

What the reports say

From the capital to remote regions in the south of the country, everyday corruption makes life hard for the citizens. Almost all cargo and passenger traffic in south and central Somalia are subjected to illegal collection of monies by regional and federal forces; documents needed from the government take longer than usual unless bribes are paid; and justice is for the highest bidder. Consequently, the reports indicate a citizenry that is fed up with the status quo; some are contemptuous of the government while others signal hopelessness. Some of the messages are therefore sent in exasperation: "Where are our leaders and why are they not taking action against the insecurity that has become part of our life?"¹⁴

Unlike in 2015-16, we have seen no complaints from government workers regarding non-payment of salaries. While commendable, unfortunately, this and other intra-government improvement is irrelevant to the public whose interaction with the government is at the low and mid-levels. The image of the government as corrupt is therefore a public perception that is not affected by the relative reduction in high-level corruption.

¹³ F in Mogadishu, Jun 2019.

¹⁴ F in Galkayo, July 2019.

Transparency

Our previous report noted that the Federal Ministry of Finance's website had not been updated for some time. We are happy to report that that is not the case any longer, and we have been able to obtain useful information on government expenditures from the site, detailing quarterly expenditures for the past two years. However, the same data from 2016 and 2017 seem to have been removed from the site for no apparent reason. Other government ministries and departments have started updating their websites, although the information is of limited use. We welcome these steps in the right direction and hope that this is not a temporary phenomenon.

On the other hand, the FGS parliament continues to lag behind the executive in terms of transparency, failing to update its website with basic information regarding its activities. Its Session Reports have not been posted since February 2015, and draft bills are not published for public comment.

Nevertheless, more needs to be done especially in the government being transparent about tax collection: what companies pay in corporate taxes; which ones are exempt and why; and what it is doing to start taxing major businesses. Likewise, contracting and procurement processes are transparent in name and more needs to be done to address that.

Accountability

At the federal level, low-level and mid-level corruption continues unabated. This is reflected in the large number of public complaints. We have seen no specific evidence of grand corruption by the top leaders of the government. This is a welcome sign, and we hope that that commitment to good governance is trickled down to the level in which the government interacts with the public.

The Anticorruption Commission Bill of 2019 was another major step in the right direction. While there was little consultation with civil society in drafting the legislation, it remains reflective of the government's general willingness to curb corruption. In talks with marqaati, top FGS leadership promised to put in place measures to investigate and take action against individuals implicated in corruption. While it would be an important step that would make this government unique in addressing public concerns regarding corruption, marqaati has seen no specific steps taken to ensure that those measures are put into place. As the Commission has the

power to investigate and take action against corrupt officials, its creation is vital to proving that the government is committed to anticorruption.

Promises to reclaim public assets from land grabbing politicians by the now-deceased mayor of Mogadishu, Abdurahman Yarisow, failed to come to fruition. It was a perfect example of political will failing to achieve a goal because of limitations in law enforcement. Attempts to remove the politicians were met by an influx of Somali National Army (SNA) units into the capital, determined to protect the politicians from other government troops. Without a professional security force, such problems will continue to hamper efforts to develop a credible Somali state.

The Parliament

The federal parliament is a powerful institution that has the power to not only hold the executive to account, but to lay the foundations for an accountable modern state; however, its members seem to lack the will to legislate. Both sessions of 2019 were unproductive, with multiple meetings cancelled due to lack of quorum. According to the parliament's website, in 2019, parliament passed only two laws. It is the same number in 2017 and 2018. For comparison, the parliament before this one passed ten laws in 2016 alone .

As such, MPs have been largely passive, not tabling any legislation, but waiting for the ministries to do so. Moreover, parliament has done little to nothing in following up on the AG's report, showing where they stand on accountability. This is a danger to the future of the parliament and neuters it as an efficient check on executive power.

The Judiciary

The judiciary is still directly controlled by the executive branch; the president appoints and dismisses judges at will. This practise is not only unconstitutional; it creates distrust in the judiciary and makes it unlikely to be independent. Critical judicial infrastructure set out in the constitution is yet to be completed. This includes the Judicial Service Commission, whose job it is to oversee the judiciary and ensure its competence and independence. In past years, the constitutional court was seen as a risk to a sitting president, as it is a requirement in his removal process. As we move on to an election year, it is unlikely that the constitutional court still poses such a risk. It seems not to be a priority, as the government focuses on re-election.

Institutionally, the judicial model in Somalia is disjointed. The FGS court system is disconnected from -- and absent in -- the FMSs. This means that appeals processes at the FMS levels would at most end at the FMS supreme courts. For instance, the appeals process in the Puntland courts would end at the Puntland Supreme Court; it is also the same for military-related cases, with the Puntland security forces having an independent system from the FGS military. However, the FGS military courts are in control of security-related cases in other FMSs, including parts of Jubbaland.

An additional consequence of the disjointed judiciary is that the benefits of institutional-building interventions and investment at the federal level have no effect beyond the capital. As a result, the judiciary in the regions is barely in existence and is staffed by incompetent and more corrupt individuals. Court cases are won by bribery, and dangerous individuals are released from jail upon payment of bribes.¹⁵

Elections

The FMS elections held during the past year offer us an indication of what to expect in the 2020/21 federal elections. The lessons learnt from the FMS elections are therefore both a warning and an opportunity to ensure that the mistakes are not repeated at the federal level.

Puntland

The FMS elections in Puntland were mired in a multi-level corruption process that involved elders, candidates for parliament, and presidential candidates. At the clan level, parliamentary seats were sold by elders to the highest bidders. Many of these MPs in turn sold their votes to presidential contenders in order to recoup the money they spent buying their own seats and to make a profit. By some estimates, votes were sold for \$10,000 to \$70,000¹⁶. The candidate who spent the most money, including the federal government's preferred candidate, lost. However, those that did not spend any money got zero votes, indicating that while money was needed in order to stand a chance to win, it was not the only factor that determined how MPs voted. This is consistent with other elections where the political class would vote based on interests, while elders and their delegates would vote for the highest payers. This will have implications for the FGS electoral model, as will be discussed later.

¹⁵ Interview with an elder in Baidoa, May 2019.

¹⁶ Interview with an MP in Garowe, January 2019.

As the Puntland cabinet is shared out among its major clans, elders again became relevant during the appointment of ministers. While the political coalition that had won the elections was going to appoint its members anyway, some clan elders were paid off in order to endorse the incoming ministers and gain legitimacy with the clans.

Southwest State

The selection process for the new president in Southwest state failed to achieve any semblance of being free and fair. Interference in the process started when the then-president of SWS, Sharif Hassan, was encouraged to resign following a generous bribe, ranging from 1-2 million USD, according to multiple sources. While this made it likely that a candidate more favourable to the FGS would be elected, it was not enough to ensure support for the FGS's preferred candidate. MPs in the SWS parliament were flown to Mogadishu where they were reportedly paid in order to vote a certain way. The arrest of Mukhtar Robow by the Ethiopian contingent in AMISOM was meant to pave the way for the eventual winner, and does not seem to be related to security or legal concerns. His continuing detention without any charges being levelled against him almost a year after his arrest shows that he is a political prisoner. To make matters worse, the police commander who had ordered the shooting of the protesters in Baidoa -- who is also the father-in-law of the now-president of SWS -- was awarded by the FGS; he was promoted to commander of the custodial corps.

Jubbaland

The Jubbaland elections could hardly be described as free and fair. In order to deny potential candidates the opportunity to challenge the incumbent, the electoral commission in Jubbaland designed requirements that could be seen as targeting the most potent challenger, who has a foreign spouse, had not lived in Jubbaland for the past two years, and was an officeholder -- all of these were considered as disqualifying a candidate. It was not only unfair, but could also raise the question of whether the incumbent himself could be disqualified because he had not resigned from his position and is foreign-born himself.

To make matters worse, the MPs were selected by the electoral commission; clan elders would submit three names, and the commission would choose whichever name it wanted. As the commission itself was appointed by decree of the incumbent president of Jubbaland, this means

that he was indirectly determining who would join the parliament; many of his staunch critics were not selected. It was no surprise that he won in a landslide in the first round of the elections.

On top of the flawed nature of the electoral process, payouts were made to clan elders and some MPs during the presidential election campaign. As a result, some elders that had opposed the process in the beginning changed their positions and embraced the unfair MP selection method.

Galmudug

The situation in Galmudug is complicated by the fact that it was undergoing a constitutional crisis for more than a year. Following the reconciliation with the ASWJ, the Galmudug parliament was expanded and its constitution was amended to accommodate ASWJ. The new unified parliament met in Dhusamareb and removed the Speaker of parliament; in return, the Speaker 'removed' the president and stayed in Adado. While the FGS supported the Adado wing of Galmudug, it continued its recognition of the Dhusamareb wing.

It is in the context of the complicated situation above that the FGS reached a deal with ASWJ and later with the president of Galmudug in order for it to organise and control the elections that are now long overdue in that FMS; the FGS paid an unspecified amount of money to gain the access and influence it needed to move things in its favour.

The Banadir Regional Administration

The issues with the BRA are unchanged from the 2018 report; it continues to be the loophole in the accountability framework. The BRA has no constitutional basis as the question of its status remains unaddressed. This appears to be because of political and financial considerations. It is politically tricky to determine the status of the capital because its share of the upper house has been assigned to other regions and it is seen by some politicians as skewing the balance of power among the clans.

Financially, it is a monetary black hole where funds are spent without a budget, records are not kept of expenditures, and assets are unrecorded.¹⁷ This means that the BRA continues to be used

¹⁷ *Office of the Auditor General, " Consolidated Compliance Audit Report – Non-Security Sector Entities For the year ended 31 December 2018", pp. 125-130, URL: <http://oag.gov.so/wp-content/uploads/2019/10/Consolidated-Compliance-Audit-Report-2018-Non-Security-Sector-Entities.pdf>*

as a piggybank, with its funds used by non-BRA institutions. For instance, the BRA procured \$442,734 to buy vehicles for individuals and institutions outside the BRA.¹⁸

Illegal tax collection at the districts

The situation is worse at the district-level in Banadir. We have received reports of extortion by office holders and illegal taxation by district officials. Some of the verified reports included taxation with blank receipts, suggesting that the collector was recording less than what he was collecting from the public. There is no formal channel to report such corrupt individuals; reporting them to their superiors produced no action against them.

Political and media freedom

Security forces engaged in discrimination of journalists in Mogadishu, especially targeting a local journalist who covers security-related news which the government apparently felt negatively impacted its image by highlighting its failures.¹⁹

SWS took a turn for authoritarianism, with political meetings being restricted; politicians and journalists being arrested, and political parties' being denied their right to open offices in the region.²⁰

In Puntland, the current administration continued the anti-media practises of its predecessor, clamping down on journalists that report facts that the government considered unfavourable to its image.²¹

Prospects for 2020

The government will be in election mode next year, with much of its focus expected to be on winning the election. Very little is expected to be done in terms of institutional building, and the

¹⁸ *Office of the Auditor General*, "Consolidated Compliance Audit Report – Non-Security Sector Entities For the year ended 31 December 2018", pg 130.

¹⁹ *VOA Somali*, "Weriye Cali Aadan Muumin oo lagu xiray Muqdisho", 28 May 2019, URL: <https://www.voasomali.com/a/4935470.html>

²⁰ *Goobjoog News*. "Baydhabo: Maamulka Lafta-gareen oo Bilaabay Ficillo Ka Dhan Ah Xuriyatul Qowlka", 29 September 2019, URL: <https://goobjoog.com/baydhabo-maamulka-lafta-gareen-oo-bilaabay-ficillo-ka-dhan-ah-xuriyatul-qowlka/>

²¹ *Goobjoog*, "Xeer ilaaliyaha Puntland oo Ka Hadlay Weriyey La Xiray", 19 October 2019, URL: <https://goobjoog.com/xeer-ilaaliyaha-puntland-oo-ka-hadlay-weriyey-la-xiray/>

dispute with JL and PL are expected to pose a serious threat to the integrity and legitimacy of the process if they are left unaddressed.

If there is no universal suffrage, the elections are expected to be as riddled with bribery and vote-rigging as happened in 2016/17. It is also unlikely that universal suffrage will be attained in the current climate where the state is facing a raging insurgency. This means that an expanded version of the problematic 2016 model will be used to select the MPs. With no concrete steps taken to define the electoral model less than a year from when the parliamentary elections were supposed to start, it is highly unlikely that elections will take place on time. At best, there will be an extension of six to twelve months. This has the potential to cause the legitimacy of the government to come into question; it therefore requires a broad political agreement that would address such a question.

On FMS relations, the FGS is clearly interested in curtailing FMS powers, including their ability and freedom to hold internal elections. While this may be necessary in order to avoid the blatantly unfair process as happened in Jubbaland, it risks further eroding support for the central government in Puntland and, to a lesser extent, in Jubbaland.

If the current impasse was to continue going into the parliamentary elections in 2020, it would be a threat to the legitimacy and stability of the government that would be produced by the elections. Current government considerations include creating a rival Jubbaland administration in Buale or in Gedo; this administration would then organise the election of MPs and senators that would represent JL at the federal parliament. Without a deal with the administration in Kismayo, it is expected that it too would organise the same elections in its areas. As opposition leaders favour Kismayo over whatever the FGS organises, they would be inclined to recognise the Kismayo process. It is therefore imperative that the JL question is settled as soon as possible in order to pave the way for the national elections.

The experience here should be a learning experience for the FGS. It should spend more time and energy on building the necessary institutional connections between itself and the FMS. Investing in institutional interconnection between the FGS and the FMSs would be a cushion against political conflicts causing a breakdown in government access in the FMSs.

Recommendations

It is unfortunate, but the fact of the matter is that our recommendations for the coming year are not much different from the ones in our previous report. This means that, looking at the big picture, little has changed. However, we have noticed a marked increase in the government's willingness to engage civil society and take some steps to improve accountability and transparency.

Our recommendation regarding transparency in government income and expenditure was mostly implemented, and we applaud the government for that. We hope that this practise is continued.

The following are our recommendations for the next year:

- Complete creating the still-uncreated accountability institutions, especially the Judicial Service Commission, the Ombudsman's office, and the anticorruption commission, whose underlying legal framework was signed into law by the President;
- The 2020/1 elections should be transparent, and civil society given the access to monitor it;
- The constitutional review should clearly define the powers of the PM and the President; further clarify FGS-FMS relations and separation of powers; and create a conflict-resolution mechanism between FGS-FMS;
- Individuals implicated in corruption should be fired and prosecuted;
- Asset declaration of officeholders should be enshrined by law;
- The accountability mechanisms in the FGS should be implemented at BRA as it is a major loophole in the system;
- The OAG's recommendations should be implemented in full;
- Somalia's international partners should use their influence in encouraging the FGS to adopt these recommendations otherwise their state building efforts will continue to be wasted.