



# FOCUS INSTITUTE Constitutional Brief



**Finalization of the Constitution:  
Comparative Analysis of the Federal Provisional  
Constitution of Somalia, the 2026 amendment, and  
the implication**

## **Table of Contents**

|                                                                |    |
|----------------------------------------------------------------|----|
| Executive Summary .....                                        | 3  |
| Introduction and Context of Somali .....                       | 5  |
| The History of Somalia's Constitution Making .....             | 6  |
| Comparative Constitutional Analysis: 2012 vs. 2026 .....       | 7  |
| 1. Constitutional Design and Political System of Somalia ..... | 7  |
| 1. Nature of Constitutional Completeness.....                  | 7  |
| 2. Comparative Analysis of Distribution of Powers .....        | 9  |
| i. Status of Local Government .....                            | 9  |
| ii. Formation of Federal Member States .....                   | 9  |
| iii. Allocation of Powers in General .....                     | 10 |
| iv. Capital City Status / Banaadir.....                        | 13 |
| v. Federal Intervention in FMS Affairs.....                    | 16 |
| 3. Comparative Analysis of Structure of Government.....        | 16 |
| 1. The Executive Branch.....                                   | 17 |
| 2. The Legislative Branch.....                                 | 18 |
| 3. The Judicial Branch .....                                   | 20 |
| Comparative analysis .....                                     | 23 |

**Finalization of the Constitution:**

**Comparative Analysis of the Federal Provisional Constitution of  
Somalia, the Amendment of 2026, and the Implications**

## Executive Summary

The constitutional evolution of Somalia from the **2012 Federal Provisional Constitution** to the comprehensive amendments approved in **March 2026** represents a foundational shift in the nation's design philosophy and structural architecture. For over a decade, Somalia operated under an explicitly incomplete constitutional framework that prioritized political adaptation, relying on informal elite bargaining to hold the decentralized post-conflict republic together. The 2026 amendments seek to finalize these transitional arrangements by introducing a highly codified, rigid **legal-institutional code** across all fifteen chapters. While this transition prioritizes legal predictability and formal state-building, it introduces a level of constitutional rigidity that risks political paralysis in a fragile environment where legal design does not always align with real political practices.

Vertically, the 2026 amendments dismantle the original two-tier federal structure by elevating local governments into a distinct, constitutionally recognized **third tier of governance**, thereby broadening the vertical separation of powers. This structural reorganization replaces the vague, open-ended 2012 power-allocation framework with a highly specified, **codified competence regime** comprising 40 exclusive federal powers, 41 shared powers, 25 exclusive Federal Member State (FMS) powers, and 28 local government powers. Under this new schedule, the Federal Government's exclusive authority is expanded across economic, security, and infrastructural domains, transitioning the center into a structurally superior rule-making role. Concurrently, the national capital of Mogadishu (Banaadir) is transitioned from a state of constitutional omission to a highly structured, hybrid governance model establishing its own legislative council, executive, localized judiciary, and Upper House representation, while maintaining exceptional federal control over security and political affairs.

Horizontally, the 2026 framework reorganizes the separation of powers among the executive, legislative, and judicial branches to stabilize inter-governmental relations. The dual-executive model is preserved, and the direct presidential election model proposed in 2024 is rolled back to restore the **indirect election of the President by Parliament**, keeping executive legitimacy rooted in parliamentary bargaining. However, executive dynamics are significantly altered because the President gains the unilateral power to **dismiss the Prime Minister** without requiring a parliamentary vote of no confidence, while the standard term of office is extended from four to five years. Legislatively, the **Upper House is elevated** to a powerful federal gatekeeper, acquiring sole authority over state formation decisions and mandatory oversight of federal interventions in FMS affairs within a strict 14-day window.

Underpinning this horizontal structure is a reorganized judicial branch that balances central consolidation with regional autonomy; it establishes a unified appellate pipeline under the Federal Supreme Court and preserves a unitary Judicial Service Commission (JSC), but integrates ad-hoc state representatives to participate in regional judicial appointments and grants FMS High Courts first-instance jurisdiction over state-level constitutional disputes.

Ultimately, this transition from a flexible post-conflict settlement to a legalized state structure presents a complex matrix of administrative benefits and centralizing risks. On one hand, the new constitutional design facilitates state-building through explicit competency specification and introduces pragmatic governance of safety valves like the **mutual delegation of power**. On the other hand, the legal rigidity of the 2026 order, combined with powerful centralizing mechanisms such as the federal intervention regime, the removal of the two-year time limit on federal interim administration of single regions, and the potential for coercive delegation through asymmetrical bargaining, creates severe risks of executive overreach. Because these structural shifts are heavily contested by prominent Federal Member States who argue the process lacked inclusive political consensus, the practical survival of this permanent constitutional order remains highly contingent on subsequent political compromises and the enactment of secondary legislation.

## Introduction and Context of Somali

Somalia operates within a complicated landscape where political, security, and developmental challenges intersect. While the nation's history has been defined by chronic instability and food insecurity, recent years have seen notable progress. However, this upward trend has yet to reach the average Somalia citizen, who continues live in a difficult situation with high levels of poverty, countless levels of insecurity and odd levels of vulnerability to disasters.

For over six decades, Somalia has been trapped in a cycle of constitutional flux; we are now the global outlier holding the record for the longest and most expensive constitution making process in modern history. The transition from the 2012 Federal Provisional Constitution to the finalized 2026 constitutional framework represents the most significant structural reorganization of the Somali state in over sixty years.

As we hit the critical final point of this government's cycle in 2026, the window for finalization is closing. Failure to resolve these foundational laws now doesn't just delay a document; it risks a total collapse in public trust, erodes the rule of law, and effectively overturns our commitment to the 2026 consciences elections process.

The amendments of constitutions were need basically to resolve the fundamental architecture of the Somali state; and it is remains in a state of flux. Critical components, such as the distribution of competencies (Allocation of authority or power), the formalization of regional administrations, and the electoral system, have yet to be fully defined. The realization of a stable federal republic depends on upcoming negotiations between federal and state actors to settle these outstanding constitutional and administrative details.

This analysis examines the legal, political, and structural shifts that have occurred as Somalia moved from a transitional federal arrangement toward a defined federal order, specifically contrasting the 2012 Provisional Constitution with the comprehensive amendments approved in March 2026.

## The History of Somalia's Constitution Making

In its simplest definition, a constitution is a document that sets out the basic principles or established precedents according to which a state (or other organization) is to be governed. It usually entrenches and institutionalizes political agreements, defines the state and its population and frames the rules for the lawful exercise of authority. Constitution is also described a social contract between rulers and ruled, explicitly formulating the obligations, rights and duties of the two sides.

The challenges of constitution making in Somali illustrate all too clearly the contested nature of statehood since its independence. Following independence in 1960, a constitutional referendum was held on 20 June 1961. After Siad Barre took over power in 1969, the 1961 constitution was suspended. A second constitutional referendum was held on 25 August 1979 approving the new draft based on scientific socialism. In 1984, amendments were made and approved in a popular vote. However, following an increased domestic and external pressure, Siad Barre announced plans for a new constitution in August 1989. Subsequently, a multi-party constitution current was approved in October 1990 and was subject to a popular vote but this never materialized due to the bloody uprising that saw the expiration of Siad Barre regime in January 1991 before the referendum took place.

Following the collapse in 1991, a Transitional National Charter (TNC) was adopted in 2000 at Arte, Djibouti Somali Conference. Again, in February 2003 at Mbagathi, Kenya saw the establishment of the Transitional Federal Charter of the Somali Republic (TFC).

In June 2006 an agreement on the 4.5 clan power sharing formula was reached. In May/June 2008, the Djibouti Peace Process took place which resulted in the merge of the TFG and the Opposition to form coalition government. Finally, in 2010, the Independent Federal Constitutional Commission (IFCC) was formed to hold consultation throughout Somalia for two years leading to the adoption of the Somalia's Provisional Constitution on the 1st of August 2012 and marked the beginning of the Federal Constitutional Review Period.

The review process aimed at finalizing the Provisional Constitution crossed over a 14years, involving multiple committees (such as the Independent Constitutional Review and Implementation Commission, ICRIC and the Parliamentary Oversight Committee, OC).

On March 4, 2026, the Federal Parliament of Somalia approved the final set of amendments to the Provisional Constitution. These amendments addressed the remaining chapters of the document (Chapters 5–15), following the earlier 2024 amendments to Chapters 1–4. The revisions cover critical areas including the allocation of powers between the federal and state levels, the status of Mogadishu, the formal recognition of local governments, and electoral frameworks.

The recent finalization of the constitutional amendments in early 2026 has initiated a new phase of national discourse regarding the practical application of these changes, the nature of intergovernmental relations, and the ongoing efforts toward achieving a broad political consensus across the Federal Member States.

Now, the greatest need is to find a common understanding for Somalia to get unified vision of the constitutional review process and establish a unified structure of the Federal Government of Somalia and Federal Member States. The political leadership must show the will actions to a new phase of national discourse regarding the practical application of these changes making a compromise continuity of statehood.

## Comparative Constitutional Analysis: 2012 vs. 2026

This study provides a comprehensive comparative analysis between the 2012 Provisional Constitution of Somalia and the proposed 2024/2026 constitutional amendments. The analysis highlights key shifts in electoral architecture, federal structure, executive power, and constitutional design philosophy, drawing upon the provided comparative framework.

### 1. Constitutional Design and Political System of Somalia

Constitutional Philosophy of the 2012 Provisional Constitution was designed as a framework constitution where core issues like resource-sharing and the exact nature of the federal units were left open for future negotiation. Its primary philosophy was to facilitate a holding-together federalism, transforming a formerly unitary state into a decentralized republic to prevent regional marginalization and limit authoritarian centralization. In contrast, the 2026 amendments reflect a shift toward a structured constitutionalism, prioritizing legal certainty and state-building through explicit specification of state functions.

#### 1. Nature of Constitutional Completeness

The 2012 document was explicitly incomplete, relying heavily on future legislation and subsequent political agreements between the Federal Government of Somalia (FGS) and Federal Member States (FMS). The 2026 amendments seek to finalize these incomplete arrangements by incorporating detailed provisions across all 15 chapters, particularly concerning the structure of the state and the allocation of competencies.

# Constitutional Brief

The 2012 model offered high flexibility, allowing for political adaptation through informal elite bargaining and constant negotiation. The 2026 amendments have increased constitutional rigidity by codifying systems that were previously subject to change via ordinary legislation or political consensus. While this provides more legal predictability, it risks political paralysis in a fragile environment where legal design may not align with political practice.

Looking in the role of Constitutional Interpretation under the 2012 framework, interpretation was critical for filling the gaps left by incomplete provisions. In the 2026 order, the scope of interpretation is somewhat reduced as more issues are regulated by text, though the role of the courts specifically the Constitutional Court remains essential for resolving remaining ambiguities and intergovernmental disputes.

The 2012 Constitution was primarily a political settlement framework designed to reconcile diverse Somali actors after years of conflict. The 2026 amendments attempt to transition the document into a legal-institutional code that governs the minute details of state operations. However, this shift is highly contested by several FMSs (such as Puntland, Jubaland, and SFO), who argue the process lacked the inclusive political consensus necessary for a legitimate permanent constitution.

| No | Feature                    | Flexibility (2012)                                        | Rigidity (2026)                                               |
|----|----------------------------|-----------------------------------------------------------|---------------------------------------------------------------|
| 2. | <b>Completeness</b>        | Framework-based; leaves core issues to special laws.      | Codified; attempts a comprehensive legal-institutional order. |
| 3. | <b>Nature of Document</b>  | Post-conflict political settlement framework.             | Governing code with detailed institutional specification.     |
| 4. | <b>Discretionary Space</b> | High legislative discretion; relies on informal bargains. | Reduced discretion; systems are constitutionally entrenched.  |
| 5. | <b>Operational Logic</b>   | Prioritizes political adaptation and safety valves.       | Prioritizes legal certainty and structural entrenchment.      |

### 2. Comparative Analysis of Distribution of Powers

On the basic Federal Structure the Provisional Constitution established a **two-tier** federation composed of the Federal Government and the Federal Member States (FMS), with local governments nested as a subordinate layer within the FMS level<sup>1</sup>. The 2026 amendments substantively restructured into **three distinct levels** that are Federal Government, Federal Member States, and Local Governments<sup>2</sup>. This shift broadens the vertical separation of powers by granting local authorities a direct constitutional status independent of state-level discretion.

#### i. Status of Local Government

Under the 2012 framework, local governments lacked distinct constitutional status and existed only as an extension of the FMS level. The 2026 amendments (Article 70 and Schedule 2D)<sup>3</sup> recognize local governments as a third tier with their own constitutionally allocated powers. This is viewed as a significant decentralizing move intended to enhance democratic participation and service delivery at the grassroots level, though experts note it may multiply coordination challenges in Somalia's fragile environment.

#### ii. Formation of Federal Member States

Authority over the creation of FMSs has shifted chambers. In 2012, Article 49 granted the House of the People the power to determine the number and boundaries of FMSs based on recommendations from a national commission. Under the 2026 amendments (Article 62), this authority is transferred to the Upper House, which represents state interests. The new text also provides more rigorous rules for boundary alterations and dispute settlement, including mandatory recourse to the Constitutional Court if agreements fail.

On the pothor of Single-Region Rule and State Formation Threshold both versions maintain the anti-fragmentation principle that no single region can stand alone as a Federal Member State. However, the 2026 amendments removed a critical constraint: the 2012 text (Article 48(2)) mandated that a single region be administered by the Federal Government for a **maximum of two years** before merging with another. The 2026 text removes this time cap, effectively strengthening federal discretion over the administration of transitional territorial units indefinitely.

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<sup>1</sup> See in Artic 48 PC 2012

<sup>2</sup> See: the Article 61(1) of amendment of 2026

<sup>3</sup> See: Article 70 and Schedule 2D of amendment of 2026

### iii. Allocation of Powers in General

The 2012 model was defined by **constitutional incompleteness**, where the allocation of most powers was postponed to future negotiation (Article 54). The 2026 amendments replace this open-ended model with a **codified competence regime**. It explicitly lists:

- **Exclusive Federal Powers** (Article 67/Schedule 2A)
- **Shared Powers** (Article 68)
- **Exclusive FMS Powers** (Article 69/Schedule 2C)
- **Exclusive Local Powers** (Article 70/Schedule 2D).

#### 1. *Exclusive Federal Competence*

The 2012 Constitution limited exclusive federal powers to just four areas: foreign affairs, national defense, citizenship/immigration, and monetary policy<sup>4</sup>. The 2026 amendments significantly expand this list into a structured catalogue under Schedule 2A. The Federal Government is now responsible for setting national policy, standards, financing, and implementation across a wider array of state-building functions.

The Schedule 2A outlines the exclusive powers and responsibilities allocated to the Federal Government of the Federal Republic of Somalia. These powers are categorized into six key sectors: general powers, economy, finance, transport and infrastructure, security and justice, and education. This framework ensures federal oversight on critical national matters, including citizenship, foreign affairs, national currency, and the protection of borders.

Furthermore, the document details specific federal duties regarding economic and security management, such as the regulation of national taxes, international trade, and the development of the National Armed Forces and intelligence agencies. It also grants the Federal Government authority over national infrastructure such as international ports and airports and the standardization of education policies and professional licensing to maintain national consistency.

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<sup>4</sup> See : article 54 of Pc 2012

## *2. Shared / Concurrent Powers*

While the 2012 document relied on broad federal principles for shared matters, the 2026 amendments introduce a cooperative-federal design. In this model **Article 68**, the Federal Government holds the primary rulemaking power setting laws, policies, and regulations while the Federal Member States are constitutionally mandated to implement and execute these shared powers. This improves national standard-setting but gives the center a structurally superior role in policy design.

The Second Schedule (B) of the Somali Constitution 20226, as detailed in it establishes a comprehensive framework for Concurrent Powers shared between the Federal Government and Federal Member States. This schedule is essential for defining the operational boundaries and collaborative responsibilities necessary for effective governance across the nation. By delineating these shared authorities, the constitution aims to create a structured approach to administration, ensuring that both federal and regional entities have a clear mandate in critical areas of public policy and service delivery.

The powers are categorized into six functional domains, reflecting a broad spectrum of governmental oversight ranging from general administrative duties to specialized sectoral management. Key sectors include economy and finance, which encompass tax collection and natural resource management, as well as essential social services like health, education, and social welfare. Other vital areas include security, specifically the administration of prisons and judicial affairs, and agriculture and livestock, which includes the regulation of marine resources and transport infrastructure.

## *3. Exclusive Powers of Federal Member States*

The 2026 amendments formally entrench a catalogue of exclusive FMS powers (Schedule 2C), granting them legislative and policy responsibility in specific fields. This strengthens the juridical identity of the states compared to the 2012 version, which did not specify such a catalogue. However, because the Federal Government's rulemaking authority is so expansive in shared fields, the overall balance remains subject to central supervision.

The Exclusive Powers of the Federal Member States, as outlined in Schedule 2C, define the specific jurisdictional responsibilities reserved for state-level governance within the Somali federal system. This schedule grants states the authority to draft their own constitutions, manage their civil service, and oversee local government administration, provided these actions do not conflict with federal law. Furthermore, it grants states significant financial autonomy, including the right to collect land, income, and business taxes, as well as the power to manage local infrastructure such as state roads and airports.

Beyond administration and finance, this document reserves critical social and judicial functions for the federal member states. States are empowered to construct and manage their own police forces and judicial systems, while also overseeing public health facilities, primary and secondary education, and cultural institutions like libraries and museums. By delineating these specific powers, the constitution seeks to empower regional entities to tailor governance, social services, and developmental initiatives to the unique needs of their local populations.

The 2026 text replaces the vague 2012 framework (which only named four federal powers) with a highly specific schedule of authorities.

| No | Category                      |         | Count     | Functional Logic                                                                                       |
|----|-------------------------------|---------|-----------|--------------------------------------------------------------------------------------------------------|
| 1. | Exclusive<br>(Art. 67)        | Federal | 40 Powers | Massive expansion. FGS holds authority over policy, standards, financing, and national implementation. |
| 2. | Shared<br>(Art. 68)           | Powers  | 41 Powers | Cooperative federalism: FGS sets the normative framework (laws/standards); FMSs manage implementation. |
| 3. | Exclusive<br>(Art. 69)        | FMS     | 25 Powers | Strengthens FMS juridical identity in regional affairs, though remains subject to federal standards.   |
| 4. | Local Government<br>(Art. 70) |         | 28 Powers | Decentralizes service delivery to the lowest tier to broaden participation.                            |

#### 4. *Residual and Delegated Powers*

Under the 2012 framework, residual powers those not explicitly assigned to a specific level of government were left largely unsettled, as Article 54 limited exclusive federal competence to only four specific areas (foreign affairs, defense, citizenship, and monetary policy) and postponed the allocation of all other powers to future negotiation. Conversely, Article 71 of the 2026 amendments stipulates that residual powers are now to be settled through formal agreement between the Federal Government of Somalia (FGS) and the Federal Member States (FMS).

In contrast to the ambiguity of residual powers, the 2026 amendments introduce a forceful and detailed framework for the delegation of powers under Article 72, an institutional innovation that was entirely absent from the 2012 document. The 2012 Constitution relied on broad principles of cooperation rather than a formal legal code for transferring authority. Article 72 of the 2026 text creates a cooperative-federal design that allows for mutual delegation across all three tiers of

Government: the FGS can delegate powers to the FMS with parliamentary approval, the FMS can delegate to the FGS, and local governments can delegate functions to the state level.

*Critically: while this provides the constitutional flexibility necessary for a fragile state, legal analysts warn it creates a risk of **asymmetrical political bargaining**, where the center might utilize financial or political leverage to pressure states into coercive delegation of their autonomous competences.*

The primary legal benefit of these amendments specifically Articles 71 and 72 is the shift toward state-building through constitutional specification, which reduces the constitutional incompleteness that hampered the 2012 arrangement. By replacing an informal system with a legalized, supervised structure of intergovernmental relations, the 2026 order benefits the nation by providing a pragmatic governance safety valve; Article 72 allows a tier with greater administrative capacity to manage complex functions on behalf of a tier that may currently lack the resources to do so. Furthermore, the inclusion of delegation mechanisms involving the newly recognized third tier (Local Government) under Article 61 ensures that power can be moved vertically to the level where it is most effectively exercised; aligning with the principle of subsidiarity intended to enhance service delivery and grassroots participation. Ultimately, while Article 71's reliance on agreement is legally ambitious, the overall framework provides a definitive roadmap for the vertical separation of powers that was previously governed by raw power rather than law.

#### iv. Capital City Status / Banaadir

The treatment of the national capital represents a major institutional development. Article 9 of the 2012 text completely bypassed the issue, leaving the status of Mogadishu undefined. Article 63 of the 2026 text constructs an elaborate, multi-layered framework for Banaadir. It establishes a dedicated capital council, an independent executive, a localized capital judiciary, and guarantees the capital explicit representation in the Upper House. However, it maintains exceptional federal security oversight, creating a mixed governance model that remains heavily contested by surrounding states.

The comparison of the capital city's status between the 2012 Provisional Constitution and the 2026 amendments reveal a fundamental shift from incompleteness to a legal-institutional code. Under the 2012 framework, Article 9 merely designated Mogadishu as the capital but left its political, legal, and financial status entirely to future negotiations and a special law that was never fully realized. This lack of detail meant the Benadir Regional Administration operated without a distinct constitutional status, often managed independently or through ad-hoc arrangements. In contrast, Article 63 of the 2026 amendments provides an elaborate constitutional status that defines its governance structure, including its own council, executive, and judiciary.

Critically, this transition represents a structural trade-off between political flexibility and legal certainty. While the 2012 model allowed for constant bargaining and adaptations to post-conflict compromises, legal analysis suggests that Article 63 remains constitutionally ambiguous and politically contested because it attempts to reconcile two conflicting visions; granting the capital a stronger constitutional identity while simultaneously retaining exceptional federal control over its political and security affairs. This hybrid model avoids a definitive choice between a city-state and a federal district, potentially creating a democratic deficit if the center's oversight overrides local self-governance.

The primary benefits derived from the 2026 amendments lie in the formalization of representation and the principle of subsidiarity. Unlike the 2012 document, the 2026 order grants the capital explicit representation in the Upper House in to **nimber** , ensuring its voice is part of the federal chamber that oversees state formation and intergovernmental disputes. Furthermore, by elevating Local Governments into a constitutionally recognized third tier under Article 61, the amendment provides Mogadishu with a legal mandate for democratic participation and autonomous service delivery.

Historically, Somalia was governed as a centralized unitary state where services and political power were concentrated almost exclusively in the capital, leading to regional marginalization and deep mistrust toward central authorities. The 2012 Provisional Constitution (Article 9) formally established Mogadishu as the capital but left its legal, political, and financial status to be determined by a special law that was never fully enacted during the transitional period.

Before the 2026 amendments, the debate focused on how to balance the Federal Government's need for a neutral, secure seat of power with the rights of Mogadishu's over three million residents to self-governance. Based on global federal models, three primary options were proposed by constitutional commissions for consideration by the Federal Parliament<sup>5</sup>:

- **Selection A (Federal District):** Mogadishu would be a district directly administered and financed by the Federal Government, existing outside the jurisdiction of any Federal Member State (FMS), similar to Washington D.C. or Abuja.
- **Selection B (City-State/Region):** Mogadishu would be established as its own Federal Member State with the same mandates and autonomous powers as other regions, similar to Berlin or Brussels.
- **Selection C (City within a State):** The capital would be located within an existing FMS, and a special law would define its status and the Federal Government's role, similar to the status of Bern or Ottawa.

The 9th Parliament eventually recommended a Regional Capital model (Selection B), arguing that it was unfeasible for the Banaadir region to join another FMS and essential to secure the representation and participation rights of its citizens<sup>6</sup>.

## Summary of Shifts: 2012 vs. 2026

| Feature                      | 2012 Provisional Constitution (Before)                                                    | 2026 Adopted Amendments (Now)                                                                  |
|------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Constitutional Status</b> | Explicitly incomplete; Article 9 left details to a special law and future review.         | Codified under Article 63, moving the capital into a permanent, institutionalized order.       |
| <b>Governance Structure</b>  | No distinct constitutional identity; operated through ad-hoc administrative arrangements. | Established with its own legislative council, executive branch, and judiciary.                 |
| <b>Representation</b>        | Lacked formal representation in the Upper House of the Federal Parliament.                | Granted explicit representation in the Upper House, ensuring a voice in federal-state matters. |
| <b>Federal Oversight</b>     | Not clearly defined; relied on broad principles of cooperation.                           | Retains exceptional federal control and special authority over security and political affairs. |

<sup>5</sup>See: [Federal-Republic-of-Somalia-MOCA-Handover-Report.pdf](#)

<sup>6</sup>See: [Ibid](#)

## v. Federal Intervention in FMS Affairs

The creation of a formalized federal intervention regime is a highly compelling, centralizing element of the 2026 text. Articles 73–76 carve out an explicit constitutional mandate allowing the central government to directly intervene in a state's internal affairs during severe national security breakdowns, sovereign threats, or institutional collapse. While the text inserts safeguards requiring Upper House approval within a strict 14-day window and declaring interventions must remain temporary it creates a real long-term risk of strategic manipulation by the central executive against non-aligned regional leaders.

**[VERTICAL INTERVENTION ANALYTICAL RISKS]** *The 14-day parliamentary approval window for federal intervention creates an intense political race. In practice, if the central government controls a legislative majority in the Upper House, it can easily formalize a regional intervention, bypass local autonomy, and depose dissident state executives under the guise of stabilizing national security.*

## 3. Comparative Analysis of Structure of Government

### Overall System of Government

Somalia has formally retained its hybrid, parliamentary governance architecture, but the internal operational mechanisms have been significantly reorganized. While the 2012 framework established a dual executive where structural ambiguity frequently induced executive-legislative deadlocks, the 2026 configuration seeks to stabilize executive-legislative relations by clarifying the separate operational spaces of the state branches across Chapters 6, 7, and 8, attempting to eliminate overlapping authorities without shifting the foundational parliamentary core of the Republic.

The reorganization of the government structure seeks to stabilize executive-legislative relations, yet it introduces new tensions by significantly centralizing authority within the presidency while maintaining a dual executive facade. The finalization of the Somali constitutional order in 2026 represents a legal and structural evolution from the framework established in the 2012 Provisional Constitution.

This transition shifts the government from an incomplete arrangement governed by informal political bargaining toward a legal-institutional code that defines the functions of the three branches of the state with increased specificity.

## 1. The Executive Branch

The 2026 amendments maintain the dual executive structure while significantly altering the balance of power and the method of legitimacy compared to both the 2012 framework and the interim proposals of 2024.

In the 2012 Provisional Constitution, the President was elected indirectly by the two houses of the Federal Parliament (Art. 89). While a major 2024 revision attempted to move toward a direct, nationwide One-Person, One-Vote presidential system, the final 2026 text reversed this, restoring the indirect election of the President by Parliament (Art. 107). Consequently, executive legitimacy remains rooted in parliamentary bargaining rather than a direct popular mandate.

### *Nature of the Executive (Dual Executive)*

The structural reality of the dual executive comprising a President as Head of State and a Prime Minister as Head of Government remains fully intact under both frameworks. Under the 2012 text, the division of executive functions was notoriously vague, sparking recurring, debilitating power struggles between successive Presidents and Prime Ministers over cabinet appointments, security control, and administrative direction. The 2026 amendments reorganize and clarify provisions across Chapters 7 and 8. However, because it preserves the dual-executive model

without creating a clearly dominant, singular executive authority, the structural friction inherent in the split executive remains unresolved, maintaining a system prone to elite-driven executive gridlock.

**Critical Analysis:** *Legally, the 2026 structure benefits the state by providing clearer structural positioning for the Council of Ministers, yet it sustains potential for recurring power struggles between the President and Prime Minister because the dual executive model is preserved without a single dominant authority.*

### *Council of Ministers*

The Council of Ministers, led by the Prime Minister, is maintained as the central engine of administrative and executive authority. The 2012 framework established collective responsibility to Parliament but left cabinet structural positioning loose. The 2026 text provides refined structural placement and clearer specifications of ministerial responsibilities under a revised Chapter 8, preserving traditional parliamentary accountability mechanisms while seeking to insulate cabinet administration from ad-hoc presidential interventions.

## *Election and Legitimacy of Executive*

The operational search for executive legitimacy experienced a dramatic constitutional reversal. The 2012 document anchored legitimacy in an indirect parliamentary vote by both houses in a joint session. A high-profile 2024 constitutional revision sought to disrupt this by establishing a majoritarian, direct presidential election model designed to vest the head of state with a direct plebiscitary mandate. However, the finalized 2026 amendments completely rolled back this change, deleting the direct popular-election clauses and restoring the indirect parliamentary selection model under Article 107. This confirms that the supreme executive mandate remains tied to parliamentary coalition bargaining rather than direct national electoral mandates.

**[THE PRIME MINISTER AND DISMISSAL POWER ANALYTICAL RISKS]** *A critical legal change in 2026 is the power of the President regarding the Prime Minister. Under the 2012 order, the Prime Minister was subject to the confidence of the House of the People. The 2024 amendments (notably [Article 54](#) in Chapter 4 revisions) established that the President can now dismiss the Prime Minister without requiring a parliamentary vote of no confidence.*

New Filters in 2026 text introduces stricter candidate requirements for the President, Prime Minister, and Ministers. These include new parental citizenship rules, foreign-spouse restrictions, residency conditions, and anti-dual-nationality rules.<sup>7</sup>The standard executive term has been increased from **four years (2012) to five years (2026)**<sup>8</sup>.

## **2. The Legislative Branch**

The Federal Parliament remains bicameral, consisting of the House of the People and the Upper House, but their functional differentiation and authority have been fundamentally redistributed. The bicameral architecture of the Federal Parliament consisting of the House of the People (Golaha Shacabka ) and the Upper House (representing federal units) is explicitly preserved. Article 77 of the 2026 text provides a much clearer articulation of legislative authority and enforces strict functional differentiation between the two chambers<sup>9</sup>, formalizing their separate roles in the legislative lifecycle and correcting early operational imbalances where the lower house frequently bypassed the upper house.

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<sup>7</sup> The Amendment Institutes New Filters and Qualifications in Art. 106/117 of a AC 2026

<sup>8</sup> See: Term Extensions Art. 50 AC 2026

<sup>9</sup> See: Article 77 of the 2026 AC

## *i. Role of Upper House*

The elevation of the Upper House represents one of the most substantial structural shifts in the structure of government. Under the 2012 Constitution, the Upper House possessed a weak operational role and was largely marginalized in early legislative practice. Article 93 of the 2026 text significantly strengthens the chamber, converting it into strong constitutional administrator interims of federal Inter governmental Relations. It is granted explicit authority to participate in state formation decisions, lead intergovernmental dispute resolution, and exercise mandatory oversight over federal interventions in state affairs, aligning it with classical federal senate models.

Under the 2012 framework, the Upper House was an operationally weak body representing state interests (Art. 71). The 2026 amendments substantively strengthen its role (Art. 93), transforming it into a consequential gatekeeper for the federal system. Authority over State Formation are given in to upper house<sup>10</sup>; a major shift occurred in the power to determine the number and boundaries of Federal Member States (FMS). In 2012, this was the exclusive mandate of the House of the People (Art. 49). In 2026, this authority was transferred to the Upper House, aligning the system more closely with classical federal models like Senates.

The 2026 text introduces a structured code for federal intervention in FMS affairs. The Upper House must now review and approve emergency federal interventions within 14 days, providing a constitutional check against centralized overreach<sup>11</sup>. The primary benefit of the 2026 legislative structure is the creation of a multi-tier dispute resolution pipeline where the Upper House handles intergovernmental conflicts before they reach the Constitutional Court.

## *ii. Legislative Process*

The legislative process, originally governed by Articles 79–86 in 2012, has been thoroughly reorganized and redistributed across Articles 77–104 in the 2026 text. While the process has been structurally streamlined to prevent legislative stalling and clarify joint-session procedures, the fragmentation of these provisions across new chapters complicates textual interpretation and requires sophisticated inter-cameral coordination.

Legislative oversight tools, including the ability to dismantle a sitting government via a vote of no confidence, are fully maintained. Article 78 of the 2026 text inserts highly specific requirements regarding member code of conduct, disclosure rules, and oversight mandates, attempting to formalize accountability within an arena historically dominated by informal clan alignments.

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<sup>10</sup> See: article 62 in AC 2026

<sup>11</sup> Oversight of Federal Intervention Arts. 73–76 in AC 2026

### 3. The Judicial Branch

The reorganization of the judicial branch represents a systemic shift from transitional ambiguity to a highly structured, codified constitutional order. Under the 2012 Provisional Constitution, the judiciary was outlined as a brief, incomplete framework under Articles 105–109C, which left critical operational details, territorial jurisdictions, and the functioning of the Constitutional Court to future legislation. The 2026 amendments substantively expand and entrench these provisions across Articles 126–149. This transition moves Somalia away from a historically flexible justice model toward a legalized, rule-of-law framework. While this expansion strengthens the vertical separation of powers, it also introduces structural rigidity into Somalia's fragile post-conflict legal environment.

#### *i. Hierarchy of courts*

The ordinary court hierarchy remains a key area of structural tension between regional autonomy and central consolidation. The regional, FMS-leaning Jowhar Agreement of January 2018 proposed a decentralized four-level ordinary court structure consisting of District and Regional courts of first instance, FMS Appellate Courts, FMS High Courts, and the Federal Supreme Court in Mogadishu. Conversely, the Cabinet's August 2018 model proposed a centralized three-level hierarchy (District/Regional courts, FMS Appellate Courts, and the Federal Supreme Court as the final instance), eliminating FMS High Courts to prevent regional jurisdictional fragmentation. The 2026 compromise framework seeks to balance these models by establishing a unified appellate pipeline that consolidates final appellate authority in the Federal Supreme Court while defining clear jurisdictional boundaries under a forthcoming Federal Organization of the Judiciary Act. Determining the final jurisdiction of the Constitutional Court has historically been a highly sensitive and politically contested issue. Under the 2012 Constitution, the Constitutional Court was established on paper (Articles 109B–109C) but remained completely non-operational, allowing constitutional disputes to be arbitrated through informal political bargaining.

The 2026 amendments reactivate and expand the role of the Constitutional Court under Article 131, granting it exclusive authority over intergovernmental and federal disputes. To address FMS anxieties regarding central judicial overreach, the 2026 compromises grant FMS High Courts first-instance jurisdiction over regional constitutional matters, subject to appeal to the Federal Constitutional Court. Furthermore, the amendments introduce a cooperative mechanism allowing two FMS judges to sit *ad hoc* on the Federal Constitutional Court when hearing appeals originating from that specific state.

The administration of judicial appointments and discipline has similarly evolved from a dual-structured proposal to a unified but representative federal body. The Jowhar Model advocated for a decentralized framework, establishing a national High Judicial Service Council alongside independent FMS High Judicial Management Committees to run state-level judiciaries.

The Cabinet Model overrode this by establishing a single, unitary Judicial Service Commission (Article 109A) with exclusive, nationwide power over the recruitment, promotion, and discipline of all judges across both FGS and FMS levels.

Under the 2026 compromises, the unitary JSC model is preserved to enforce national standards, but it is made inclusive through an ad hoc mechanism: when the JSC decides on the appointment, discipline, or transfer of a regional judge, four ad hoc members representing the affected state must join the commission to participate in the decision.

## *ii. The Attorney General's Office*

In the 2012 Provisional Constitution, the Attorney General was established under the category of Independent Offices (Art. 114) with minimal constitutional specification regarding its federal-state operational relationship. The 2026 amendments structurally integrate the Attorney General's Office directly into the broader judicial chapter (Articles 126–149), reinforcing its institutional independence and aligning its administrative oversight with the Judicial Service Commission (JSC). This shift represents a transition from a loosely defined office to a codified judicial entity with clear federal parameters.

The Jowhar Agreement (January 2018) proposed a highly decentralized, dual-structured prosecutorial framework where the National Attorney General's Office, based in Mogadishu, would prosecute federal-level cases within FMS territories, but each state would establish its own completely independent FMS-level attorney service. Under this model, FMS attorney offices would maintain exclusive authority over state-level prosecutions alongside separate state budgets and administrative management. Conversely, the Cabinet Model (August 2018) sought to balance this regional autonomy with centralized national standards. While it preserved independent state-level attorney services for local offenses, the Cabinet version insisted that a single, unified Judicial Service Commission (JSC) hold exclusive authority over the appointment, promotion, and discipline of all prosecutorial staff across both federal and state levels.

Under the 2026 compromise framework, the Federal Attorney General's Office maintains its primary seat in Mogadishu but is constitutionally authorized to establish branches within each FMS to prosecute federal-level crimes such as national defense, currency counterfeiting, aviation safety, and crimes committed by federal employees directly before regional courts. To bridge the gap between central standards and state autonomy, the 2026 text relies on the unified JSC's ad hoc regional representation mechanism for federal prosecutorial appointments while mandating that the precise procedural boundaries and duties and procedural work between the Federal AGO and FMS attorney services be detailed under a forthcoming **Federal Organization of the Judiciary Act**.

### *iii. The Judicial Service Commission*

The reorganization of the Judicial Service Commission (JSC) represents one of the most substantial structural shifts in the administration of the Somali judiciary. Under the 2012 Provisional Constitution, the JSC was established under Article 109A to safeguard judicial independence, but it remained operationally weak and largely non-functional, leaving judicial appointments and discipline to informal, political, and clan-mediated bargains. Articles 126 to 149 of the 2026 amendments substantively entrench and expand the commission's constitutional mandate, converting it into a centralized, rule-of-law administrator for federal-state judicial oversight. While the 2012 model was framework-based and incomplete, the 2026 text seeks to establish a highly structured, legal-institutional order that enforces unified national judicial standards and strengthens the formal checks and balances of the state.

The division of administrative authority over the ordinary courts highlights a deep-seated constitutional friction between regional autonomy and central consolidation. The regional, FMS-leaning Jowhar Agreement of January 2018 proposed a decentralized, dual-structured model, establishing a national High Judicial Service Council alongside completely independent FMS "High Judicial Management Committees" to govern state-level judiciaries. Conversely, the Cabinet's August 2018 model insisted on a unitary, centralized structure, establishing a single national JSC with exclusive, nationwide authority to recruit, promote, discipline, and dismiss all judges across both federal and state levels.

To resolve this impasse, the 2026 compromise framework preserves the unified national JSC to enforce national legal standards but introduces an ad hoc mechanism requiring four state representatives consisting of the affected FMS political head, state chief justice, state bar member, and a civil society representative to join the commission and participate in any decision involving a state-level judge. This hybrid design successfully balances national judicial coherence with regional state sovereignty, though its practical execution remains dependent on the enactment of the forthcoming Federal Organization of the Judiciary Act.

## **Comparative analysis**

# Constitutional Brief

| Issue                                                  | 2012 Constitution                                                                                                                                                                               | 2024/2026 Constitution                                                                                                                                                                                                                                                                                                                                          | Remarks / Analysis                                                                                                                                                                                                                            |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Electoral System &amp; Political Representation</b> |                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                               |
| <b>Basic electoral architecture</b>                    | Art. 46–47: representation principles are constitutionalised, but the actual electoral system, parties, and National Independent Electoral Commission are largely left to <b>special laws</b> . | Ch. 4, Arts. 47–56 in the 2024 text constitutionalise general election principles, direct elections, party competition, and election management in much greater detail; the <b>National Independent Electoral and Boundaries Commission</b> is expressly established in Art. 55–56.                                                                             | <b>Substantive change.</b> The 2012 model was framework-based and incomplete; the 2024/2026 model constitutionalises the electoral order itself. This reduces legislative discretion, but also makes electoral design more politically rigid. |
| <b>Directly elected institutions</b>                   | 2012 did not constitutionally spell out a full list of directly elected bodies in the same way. It guaranteed popular participation but left the detailed model open.                           | Art. 49 identifies directly elected institutions. Parliament remains directly elected; state assemblies remain directly elected; local councils remain directly elected. But the presidency was first inserted into the direct-election model in 2024 and then later <b>removed from that category and relocated to parliamentary election under Art. 107</b> . | <b>Major political reversal.</b> The 2024 change suggested a presidentialising move through direct election; the 2026 text retreats from that and restores indirect election.                                                                 |
| <b>Election of the President</b>                       | Art. 89: President elected by the two Houses of Federal Parliament in joint session.                                                                                                            | The 2024 chapter 4 comparison text states that the clause making the President directly elected was <b>deleted</b> and its substance moved to Ch. 6/7/8, especially Art. 107. Shared parliamentary powers under Art. 94(c) expressly include election of the President under Art. 107.                                                                          | <b>Continuity with modification</b> relative to 2012; <b>reversal</b> relative to 2024. The presidency is again rooted in parliamentary bargaining, not direct nationwide plebiscitary legitimacy.                                            |

# Constitutional Brief

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| <b>Political parties</b>                       | <b>Art. 47</b> leaves party regulation to ordinary legislation.                                                                                   | <b>Art. 54</b> now provides that elections are contested by formally registered political parties, and the earlier “top three organisations become national parties” formula was removed and replaced by a more structured registration model.                             | <b>Substantive change.</b> Party law moves upward from statute into the Constitution. This is designed to move Somalia beyond clan-mediated indirect selection, but party institutionalisation remains socially thin. |
| <b>National election commission</b>            | <b>Art. 111G</b> created the National Independent Electoral Commission as one of many independent commissions.                                    | In the new order, the electoral commission is moved into <b>Chapter 4</b> , becoming part of the constitutional architecture of representation itself; <b>Art. 55–56</b> establish and define it. The old <b>Art. 111G</b> is expressly said to be relocated to Chapter 4. | <b>Institutional innovation.</b> Election administration is elevated from general commissions chapter placement into the core representation chapter. That strengthens constitutional entrenchment.                   |
| <b>Term of directly elected institutions</b>   | In 2012, the standard federal parliamentary and presidential term was <b>4 years</b> under the original structure.                                | <b>Art. 50</b> fixes the term of directly elected constitutional institutions at <b>five years</b> .                                                                                                                                                                       | <b>Substantive change.</b> Longer tenure may improve institutional stability, but also raises the stakes of electoral control and delays rotation of power.                                                           |
| <b>Local government elections</b>              | Local governments were constitutionally nested under the FMS level in <b>Art. 48(1)(b)</b> . Electoral detail was not comprehensively entrenched. | Local councils remain directly elected, but the <b>mayor and deputy mayor were removed from direct election language</b> in the Chapter 4 revision tables.                                                                                                                 | <b>Modification.</b> Local democratic opening remains, but executive leadership at local level is not uniformly democratised.                                                                                         |
| <b>Candidate qualifications for Parliament</b> | <b>Art. 58</b> required citizenship, full mental capacity, minimum age, and secondary education or equivalent experience.                         | <b>Art. 80</b> significantly expands eligibility criteria: citizenship, no recent suspension of civic rights, no serious conviction, age thresholds, university-level education or equivalent experience, work experience, integrity, residence, and party membership.     | <b>Substantive change.</b> This professionalises parliamentary candidacy, but may also narrow access and favour established elites and organised parties.                                                             |

# Constitutional Brief

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| <b>Candidate qualifications for President / PM &amp; Ministers</b> | <b>Art. 88 / 98</b> required Somali citizenship, Islam, minimum age 40, 40, 30 respectively, suitable knowledge/experience, mental soundness, and no serious criminal conviction.     | <b>Art. 106/117</b> retains the basic criteria but adds stricter filters, including parental citizenship requirements, foreign-spouse restrictions, residency conditions, and anti-dual-nationality rules                                                                                   | <b>Substantive change.</b> The office becomes more tightly filtered. Politically, that may exclude sections of the diaspora and reshape elite competition.                                                                                                                          |
| <b>Distribution of Powers</b>                                      |                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                     |
| <b>Basic federal structure</b>                                     | <b>Art. 48(1):</b> the state is composed of <b>two levels</b> of government: the Federal Government and the Federal Member States; local governments are nested within the FMS level. | <b>Art. 61:</b> the Federal Republic is expressly restructured into <b>three levels</b> of government: <b>Federal Government, Federal Member States, and Local Governments.</b> The 2026 comparison text expressly says local governments were elevated into a distinct governmental level. | <b>Substantive change.</b> The 2012 model constitutionalized a two-tier federation with local government subordinated to state level. The 2024/2026 model elevates local government into the constitutional structure itself, broadening the vertical separation of powers.         |
| <b>Status of local government</b>                                  | Local governments existed only as part of the FMS level under <b>Art. 48(1)(b)</b> , without a distinct constitutional status as a separate order of government.                      | <b>Art. 61(c)</b> and <b>Art. 70</b> recognise local governments as a distinct level with their own constitutionally allocated powers under Schedule 2(D).                                                                                                                                  | <b>Institutional innovation.</b> This is one of the clearest decentralising moves in the amended order. It potentially widens democratic participation and service delivery autonomy, but it also multiplies coordination problems in a fragile federal system.                     |
| <b>Formation of Federal Member States</b>                          | <b>Art. 49:</b> the <b>House of the People</b> determines the number and boundaries of FMSs after a national commission studies the issue and reports to it.                          | <b>Art. 62:</b> the <b>Upper House</b> decides on approval of state formation, while the new text also provides more detailed rules on boundary alteration and dispute settlement, including recourse to the Constitutional Court where agreement fails.                                    | <b>Substantive change.</b> Authority over state formation shifts away from the lower chamber toward the chamber representing the federal units. That better fits federal theory, but it also makes the Upper House a much more politically consequential constitutional gatekeeper. |

# Constitutional

## Brief

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| <b>Single-region rule / state formation threshold</b> | <b>Art. 48(2):</b> no single region may stand alone; until merger with another region, it is administered by the Federal Government for up to two years.                                                                                                                                  | <b>Art. 62(5)–(6)</b> in the 2026 comparison text preserve the rule that a single region cannot stand alone, but remove the earlier <b>two-year limit</b> and restate federal interim administration until merger.                                                                                                                            | <b>Modification with centralising implications.</b> The anti-fragmentation principle remains, but the removal of the time cap strengthens federal discretion over transitional territorial administration.                                                                                       |
| <b>Allocation of powers in general</b>                | <b>Art. 54:</b> allocation of powers and resources is largely postponed to future negotiation between the Federal Government and the Federal Member States, except for four exclusive federal matters: <b>foreign affairs, defence, citizenship and immigration, and monetary policy.</b> | The 2026 text removes the open-ended 2012 clause and replaces it with a structured competence regime: <b>Art. 67</b> (exclusive federal powers), <b>Art. 68</b> (shared powers), <b>Art. 69</b> (exclusive FMS powers), <b>Art. 70</b> (exclusive local powers), <b>Art. 71</b> (residual powers), and <b>Art. 72</b> (delegation of powers). | <b>Substantive change.</b> The 2012 Constitution created a negotiated federalism with major constitutional incompleteness. The 2024/2026 model replaces that with a codified allocation system. This reduces indeterminacy, but also constitutionalises disputes that were previously political. |
| <b>Exclusive federal competence</b>                   | Under <b>Art. 54</b> , only four federal competences were expressly entrenched: foreign affairs, defence, citizenship/immigration, and monetary policy.                                                                                                                                   | <b>Art. 67</b> now states that the Federal Government has its own exclusive powers listed in Schedule 2(A), and that it is responsible for legislation, policy, regulations, standards, monitoring, financing, and implementation of those powers.                                                                                            | <b>Substantive change.</b> The centre moves from a narrow list of explicit exclusive powers to a much more structured and administratively capable constitutional role. This is state-building through constitutional specification.                                                             |
| <b>Shared concurrent powers</b> /                     | The 2012 Constitution did not provide a detailed constitutional schedule of shared competences. It relied more on broad federal principles and later negotiation.                                                                                                                         | <b>Art. 68</b> creates shared powers and expressly divides functions within them: the Federal Government sets the laws, policies, regulations, standards, and oversight framework, while <b>Federal Member States implement and execute</b> the shared powers.                                                                                | <b>Institutional innovation.</b> This is a cooperative-federal design: federal norm-setting with state implementation. It may improve coordination, but it also gives the centre a structurally superior role over policy design.                                                                |

# Constitutional Brief

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| <b>Exclusive powers of Federal Member States</b> | The 2012 text did not constitutionally specify a detailed catalogue of exclusive FMS powers in the same way.                                   | <b>Art. 69</b> gives FMSs exclusive powers under Schedule 2(C), with responsibility for legislation, policy, regulations, standards, monitoring, financing, and implementation in those fields.                                                                                                                            | <b>Institutional innovation.</b> This strengthens the juridical identity of FMSs. But because federal shared-power rulemaking is stronger elsewhere, the overall balance may still favour central supervision.                                                  |
| <b>Residual powers</b>                           | The 2012 Constitution did not clearly settle residual powers; in practice, this was part of the broader open-ended bargain in <b>Art. 54</b> . | <b>Art. 71</b> states that residual powers are to be settled by <b>agreement between the Federal Government and the Federal Member States</b> .                                                                                                                                                                            | <b>Partial continuity with modification.</b> The amended text is more explicit than 2012, but it still does not fully solve the problem of final authority when agreement fails. <b>This provision is constitutionally ambiguous and politically contested.</b> |
| <b>Delegation of powers</b>                      | The 2012 Constitution did not lay out an explicit constitutional framework for mutual delegation of competences across levels in this detail.  | <b>Art. 72</b> allows the Federal Government to delegate its powers to FMSs and their legislatures with federal parliamentary approval; it also allows FMSs to delegate their own powers to the Federal Government with approval of their representative institutions, and local governments to delegate to the FMS level. | <b>Institutional innovation.</b> This creates constitutional flexibility within the federal order. It may help pragmatic governance, but it also opens space for asymmetrical political bargaining and possible coercive delegation dynamics.                   |

# Constitutional Brief

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| <b>Intergovernmental cooperation</b>       | <b>Arts. 50–52</b> establish broad principles of federalism, collaboration, consultation, and cooperative relations, but in a largely programmatic form.           | <b>Arts. 64–66</b> restate federal principles, require all levels to obey the Federal Constitution, elaborate cooperation duties, and recognise intergovernmental agreements, some of which require parliamentary approval. The Upper House is also given a stronger dispute-handling role before matters reach the Constitutional Court.                                 | <b>Substantive change.</b> The 2012 model relied heavily on dialogue; the 2024/2026 model gives cooperation a more legalised and supervised structure. That may improve coherence, but it also reduces the informality that once allowed elite bargains to hold the system together.                                                     |
| <b>Capital city status / Banaadir</b>      | <b>Art. 9</b> left the status of Mogadishu to be determined in the constitutional review process and by special law.                                               | <b>Art. 63</b> in the 2026 comparison text creates a much more elaborate constitutional status for the capital: capital council, executive, judiciary, representation in the Upper House, and a special federal role over security and political affairs.                                                                                                                 | <b>Institutional innovation.</b> The capital is no longer left almost entirely to future law. But the arrangement is mixed: it gives Banaadir stronger constitutional identity while retaining exceptional federal control. <b>This provision is constitutionally ambiguous and politically contested.</b>                               |
| <b>Federal intervention in FMS affairs</b> | The 2012 Constitution did not provide a detailed constitutional intervention code of this kind; it relied more on principles of cooperation and shared federalism. | <b>Arts. 73–76</b> create a structured federal intervention regime where the Federal Government may intervene when territorial unity, national security, sovereignty, or grave state-level conditions are at stake; consultation is required where possible, emergency action is reviewable by the Upper House, and intervention must remain temporary and proportionate. | <b>Substantive change.</b> This is one of the strongest centralising innovations in the new order. It gives the federation a constitutional self-protection mechanism, but also creates real risks of partisan or strategic use against non-aligned FMSs. <b>This provision is constitutionally ambiguous and politically contested.</b> |

# Constitutional

## Brief

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| <b>Overall system of government</b>         | Hybrid/parliamentary-leaning system: President elected by Parliament ( <b>Art. 89</b> ), Prime Minister leads government ( <b>Art. 100</b> ).                                                                                                                                           | Retains parliamentary structure but with reorganization of powers and stronger institutional clarity across Chapters 6–8.                                                                                              | <b>Continuity with modification.</b> The system remains formally parliamentary, but structural refinements suggest an attempt to stabilise executive-legislative relations without fully resolving dual executive tensions. |
| <b>Executive Structure &amp; Legitimacy</b> | Arts. 89 Dual executive retained: President (Head of State) and Prime Minister (Head of Government), with President appointing PM ( <b>Art. 90</b> ) and PM leading government ( <b>Art. 100</b> ); Council of Ministers (Arts. 97–102) remains collectively responsible to Parliament. | <b>Art. 107</b> Under the amended Constitution, provisions are reorganised across Chapters 7–8, with President still indirectly elected ( <b>Art. 107</b> ) and Cabinet roles clarified. Continuity with modification: | <b>Continuity.</b> parliamentary executive model preserved, but no dominant executive authority, sustaining recurring President–PM power struggles and elite-driven legitimacy rather than direct popular mandate.          |
| <b>Parliamentary structure</b>              | Bicameral Parliament: House of the People + Upper House ( <b>Art. 55–76</b> ).                                                                                                                                                                                                          | Bicameralism retained; clearer articulation of roles: <b>Art. 77</b> affirms legislative authority and functional differentiation between the two chambers.                                                            | <b>Continuity with clarification.</b> Institutional roles are more explicitly defined, especially the Upper House as a federal chamber.                                                                                     |
| <b>Role of Upper House</b>                  | <b>Art. 71</b> Represents Federal Member States but with relatively weak operational role in early practice.                                                                                                                                                                            | <b>Art. 93</b> Strengthened role: participates in state formation decisions, dispute resolution, and oversight of federal intervention (e.g., intervention review within 14 days).                                     | <b>Substantive change.</b> The Upper House becomes a central actor in federal governance, aligning more closely with classical federal systems (e.g., Senate models).                                                       |
| <b>Legislative process</b>                  | <b>Art. 79–86</b> Detailed legislative procedures, including initiation, approval, and presidential assent.                                                                                                                                                                             | <b>Art. 77 - 104</b> Legislative process reorganised and partly redistributed across new provisions (e.g., shared parliamentary functions under revised articles).                                                     | <b>Modification.</b> The process remains similar but is structurally streamlined; however, fragmentation of provisions may complicate interpretation.                                                                       |

# Constitutional

## Brief

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|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Judicial structure</b>                                          | <b>Art. 105–109C:</b> establishes judiciary, including Constitutional Court and Judicial Service Commission.                                  | <b>Art. 126–149</b> Judicial structure retained; emphasis on interpretation and constitutional review continues, with expanded functional clarity. | <b>Continuity.</b> Institutional design remains largely unchanged, but implementation gaps persist, especially regarding the Constitutional Court.                                                                          |
| <b>Constitutional Court</b>                                        | Established under <b>Art. 109B–109C</b> , but historically weak or not fully operational.                                                     | <b>Art. 131</b> Retained with expanded role in resolving federal disputes (e.g., state boundary conflicts, intergovernmental disputes).            | <b>Continuity with expanded function.</b> The Court is central to the new constitutional order, but <b>this provision is constitutionally ambitious and politically contested</b> due to weak judicial independence.        |
| <b>Judicial independence</b>                                       | <b>Art. 106:</b> guarantees independence of judiciary.                                                                                        | <b>Art. 127</b> Judicial independence reaffirmed; role of courts in constitutional interpretation emphasized in practice.                          | <b>Continuity.</b> Independence is constitutionally guaranteed but institutionally fragile in practice.                                                                                                                     |
| <b>Separation of powers</b>                                        | Implied and partially articulated across the Constitution; not always strictly enforced in practice.                                          | More structurally embedded through clearer institutional roles and federal arrangements across Chapters 5 – 10.                                    | <b>Modification.</b> The doctrine is better articulated, but practical overlap between branches remains significant.                                                                                                        |
| <b>Checks and balances</b>                                         | Present but weakly institutionalised; heavy reliance on political negotiation rather than legal enforcement.                                  | Strengthened through clearer roles of Upper House, Constitutional Court, and structured federal intervention review.                               | <b>Substantive change.</b> The system introduces stronger formal checks, but effectiveness depends on institutional capacity and political neutrality.                                                                      |
| <b>Structure of Government (Executive, Legislature, Judiciary)</b> |                                                                                                                                               |                                                                                                                                                    |                                                                                                                                                                                                                             |
| <b>Overall system of government</b>                                | Hybrid/parliamentary-leaning system: President elected by Parliament ( <b>Art. 89</b> ), Prime Minister leads government ( <b>Art. 100</b> ). | Retains parliamentary structure but with reorganization of powers and stronger institutional clarity across Chapters 6–8.                          | <b>Continuity with modification.</b> The system remains formally parliamentary, but structural refinements suggest an attempt to stabilise executive-legislative relations without fully resolving dual executive tensions. |

# Constitutional

## Brief

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| <b>Nature of the Executive (dual executive)</b> | Dual executive: President (Head of State) + Prime Minister (Head of Government). President appoints PM ( <b>Art. 90</b> ), PM runs government ( <b>Art. 100</b> ). | Dual executive retained; provisions reorganised and clarified across <b>Ch. 7–8</b> , with clearer distribution of functions and relocation of certain presidential powers. | <b>Continuity.</b> The dual executive remains intact. However, Somalia continues to lack a clearly dominant executive authority, creating recurring power struggles between President and Prime Minister. |
| <b>Election and legitimacy of Executive</b>     | President elected by Parliament ( <b>Art. 89</b> ); PM appointed by President ( <b>Art. 90</b> ).                                                                  | President remains indirectly elected under <b>Art. 107</b> (relocated); PM still appointed by President under revised executive provisions.                                 | <b>Continuity with modification.</b> The temporary move toward direct election (2024) is reversed. Executive legitimacy remains <b>parliamentary and elite-driven</b> , not directly popular.             |
| <b>Council of Ministers</b>                     | <b>Art. 97–102:</b> Council of Ministers collectively responsible to Parliament; PM leads government.                                                              | Council of Ministers retained with clearer structural positioning and refined responsibilities under revised Chapter 8.                                                     | <b>Continuity.</b> Cabinet government remains central to executive authority, preserving parliamentary accountability mechanisms.                                                                         |
| <b>Parliamentary structure</b>                  | Bicameral Parliament: House of the People + Upper House ( <b>Art. 55–76</b> ).                                                                                     | Bicameralism retained; clearer articulation of roles: <b>Art. 77</b> affirms legislative authority and functional differentiation between the two chambers.                 | <b>Continuity with clarification.</b> Institutional roles are more explicitly defined, especially the Upper House as a federal chamber.                                                                   |
| <b>Role of Upper House</b>                      | Represents Federal Member States but with relatively weak operational role in early practice.                                                                      | Strengthened role: participates in state formation decisions, dispute resolution, and oversight of federal intervention (e.g., intervention review within 14 days).         | <b>Substantive change.</b> The Upper House becomes a central actor in federal governance, aligning more closely with classical federal systems (e.g., Senate models).                                     |
| <b>Legislative process</b>                      | Detailed legislative procedures under <b>Art. 79–86</b> , including initiation, approval, and presidential assent.                                                 | Legislative process reorganised and partly redistributed across new provisions (e.g., shared parliamentary functions under revised articles).                               | <b>Modification.</b> The process remains similar but is structurally streamlined; however, fragmentation of provisions may complicate interpretation.                                                     |

# Constitutional

## Brief

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| <b>Parliamentary accountability mechanisms</b> | Parliament can remove government through vote of no confidence; oversight powers implied in structure of parliamentary system. | Accountability mechanisms retained; clearer articulation of parliamentary roles and responsibilities of members ( <b>Art. 78</b> ). | <b>Continuity.</b> Parliamentary oversight remains intact, but effectiveness depends on political cohesion and party development, which remain weak.                                                                 |
| <b>Judicial structure</b>                      | <b>Art. 105–109C:</b> establishes judiciary, including Constitutional Court and Judicial Service Commission.                   | Judicial structure retained; emphasis on interpretation and constitutional review continues, with expanded functional clarity.      | <b>Continuity.</b> Institutional design remains largely unchanged, but implementation gaps persist, especially regarding the Constitutional Court.                                                                   |
| <b>Constitutional Court</b>                    | Established under <b>Art. 109B–109C</b> , but historically weak or not fully operational.                                      | Retained with expanded role in resolving federal disputes (e.g., state boundary conflicts, intergovernmental disputes).             | <b>Continuity with expanded function.</b> The Court is central to the new constitutional order, but <b>this provision is constitutionally ambitious and politically contested</b> due to weak judicial independence. |
| <b>Judicial independence</b>                   | <b>Art. 106:</b> guarantees independence of judiciary.                                                                         | Judicial independence reaffirmed; role of courts in constitutional interpretation emphasized in practice.                           | <b>Continuity.</b> Independence is constitutionally guaranteed but institutionally fragile in practice.                                                                                                              |
| <b>Separation of powers</b>                    | Implied and partially articulated across the Constitution; not always strictly enforced in practice.                           | More structurally embedded through clearer institutional roles and federal arrangements.                                            | <b>Modification.</b> The doctrine is better articulated, but practical overlap between branches remains significant.                                                                                                 |
| <b>Checks and balances</b>                     | Present but weakly institutionalised; heavy reliance on political negotiation rather than legal enforcement.                   | Strengthened through clearer roles of Upper House, Constitutional Court, and structured federal intervention review.                | <b>Substantive change.</b> The system introduces stronger formal checks, but effectiveness depends on institutional capacity and political neutrality.                                                               |

### Federalism & Intergovernmental Relations

# Constitutional Brief

|                                                        |                                                                                                                                                                                                   |                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Nature of federalism (general model)</b>            | <b>Art. 50:</b> establishes broad <b>principles of federalism</b> (cooperation, consultation, unity, equitable resource sharing), but in a largely <b>programmatic and non-operational form</b> . | <b>Art. 64:</b> restates and refines federal principles, explicitly emphasizing <b>distribution of power across levels</b> , subsidiarity, equal access to services, and structured cooperation. | <b>Modification.</b> The 2012 model was principle-based and open-ended; the 2024/2026 model is more structured and operational. However, many principles remain aspirational rather than enforceable.                                                              |
| <b>Intergovernmental cooperation framework</b>         | <b>Art. 51–52:</b> establishes general obligations of cooperation, consultation, and information sharing between levels of government.                                                            | <b>Art. 65–66:</b> elaborates structured cooperation, including formal agreements between levels of government and requirement of parliamentary approval for major intergovernmental agreements. | <b>Substantive change.</b> Cooperation moves from informal political practice to <b>legalised intergovernmental relations</b> . This strengthens predictability but reduces flexibility for elite bargaining.                                                      |
| <b>Dispute resolution between levels of government</b> | <b>Art. 50;</b> Disputes expected to be resolved through <b>dialogue and cooperation</b> under no strong institutional mechanism clearly operationalised.                                         | <b>Art. 64(g):</b> disputes first resolved through negotiation; if unresolved, escalated to <b>Upper House</b> , and ultimately to the <b>Constitutional Court</b> .                             | <b>Institutional innovation.</b> Introduces a <b>multi-tier dispute resolution system</b> . However: > <b>This provision is constitutionally ambitious and politically contested</b> , as the Upper House and Court may lack independence or enforcement capacity. |
| <b>Participation of FMS in foreign affairs</b>         | <b>Art. 53:</b> Federal Government must consult FMS in international negotiations affecting them.                                                                                                 | The specific article is removed; its substance is redistributed into broader power allocation and cooperation provisions.                                                                        | <b>Modification.</b> The explicit constitutional guarantee of consultation is diluted. This may weaken FMS influence in foreign affairs.                                                                                                                           |
| <b>Intergovernmental agreements</b>                    | Allowed informally; not strongly constitutionalised.                                                                                                                                              | <b>Art. 66:</b> explicitly allows agreements between FGS and FMS, subject to constitutional limits and, in some cases, parliamentary approval.                                                   | <b>Institutional innovation.</b> Formalises intergovernmental agreements, increasing legal clarity but also introducing procedural constraints.                                                                                                                    |

# Constitutional Brief

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|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Fiscal and resource-sharing framework</b>        | <b>Art. 50(e–f):</b> calls for equitable sharing of resources and revenue, but lacks detailed mechanisms.                                                | <b>Art. 167 - 177</b> Finance issues and Resource-sharing principles retained and linked to broader federal structure; detailed allocation shifted to specific chapters and schedules. | <b>Continuity with structural refinement.</b> The principle remains unresolved in practice—one of the most politically sensitive areas of Somali federalism.                                     |
| <b>Constitutional Design &amp; Political System</b> |                                                                                                                                                          |                                                                                                                                                                                        |                                                                                                                                                                                                  |
| <b>Overall constitutional design philosophy</b>     | A <b>provisional, framework constitution:</b> many core issues (federalism, elections, resource-sharing) left intentionally open for future negotiation. | A <b>more detailed and codified constitution:</b> key political systems (electoral system, federal structure, power allocation) are explicitly constitutionalised.                     | <b>Substantive transformation.</b> The system shifts from <b>transitional constitutionalism</b> → <b>structured constitutionalism.</b> This increases clarity but reduces political flexibility. |
| <b>Nature of constitutional completeness</b>        | Explicitly <b>incomplete/provisional</b> ; relies heavily on future legislation and political agreements.                                                | Moves toward a <b>complete constitutional order</b> , with detailed provisions across governance, federalism, and elections.                                                           | <b>Substantive change.</b> The Constitution becomes less of a political framework and more of a legal code. Risk: rigidity in a fragile political environment.                                   |
| <b>Balance between flexibility and rigidity</b>     | High flexibility due to open-ended provisions and reliance on negotiation.                                                                               | Increased rigidity due to detailed constitutional provisions and codified systems.                                                                                                     | <b>Structural trade-off.</b> 2012 allowed political adaptation; 2026 prioritises legal certainty. Neither model fully resolves Somalia's governance challenges.                                  |
| <b>Role of constitutional interpretation</b>        | Critical due to ambiguity; courts and political actors fill gaps in incomplete provisions.                                                               | Still important, but scope reduced as more issues are explicitly regulated in the text.                                                                                                | <b>Continuity with modification.</b> Interpretation remains essential, especially where provisions are politically contested or poorly implemented.                                              |
| <b>Constitution as political vs legal document</b>  | Primarily a <b>political settlement framework</b> (post-conflict compromise).                                                                            | Moves toward a <b>legal-institutional constitution</b> governing detailed state functions.                                                                                             | <b>Substantive transformation.</b> However: > <b>This provision is constitutionally ambitious and politically contested</b> , as political practice may not align with legal design.             |

