

Brief report



**Executive and Legislative Integrations:
Entwining the implementation and
oversight roles, causes implication and
possible remedies
Issue Analysis**





Summary

The provisional constitution of the federal government allows the members of the parliament to be appointed for the cabinet. In the past fifteen years a significant number of the appointed Council of the Ministers came from the parliament. Therefore, the executive and the legislative branches have integrated and fused and this led to entwine the oversight and accountability role of the parliament and policy implementation role of the executive branch. This brief examines the causes of the overlap of the two branches, its major implications and it also proposes some policy recommendations.

TALO center for Governance and Public Policy Studies

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Issue Analysis

The separation of powers among the government branches is so crucial for good governance and state effectiveness. The legislature has a specific responsibility for such legislation and oversight, while the executive branch is responsible for formulating public policy and implementing the country's laws. So, the two branches should be independent from each other to ensure a check and balance. In order to achieve an effective oversight role, the parliament should not be fused and integrated financially with the executive branch.

Nevertheless, over the past 15 years, the majority of appointed ministers came from the members of parliament. As a result of that, the ministerial functions were fused with the legislative responsibilities, and this further led to the twinness of the executive and legislative branches. This brief deeply examines the integration of these branches, its causes and implications, as well as possible policy remedies.



Roles and Responsibilities of Executive Branch

In all governance systems, power and authority are shared by the three branches of the government, namely, the executive, legislative, and judiciary, to prevent the concentration of power in one branch and to secure check and balance. The legislative branch is responsible for making laws, whereas the executive branch is responsible for ruling the state. The Council of Ministers has the mandate to implement the nation's laws, initiated and approved by the legislative body (Böckenförde, 2011). Also, the executive branch is responsible for formulating and administering public policy and the national development agenda.

The executive power of the Federal government is vested in the Council of Ministers. Article 97, clause 2 of the Somali constitution states that the Council of Ministers is the highest executive authority and consists of the Prime Minister, the Deputy Prime Minister, Ministers, State Ministers, and Deputy Ministers. (The Federal Republic of Somalia, 2012).

Additionally, article 99 of the constitution states that the Council of Ministers is responsible for formulating the overall government policy and implementing it. Similarly, they approve and implement administrative regulations in accordance with the law. They also have the power to prepare draft laws, set the national development plan, prepare the annual budget, and finalize the national

accounts. Furthermore, they have the power to appoint and dismiss senior public officials and propose the appointment or dismissal of ambassadors, consuls, and diplomats.

The Prime Minister is the head of the federal government. He co-ordinates the work of the Cabinet and leads the government's business in Parliament. He appoints and dismisses the members of the Council. The Prime Minister also presents the government's programs before the House of the People to endorse and approve them. Similarly, every ministry is personally responsible for the function of his/her ministry, whereas the deputy minister should carry out duties delegated to him by the minister. On the other hand, the state ministry is responsible for carrying out the specific functions assigned to it by the Prime Minister.

There are certain criteria for the membership of the Council of Ministers in the Somali constitution that any person holding the office of the Prime Minister or the Deputy Prime Minister should not be under the age of forty (40) years and must have a university level education. Similarly, the person being appointed as Minister, Deputy Minister, or State Minister must not be under the age of thirty (30) years and should have a university level of education. Additionally, the members of the Council should not hold any responsibility other than the membership of the House of the People, and this allows MPs to become members of the Council of Ministers.



There is no uniform procedure for appointing the ministries in all governance systems, considering the differences in the political systems. In the parliamentary system, a large number of the cabinet members come from the parliament, and the Council of Ministers is approved based on a vote of confidence from the majority of the legislature. Similarly, they can be sacked through a vote of no confidence. However, in the presidential system, the ministers don't come from the parliament. For example, in some countries, such as Nigeria, any Member of Parliament who is appointed to a ministerial position loses his parliamentary membership (Bulmer, 2019).

Roles and Responsibilities of the Legislative Branch

Parliament is the national legislature elected by the people, and it is the bodies of popular representation that make and change the laws of the country. In 2016, Somalia embraced a bicameral house under Article 55 of the Somalia Provisional Constitution, which consists of the House of the People and the Upper House. The member of the house of people represents his/her constituency while the member of the upper house represents his/her federal member state. (The Federal Republic of Somalia, 2012). The Somali Provisional Constitution gives the following powers to the House of the People:

1. approve, reject, and amend the bills presented to the parliament.

2. initiates the laws, except the laws relating to the budget and the mandate of the executive arm;
3. It approves the independent commissions presented by the prime minister.
4. Oversight of the national institutions to safeguard the implementation of law and policy;
5. gives a vote of confidence to the prime minister and the council of ministers;
6. It elects and dismisses the president.

In the democratic political system, parliament has three main functions, which are lawmaking, oversight, and representation.

For law-making, the parliament is responsible for the enactment and approval of the laws and rules that govern society. For instance, Article 63 of the Somalia Provisional Constitution stipulates that the Somali Federal Parliament has the power to "pass, amend, or reject legislation tabled before it under the Constitution" and also participates in the emending of the constitution.

Oversight is another important function of parliament to ensure that the functions of the government and its institutions are carried out in accordance with the country's laws and policies and that power and resources are used to meet the citizens' needs and interests. Furthermore, parliamentary oversight ensures that the decisions of the government and laws are implemented as approved by the parliament, and it



also strengthens the accountability and transparency of the government. Therefore, oversight promotes public trust, confidence, and integrity in government policy and it also encourages citizens to accept the government's policy instead of resorting to violence. (Arinanto, Satya, S.H., M.H., and Fatmawati, S.H., 2009). Moreover, the parliamentary oversight role is one of the cornerstones of democracy. It ensures that the national resources are allocated appropriately, scrutinizes the government's expenditures, and follows up on the government's implementation of programs to be undertaken effectively. Another important role of the parliament is to represent the citizens. Article 61 of the Somali Constitution mentions that "every member of the House of the People of Somalia Federal Parliament represents his/her constituencies, regardless of their political and party affiliation." Furthermore, the people give the lawmakers their mandate so as to represent them, because "representing an institution without representation has no meaning." Arinanto, Satya, S.H., M.H., & Fatmawati, S.H. (2009).

Contributing causes

The major factors that incentivize the members of parliament to join the Council of Ministers are as follows:

Firstly, the constitution allows a member of parliament to become a member of the cabinet and have a dual role. Article 59 of the constitution disqualifies the membership of the federal parliament from accepting a government position other than a ministerial post.

Second, members of parliament that seek political power try to join the Council of the Ministers to participate in formulating the national agenda and implementing public policies as well as retaining the power of legislation and representation. This enables them to overstay in the political arena and become prominent actors.

Finally, the driving force of some members of parliament to join the Council of Ministers is an economic incentive since they manage the budgets of their own respective ministries and they often receive both parliamentary and ministerial allowances.

Major implications

The powers of each branch of the federal government are clearly defined in the Somali provisional constitution. However, the integration of the MPs and the Ministers of the Somali Federal Government raises concern about the separation of power among the two branches of the government and has negative consequences for building effective and independent public institutions with checks and balances. The mix of the two institutions often makes the parliament dysfunctional and unable to perform its main duties and responsibilities, such as legislation, oversight, and implementation of the constitution and national laws.

The legislative responsibility of the parliament was derailed by the integration of the council of ministers and legislators. For instance, the process of approving and amending some bills that



establish independent commissions is manipulated by the executive branch through the lobbying of MPs who are also ministers. In 2019, the House of the People of the Federal Parliament amended some articles of the bill that establishes the Office of Auditor General as demanded by the Council of the Ministers, where the new amendment stated that the Auditor General should report to the President. However, the Upper House of the Federal Parliament rejected the proposed amendments, arguing that they undermine the autonomy of the Auditor General's Office. Oversight is also another major duty of the members of parliament that plays an important role in controlling and scrutinizing ministries, agencies, and other national offices as articulated in the constitution. It is worth noting that the integration between the executive and legislative branches of the government represents a great impediment to monitoring and holding ministers accountable to the parliament since a large number of ministers who are also MPs circumvent accountability through their influence in the House of the People. Several plenary meetings of the House of the People to summon the members of the Council of Ministers were cancelled due to lack of a quorum as ministers who are also MPs did not attend such meetings, persuading their fellows as well. Similarly, despite the House of People's procedure requiring each parliamentary committee to monitor and conduct a rigorous oversight of relevant ministries, the role of

parliamentary committees to scrutinize and control various ministries remains ineffective and weakened by the integration of the two branches. Furthermore, motions to vote no confidence in the Prime Minister, the Council of Ministers, and government policies are important parliamentary tools for controlling the executive branch, but the integration of the two branches prevented any motion from being tabled in parliament.

Another implication of the integration of these institutions is the failure of budgetary oversight. Since budgetary oversight is a tool used by parliaments to ensure that the approved budget has been spent appropriately, the House of the People of Somalia Parliament has established a parliamentary committee known as the "Committee on Budget, Finance, Planning, International Cooperation and Financial Oversight of Public Institutions" with a specific function of budget oversight.

There is a global trend for public financial management to be transparent and open so as to warrant the national funds raised by the government for the public interest being appropriated as proposed by the government and approved by parliament (World Bank Institute, 2009). Therefore, the integration of the legislature and executive branches would result in the absence of this cornerstone function of oversight toward the government.

Finally, the duties and responsibilities of the parliament include ensuring the implementation of the federal constitution and national laws. Nevertheless, the



provisional constitution and other national laws are flagrantly violated and not complied with by the ministries and government officials. For instance, public funds are not fully managed in accordance with the public financial management (PFM) act.

Policy recommendations

Based on this brief analysis, we recommend the following:

- To limit the number of appointed ministers from the members of Parliament in the House of the People to a certain threshold.
- To avoid dysfunction and paralyzing of the legislative branch, the parliament must perform its roles in accordance with the constitution and rules of procedure.
- If necessary, Somalia should adapt to a fully-fledged parliamentary system that allows members of parliament to be appointed to the cabinet.
- Parliament must enact a law or resolution that stimulates the council of ministers to not be appointed from the House of the People.

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