



**Addis Ababa University**  
**Collage of Law and Governance**

**Center of Federalism and Governance Studies**

**Distribution of Powers and Responsibilities in a Federal System of Somalia,  
Prospect and Options.**

**A POSTGRADUATE DISSERTATION PRESENTED TO THE ADDIS  
ABABA UNIVERSITY COLLAGE OF LAW AND GOVERNANCE  
STUDIES IN THE CENTER OF FEDERALISM AND GOVERNANCE  
STUDIES IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOT  
THE AWARD OF THE MASTER OF FEDERALISM AND GOVERNANCE  
STUDIES.**

**BY**

**Shafii Mohamud Egal**

**January, 2020, AAU**



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**Advisor Dr. Zemelak Ayitnew( Associate Professor)**

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**Shafii Mohamud Egal**

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**Approved by the Board of Examiners**

1. **Dr. Zemelak Ayitnew** \_\_\_\_\_ **Sign** \_\_\_\_\_ **Date** \_\_\_ \_\_\_ \_\_\_

**Director of the Center**

2. **Dr. Zemelak Ayitnew** \_\_\_\_\_ **Sign** \_\_\_\_\_ **Date** \_\_\_ \_\_\_ \_\_\_

**Advisor**

3. ***Dr. Ketema Wakjira*** \_\_\_\_\_ **Sign** \_\_\_\_\_ **Date** \_\_\_ \_\_\_ \_\_\_

**Internal Examiner**

4. **Dr. Asnake Kefale** \_\_\_\_\_ **Sign** \_\_\_\_\_ **Date** \_\_\_ \_\_\_ \_\_\_

**External Examiner**

**Addis Ababa University**  
**Collage of Law and Governance**

Center of Federalism and Governance Studies

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Throughout the work I have acknowledge all sources used in its compilation.

Name of Researcher: **Shafii Mohamud Egal**

Researcher's Signature \_\_\_\_\_

This work has been produced under my supervision.

Name and Signature of Supervisor **Dr. Zemelak Ayitnew** Sign \_\_\_\_\_

Date of Submission \_\_\_\_\_

Submitted to- \_\_\_\_\_

## **Dedication**

I wish to dedicate this dissertation on my mother Shamis Egal Anshur and my father Moahmud Egal as well as my brother Mohamed Mohamud Egal whose love for education and support remains my source of inspiration. I will also not forget my family and friends whose words of encouragement throughout my academic struggle kept me alive in the face of hardship.

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In Conclusion, I thank all those who willingly and participated in this research for sharing valuable information contained in this research project

## Abbreviations and Acronyms

Art	Article
FMS	Federal Member States
FGS	Federal Government of Somalia
AU	African Union
EU	European Union
UN	United Nations
UNSRSG	UN Special Representative of the Secretary-General
IGAD	Inter-Governmental Authority on Development
LGs	Local Governments
SRC	Somali Reconciliation Conference
TNG	Transitional National Government
TFC	Transitional Federal Charter
NCA	National Constituent Assembly
HDMS	Hizbia Mustaqil Al-Somali
SDR	Somali Democratic Republic
SYL	Somali Youth League
EA	East Africa
HoA	Horn of Africa
XEER	Conflict resolution Mechanisms

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## Abstract

*Somalia, tried out many systems of governance since independence, the British model of a parliamentary system, democratic republic of Somalia, authoritarian regime system, Scientific Socialist and finally, the country has moved toward a federal system. Federalism become emerging as viable political system to bring a semblance of reconciliation, inclusive governance, power sharing and peace in Somalia. Since the adoption of provisional constitution in Somalia 2012 built on three primary objectives:(1) to unite the republic: (2)to lend legitimacy to future political leadership and (3) to introduce good governance that are representative, responsive and accountable to the people. But, simply provides a space of the federal system and many of the elements are yet to be filled including the division of powers and functions between federal member state and federal government, division of taxes. There are different proposals regarding how best to divide powers between federal and federal member states in Somalia. The federal government has its own proposal and FMS have also their own view on the matter. The main purpose of the study is to evaluate the proposals of both the federal government and FMS to redesign in light of established federal principles, the appropriateness divisions of powers and the experience of other federations. The design and research approach are exclusively based on extensive review of relevant literature. It will also make comparative analysis based on the key findings of case studies of five countries and the outlook of the relationship between Somalia and other federal system countries. The three guiding questions guided in both the case studies and discussion of the findings and in drawing conclusions and recommendations. to examine how competences are divided in federal systems with a view to gathering lesson regarding how best to divide in federal systems, and what factors are considered when dividing power based on the experiences of federal countries, what competences are exercised by federation and what are left for states and which competences should go to federal. Recommendation will be my own proposal based on analysis of how best is the power divide and alternative option for improving the competing proposals between FG and FMS, within consider this context of the Somali political culture, history and social cleavages.*

**Keywords:** *Federalism, Constitutions, division of power, political culture, history, self rule, sharing rule, state, federal, Somalia, subsidiarity, Asymmetric, Unity, diversity, symmetric, reconciliation,*

## CHAPTER ONE

### 1.1 Introduction

Colonialism impacts of Africa draw boundaries that often divided ethnic groups among numerous colonial states. The Somali people which is believed ethnically, sharing a common culture, one religion, but lacking a governance authority that united them segmented political system was ultimately subjugated and divided among four imperial powers: Britain, France, Italy and Ethiopia. (Lewis 2002).

In 1960, the former British and Italian territories merged by mutual agreement within days of independence to form the Somali Democratic Republic. Nationalists of both north and south united behind the leadership of the Somali Youth League. Most Somalis, however, saw this instance of unification as the only beginning (Thomson, 2016). The country has embarked upon a parliamentary civilian political system as the country has experienced the first African democracy and four general elections were held based on a clan multi-party system in the first decade (Ylonen, Zahorik, 2017). The civilian governments worked well somehow, though they were marred by corruption, nepotism, misrule and tribalism which have resulted in a lack of progress in the country. Increased politicization of clan issues and stiff clan competitions in the politics became a result of a failed political system and gave rise to popular discontent and need for change. In that regard, the political parties who were running for election have reached 64 clan based parties (Kelly, 1999). Disappointment over the civilian government's performance led to the assassination of president Sharmake and president Barre took over power in a bloodless coup d'état on 21st October 1969. The country's fall into military hands led to one party system and a lifetime president Barre's rule was marred by oppression and tyranny although in his tenure, the country made progressive social programs and made tremendous change. However the speedy progress declined in the late 1970s. Due to the cruel acts of the tyrannical regime, the country's unity has been disintegrating, political conditions deteriorated and clan loyalties came to the fore, and eventually rebel groups emerged very soon and the country was mired in political waves and instability that led to the fall of Barre's 21 year regime(I. M. Lewis 2008).

In the aftermath of centralization government with Siyad barre dictatorship, guerilla groups were started, both clan-based and regional. By 1989, full-scale civil war had broken out leading to Siyad barre's overthrow in 1990, resulting in millions of people dying and hundreds of thousands fleeing. This conflict's spillover effect was mistrust bound to the political elites and widespread mistrust among the Somali people at large. This led to the rise of federalism in Somalia. The driver of federal decentralization of Somalia is the prevailing mistrust in the Somali political elites (Elmi, 2014). Federalism emerged as a viable political system to bring a semblance of peace in Somalia, as the country had tried many systems of governance since independence. It followed the British model of a parliamentary system until a coup d'état in 1969, at which point the military government of the Somali Republic was overthrown and replaced by a socialist state. Since 2004, the country has moved toward a federal system. Demand for federalism was created by 1988 atrocities against Somali civilians in Hargeisa by the military regime and the 1991 clan cleansing committed by Warlords' in Mogadishu and other parts of Somalia, which reinforced the mistrust. This led to Somali people not trusting each other, especially when it came to resource sharing, power sharing, and political representation, which was abused as some clans dominated the higher ranks of the government, while welfare services were never delivered, and minorities or clan members who were not in the higher political positions did not receive their share of national resources. Reconciliations began in 2000 with a conference to create a new inclusive governance system (4.5 system) reflecting political realities based on clan quotas and, more curiously, gender. The seats were allocated accordingly: 44 seats each for the Darod, Hawiye, Digil-Mirifle, and Dir Clan. Also 24 seats for minorities and 25 for women, with the balance 20 seats picked randomly from the international community.

Federal principles and methods of division of power between state and federal government are very complex in all federations. The philosophical foundations of some federal polities stipulate that a government is the best when it governs the least and, therefore, only limited functions are given to the federal government at its founding. In other places, in view of historical traditions of centralization of power and authority, the operative principle is that a government is the best when it is able to bring about social transformation (Majeed, Watts, Brown, 2005). Also, demarcation of distribution of powers and responsibilities among federal systems, such as the process by which a federal system was created, could be one such factor. That the federal systems that were created by uniting pre-existing political entities, referring to them as aggregative or

coming-together federations. For example Swiss federations were formed by the merger of pre-existing political societies, but the subsequent creation of the canton of Jura could be seen as devolutionary. Similarly, the thirteen original states of the United States came together to form a federation, but subsequent states were carved out of the territory of a preexisting federation. Despite these caveats, the distinction remains useful. Another factor that might influence the scope of distribution of powers and responsibilities is whether the federation has a system of symmetrical or asymmetrical federalism. In a symmetrical federal system, all constituent units have the same powers of self-government, but in an asymmetrical system one or more constituent units are vested with special or greater self-governing powers. Federations typically create asymmetrical arrangements to take account of the fact that within a state there are significant cultural or societal differences among the constituent units. (Majeed 2005)

In light of the federal principle, the appropriate method of dividing power between FMS and federal government of Somalia is very complicated, there is no simple formula for determining the appropriate allocation of powers between orders of government, while there are some patterns in the allocations of powers with federation, there is also great variety between federal government and FMS, but the concept of subsidiary to develop their debate issue, a principle that the central government take on powers when it is necessary to achieve an objective and when it adds value in comparison to what the governments of the federal member states could achieve on their own. While helpful the principle will prove elusive practices. Other side, it could be necessary if the distribution of powers and responsibilities will apply on asymmetric for many aspects of difference between federal member states, such as asymmetrical political weight, asymmetrical history marginalized and status right, asymmetrical powers. Each of these poses different issues. Clearly, different federal State member have different political weights because of their, population, strategic position, wealth, history.

## **1.2 Statement of Problem**

The colonial period in Somalia, state building process never was successfully in terms of institutional building, infrastructure and out of political conspiracy. There was deliberately recognition of clan institutional systems were eventually, lead to weak, very corrupt and center of favoritisms. There were massive political parts and colonial legacy that are promoted clannish

is the basic standard of institutional building. Federalism become in arrangement of instrument that used on peacemaking, state building and device that can build trust among Somali political and social fragmented.

The driver of federal decentralization of Somalia is the prevailing by mistrust in the Somali political elites (Elmi, 2014, p. 1). However this mistrust is not only bound to the political elites but also there is wide mistrust in and among the Somali people at large. ). However this mistrust is not only bound to the political elites but also there is wide mistrust in and among the Somali people at large. Specifically when comes resource sharing, power sharing, political representatives, which is abused some clan dominate the higher ranks of Government, welfare services never been delivered, minorities or clans those who not been presented higher political position never receive their share of national cake This mistrust was created by pre-colonial clan conflicts, colonial legacies and independence clan grievances, conflict and atrocities perpetrated by 1988 atrocities against the Somalia civilians in Hargaisa by the military regime and the 1991and clan cleansing committed by Warlords' in Mogadishu and some other parts of Somalia reinforced the mistrust.

Somalia's provisional constitution has established a parliamentary system of government, with the president of Somalia as head of state and selects prime minister as head of government. The country has bicameral legislature, which consists of the Senate (upper house) and national assembly of Somalia (lower house). The constitution simply provides a skeleton of the federal system and many of the elements are yet to be filled including, Upper house and lower house division of their powers clearly,, division of powers and functions between federal member state and federal government, fiscal federalism and the constitutional court guidelines that manage the conflict between spheres of governments. Since its adoption in 2012 the federal constitution has made scarcely any contribution to ensuring national cohesion. Also elections will be taken place in 2021 which is far from political reality. The political economy of war ( Keen 200).

Article 54 of Provisional constitution states that, the Allocation of powers and resources shall be negotiated and agreed upon by the federal Government and the Federal Member States (Pending the formation of federal member states) except in the matters concerning: 1-Foreign Affairs, 2-National Defense, 3- Citizenship and Immigration and 4-Monetary Policy, could be the powers

and responsibilities of the federal government. These elements always are very complex and debatable in a federation and in Somalia require constant dialogue and negotiation as nothing exists so far, which is shows lack probably clarified the demarcation powers and responsibilities between federal government and federal member states. This research study based on comparative studies and options of Somalia federal system of divide power and responsibilities coordinating the principal philosophical, history, cultural, political bases and political culture of Somali.

### **1.3 Research Questions**

2. What are the proposals in terms of division of powers between the FMS and the federal government?
3. To redesign in light of established federal principles, the appropriateness divisions of powers and responsibilities in Somalia?
4. Is there a better option in terms of dividing functions and powers between the federal government and FMS?

### **1.4 Research Objectives**

#### **1.4,1 General Objective**

The general objective is to evaluate the proposals of distribution of powers and responsibilities in a federal system of Somalia, Prospect and options.

#### **1.4. 2 Specific Objectives**

1. To examine the proposals in terms of division of powers between the FMS and the federal government.
2. To redesign in light of established federal principles, the appropriateness divisions of powers and responsibilities in Somalia.
3. To investigate a better option in terms of dividing functions and powers between the federal government and FMS

## **1.5 Significance of the Study**

This study was essential to assess distribution of powers and responsibilities in a federal system of Somalia, Prospect and options. Specifically, the current issues of federal government and federal member states. In spite of the limitation that is referred below, this study can make contribution to the existing knowledge in the area of Federalization of Somalia. The findings of the study will be vital for the benefit of federal government and local community living in all regions of Somalia. It will be informative to the policymakers, NGOs, and others and provide key factors in consideration for planning for policymakers. It may give direction to them on areas that should have emphasis as to enhance the wellbeing of Federal system of Somalia. Moreover, the study is relevant in generating knowledge through analyzing the proposals of distribution of powers and responsibilities in a federal system of Somalia, Prospect and options. Based on the principle, philosophical historical, culture and political bases of Somali people.

## **1.6 Limitations of the Study**

The study was in spite of useful insights with regard to the distribution of powers and responsibilities in a federal system of Somalia. However, there are some limitations. The study gets reliable information from some respondents, who were not familiar with the technicality of distribution of powers and responsibilities in a federal system. There was also a lack of availability of Constitution and federal documents in the study area. But the research overcomes this limitation by obtaining the 60 years history, policies articles, policy dialogue documents and books of Somalia, East Africa, UN agencies and international websites. Similarly, some institutional officials were not well trained in the federalism and strategies to provide reliable information. Moreover, the study had the limitations of generalization, Even though, as much as possible tried to minimize it may not be fully-free from bias. Also the study had the limitations that emanate from using a mix of non-random sampling techniques.

## **1.8 Research Methodology**

### **Methods and Designs of the Study**

This study was employed exclusively based on extensive review of relevant literature. It was also made comparative analysis based on the key findings of case studies of five countries and the outlook of the relationship between Somalia and federal system countries. The three guiding

questions above were guide in both the case studies and discussion of the findings and in drawing conclusions and recommendations. The study was, therefore, limited in that it has not corroborated or triangulate the synthesis of the literature review with those from key findings. This section dealt with approach, the research design, types data needed, methods of data collection, sampling techniques, data analysis and details of data interpretation mechanism as well as study site selection and it gave an account for how the research secondary are selected.

### **Approach of the research**

The study were used a descriptive research type that describes the status of the phenomena and some extent an exploratory as well. The research was employing a mixed research approach for qualitative and quantitative data.

### **Data Sources and Collection instruments**

In order to achieve the objectives of the study, both primary and secondary data source were used. For seeking primary data sources, the researcher were used attend by personal observation. Different existing secondary sources including articles, journals, books, internet, history and policy documents and federalism comparative countries documents of the distribution powers and responsibilities.

### **Document Analysis**

The researcher in order to triangulate the validity and reliability of primary data employed document analysis as a secondary source of data along with the primary data. This technique facilitated cross-checking of the accuracy of the firsthand information regarding analyzing the proposals of distribution of powers and responsibilities in a federal system of Somalia, Prospect and options. Various published and unpublished documents which can have interaction with ongoing issue it can be policies strategies, programs, project, journals, articles, documents, reports and other written sources that can reflect the in light of established federal principles, towards the competing proposals of federal government and federal member to redesign the divisions of powers appropriate will be the focus of analysis. Particularly, the trends of interaction so far will be traced using various documents from government officials, experts, and civil service respondents.

## **Ethical Consideration**

In this study, informed consent was obtained from an area under study after provision of the necessary explanation about the intention of the research and some procedures of the study. All information addressed by the research were taken into account of privacy, anonymity and treated with confidentiality. According to (Fink, 2009) states that use of surveys and concern of ethical issues are completely interwoven. A survey conducted were based on considerations of protection of the individual's right to privacy or even anonymity. Furthermore, before the data collection, the consent form that includes a title such as consent to participate in the research, the title of a research, procedures followed risks and discomforts, confidentiality and withdrawal filled. The consent form was given to potential respondent's sufficient written information on whether to complete a survey.

## **CHAPTER TWO**

### **Patterns in the Distribution of powers and responsibilities within Federations**

#### **2.1 Introduction**

As was mentioned in the preceding chapter, there are different approaches on how best to divide powers between federal and federal member states in Somalia. The federal government has its own proposal and FMS have also their own view on the matter. The main purpose of the study is to evaluate the proposals of both the federal government and FMS in light of federal principles of division of powers and the experience of other federations. To this end, this chapter examines principles that underpin division of powers in federal system. It also aims to examine how competences are divided in federal systems with a view to gathering lesson regarding how best to divided in federal systems, and what factors are considered when dividing power based on the experiences of federal countries, what competences are exercised by federation and what are left for states and which competences should go to federal.

The chapter begins by defining the concept of federalism and identifying the basic features of such system. It proceeds to discuss. In the first part theoretical literature that includes an overview of division of power of federal systems concept, principle of division of power and responsibilities, and mechanisms of division powers and responsibilities is presented. Then the conceptual frameworks used in the study of different approaches (Comparative Studies) are presented. In the last section, empirical literature is presented.

#### **2.2 Concept of Federalism and Definitions of Terms**

As any concept in social science, there is no common definition of federalism. The most clarification of the concept is given by Ronald Watts (2008:8) who-; distinguishes three interrelated concepts- “federalism, federal political systems, and federations.”-Watts uses federalism as normative term multi-tiered government system that combines elements of shared rule and self-rule. Federal political system, according to Watts is any system of government that has two or more orders formation, through all orders of government having a range of autonomous as well as shared decision-making responsibilities( (Broadway and Shah, 2008:5-8). That means the process in which the spheres of governments come together under an umbrella of

a federation based on tolerated consent with the limitation of their multi-tier government under the constitutionally guaranteed power division among the federal and constituent units. It used to accommodate difference in a politics and promoting unity through existed shared rule principle.<sup>1</sup> Federalism, seen as self-rule and shared-rule, can bind a diverse set of people together as a valued way of living harmoniously. Federalism becomes a national value when the various components of the nation pride themselves in a system that enables them to co-exist with different cultures, languages and religions. Most of federal system countries have a common feature has been existing at one and the same time of powerful needs to be united for certain determination, and of well established motives for autonomous regional governments for other intentions.<sup>2</sup> Most of federal systems establish two levels of government, with both levels being elected by the people and each level assigned different functions and the constitution is federal if it provides for two levels of government each of which has some guaranty of its contained autonomy within its sphere.<sup>3</sup> By definition, a system like this requires that different levels of government cooperate, because the institutions at each level form an interacting network and institutional arrangement that creates two relatively autonomous levels of government, each possessing the capacity to act directly on behalf of the people with the authority granted to it by the national constitution.<sup>4</sup>

### **2.3 Distribution of Powers and Responsibilities in Federal Systems**

The principles of dividing competences between federal and state governments may acknowledge the following criteria or principles, such as subsidiarity, institutional capacity, populations, accountability and transparency, symmetric or asymmetrical, political weight, history, geography or strategic consideration. For example, economics of scale of performance of

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<sup>1</sup> . There are 192 sovereignty states, 25 that are functioned federalism in their government character claim to be federations exhibit the major characteristics of federations. They are more than two billion population or 40 percentage of total population in the world, which they encompass some 510 states/provincial or federated unites, they have emerged new variants in the application of federal idea.

<sup>2</sup> . See Ronald L. Watts, ***Comparing Federal System***, (Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press Montreal & Kingston. London. Ithaca 3<sup>rd</sup>ed,(2008) pp.117-118.

<sup>3</sup> . William Riker's *Federalism: origin, Operation, Significance*(1964)

<sup>4</sup> Ronald L. Watts. 1999. *Comparing Federal Systems*, 2nd ed. Kingston, Ontario: McGill-Queen's University, 6-7; Daniel J. Elazar. 1992. *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*. Harlow, Essex: Longman Current Affairs

duties, demanded areas larger than a local legal power for cost-efficiencies stipulated conditions, for example, defense, public transportation, physical infrastructure. This has expressed itself in the design of federations by the distribution of powers and responsibilities between those assigned to federal member states of government, for the purpose related to the expression states identity. The specific form and allocation of distribution of powers has varied, however, relating to the underlying degrees and kinds of common interests and diversity within a particular society in question (Majeed, Watts and Brown 2006). Factors that relevance the administrative feasibly standard, centralized governance comes generally leads to lower, the administration costs linked with financing public services. According to the subsidiarity principle power and responsibility should be exercised by the government closest to the people, unless a convincing case can be made for assigning these to higher orders of government. Also efficient proviso of public service are provided most efficiently by the legal power having control over the minimum geographic area that would internalize benefits and costs of such provisions, because local government understand the concerns of local residents The common market becomes an important area of concern the most nations undertaking state building to the sub national governments, in their pursuit of labor and capital, may gratify in beggar-thy-neighbor policies and the process, erect barriers to goods and factor mobility, thus the division of power and responsibilities of government regulatory functions create the potential for disharmonies economic relations among regional governments, regulations of economic activity such as trade and investment is generally best to national governments.

Therefore, as suggested by Robin Broadway, constitutional guarantees for the free domestic flow goods and services may be the best alternative to assign regulatory responsibilities solely to the national government.<sup>5</sup> However, never clear, even though many federal constitutions attempt to divide functional competences and powers between the two levels of government.<sup>6</sup> In practice federations have found it impossible to avoid overlaps in the division of powers and responsibilities of governments, the most extreme form is the interlocking relationship between governments in the Germany federation which has developed because there most of federal legislation is administered by states through upper house (Bund) such a strong emphasis upon

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<sup>5</sup> Robin Boadway, *The Constitutional Division of Powers: An Economic Prospective* (Ottawa: Economic Council of Canada, 1992).

<sup>6</sup> . Duchacek, *Comparative Federalism: the Territorial Dimensions of Politics* (2nd ed.Lanham: University Press of America, 1987), p 58-63.

coordination through joint decision making may carry its own price in terms of reduction in opportunities for flexible and variety for policy through autonomous decision making by different level of spheres governments.<sup>7</sup> Both Germany and Austria, which represent in extreme form interlock relationships, there have been recent efforts to disentangle some of these in order to encourage more autonomous initiatives in each level of government.<sup>8</sup>

The philosophical cornerstones of some federal political systems stipulate that a government is the best when it governs the least some powers and only limited functions are given to the central of federal government, at its constituting the operative principle is that a government is the best when it's able to bring about efficiency, effectiveness and social change. In other words, the sharing power of federal government and the states governments often evolves to a point at which federal powers become exclusive, but states powers remain shared, this created serious problems for many federal systems. The question of distribution of responsibilities assignment of resources is also linked to political culture, which is in general remains a necessarily nebulous concept federal political culture has the potential to be more specific (Brown, 2012). There are some countries that the federal system countries influence the regime political party system that hold current administration and have created new phenomena that are frame the structure of division of powers and responsibilities. This has led to the new trends of ways of organizing interstate and centre-state relations, and others, newly evolved structure are informal even specific and constitutional. All this affects the nature of political coalitions and alliances, which is consequently, changes the nature of the distribution of power and responsibilities among different orders of government. In some federal governments, there are concerns that some probably dividing powers and responsibilities to spheres of government leads to remove inequality and regional disparity , other society maintenance of social peace and national integration (Majeed, 2006).

In some federations, the powers of individual sub national units were consider deciding through bilateral agreements, with the federal government. Some federations permit the delegation of responsibility between orders of government while others do not. But all federations have

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<sup>7</sup> . Pernice, I. (2002). *Multilevel constitutionalism in the European Union*. *European law review*, 27(1/6), p.511-529.

<sup>8</sup> WALLNER, J., & BOYCHUK, G. W. (2014). *Comparing Federations. Comparing Canada: Methods and Perspectives on Canadian Politics*, p.198.

provisions in their constitution dealing with the allocation of powers between the central and sub national units. Constitutions differ exceedingly in the level of detail and approach. For example, the United States Constitution has only 18 headings for the powers of the federal government and most of these are actually concurrent with federal paramount, all other powers (residual powers) lie with the states. The Indian Constitution, by contrast, has three long lists: the union list has 97 headings, the concurrent list 47 and the state list 66. The Spanish Constitution lists competencies that may be delegated to the autonomous communities, but this is done legally through statutes of autonomy for each community, and these statutes can varying many federations, interpretations by the courts and evolving practice has shifted the real division of powers significantly away from the intent of the constitution's drafters, making the federation more or less centralized than was first envisaged, this is probably most true of the older, less detailed constitutions.<sup>9</sup>

## **2.4 Principles for Distributing Powers and Responsibilities**

There is no single formula for determining the appropriate allocation of powers between orders of government. There are some patterns in the allocations of powers within federations, while have a great variety. But, the most federal governments considered the concept of subsidiary principle is the basic principle of their formula of efficient and effectiveness, which is the federal government, should take on powers only when it is necessary to achieve an objective. It is notable that the European Union has not empowered Brussels in the areas of defense and foreign policy, which are the classic central powers of federations, each country has its own debates around the allocation of powers in decisions will reflect questions of efficiency and effectiveness, but also, critically views of what are shared objectives across the federation, (Shah, 2007).

### **✓ Subsidiary principle**

The Concept of subsidiary principle that the central government should take on powers only when it is necessary to achieve an efficient and effectiveness and when it adds value in comparison to what the governments of the regional/ province, could achieve on their own while accommodative, the principle has proven problematic in practices, include a necessity condition,

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<sup>9</sup>. Requejo, F.(2005). *Multinational Federalism and value pluralism: the Spanish case*. In J. Lauphling(Ed.). London and New york: Routledge.

allowing central unit action only when sub-units cannot achieve the desired result on their own. The principle of subsidiarity can regulate the allocation of legal competences or powers between units of government or it can regulate the making and execution of laws<sup>10</sup>, or it can regulate the making and execution of laws. The following three elements seem required by a theory of subsidiarity. Firstly, the theory should offer certain designs of the individual and of the proper relations between individuals, various social associations (including states) and the larger political system. Secondly, normative arguments must be offered for criteria of just distribution of benefits and burdens among individuals and among associations/states within a larger political system. Such arguments should provide criteria for the allocation and use of political authority, on the basis of some conception of individuals' good. Thirdly, most theories will also rely on institutional arguments absorbing on empirical generalizations, regarding the likely consequences of institutions or policies embodying a particular interpretation of the principle of subsidiarity. Such empirical arguments are required to show that, compared to the alternatives, that principle of subsidiarity satisfies the normative standards of distribution acceptably well. Institutional subsidiarity as a force in societal life, constrains any more encompassing or super ordinate institution (or body or community) to refrain from taking for its account matters which a more particular, subordinate institution (or body or community) can appropriately dispose of irrespective of whether the latter is an organ of State or of civil society.<sup>11</sup>

#### ✓ **Asymmetry and Symmetrical factors**

Most of federations have Asymmetry in the distribution of power and responsibilities.<sup>12</sup> The term asymmetry is applied to many prospects of difference between the levels of governments of federations, such as asymmetrical political weight, asymmetrical group or language rights and status, and asymmetrical powers, each of these poses different issues. Clearly, different regional/state governments have different political weights because of their population, wealth, or strategic position. Federations, usually allocate the same powers to all of the regional/state governments, while other federation's regional/state governments receive more powers than

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<sup>10</sup> . Grundgesetz, Article 72.

<sup>11</sup> . As Benda, Maihofer & Vogel (eds) Handbuch des Verfassungsrechts 2 ed (1995) 1051 has it: "Nach diesem Prinzip soll das, was die kleineren und untergeordneten Gemeinwesen leisten und zum guten Ende führen können, nicht für die weitere und übergeordnete Gemeinschaft in Anspruch genommen werden." ["According to this principle a comprehensive, super ordinate community ought not to take for its account any matter that a smaller, subordinate community can deal with and bring to a good.]

<sup>12</sup> . See George Anderson, *Federalism: Forum of Federations*, (Oxford University press, and 2008), p.21-29.

others. Constitutional asymmetry is usually limited because major asymmetry poses challenges in the management of federations and also can be more pragmatic forms of asymmetry. Some federations try to limit this by giving extra weight to the representation of smaller units, within central institutions, special the distinct provisions regarding group, linguistic, or religious rights within particular constituent units are a frequent feature in very diverse federations (Watts, 2007). This is particularly true of constitutionally established asymmetries, while the flexibility of this kind can address demands coming from a particular region for a decentralization of a power or powers that the regional/ state governments elsewhere may not consider a priority. However, special treatments for one regional/ state government can create pressure for the same treatment for the others. As well, if the powers that are devolved asymmetrically are very important, or go to a very regional/state governments, this can create pressure to limit the weight of representatives from that unit in the central government's decision making on these subjects. In practice, most constitutional asymmetries of powers in federations are of relatively secondary powers or special arrangements for very small and recognizably distinct constituent units and this is different from the lesser legal status of territories or tribal areas and of national capitals in some federations (Bird and Stauffer, 2007).

Canadian federal parliament's powers over property and civil rights vary by regional/state governments, Quebec effectively has non-constitutional arrangements with the federal government, which give it different authority from though usually harmonized with that given to the other provinces, e.g. pensions, taxes, social programs of the newer federations, Malaysia provides the Borneo states special powers overactive laws, communications, fisheries, forestry, and immigration. India has similar provisions for Jammu and Kashmir and some of the smaller states. Russia made extensive use of very different non-constitutional bilateral agreements with constituent units of the federation that tended to favor certain powerful units, but these variations have now been largely eliminated.<sup>13</sup> Spain also engaged in bilateral arrangements, notably in giving special powers to the autonomous communities that had historic nationalities. Again, the differences have greatly diminished over time, with the exception of ancient historic fiscal rights for the Basque country and Navarre. Belgium, Comoros, Bosnia and Herzegovina, and St. Kitts

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<sup>13</sup>. George Anderson, *Federalism: An introduction*, Forum of Federations,(Oxford University press, and 2008), p.10-20

and Nevis also have some constitutionalised asymmetrical arrangements. There some unitary government, highly decentralization were most significant issues in an asymmetrical arrangements, such as Scotland in the United Kingdom, but the implications of this are still being debated in the UK (Saunders and Roy, 2006). The history of most countries, where one or two minority groups fought for their inclusion, very few constitutions provide for a symmetrical deal or more powers for such groups.<sup>14</sup>

## 2.5 Division of Powers Based On Comparative Studies

**Table1: Division of powers based on Comparative Studies**

Countries	Federal	Constituent Units	Concurrent	inconsistence
USA	Foreign Affairs Defense & General welfare International Trade & Commerce and Customs Economic and Monetary policy Establish rules of neutralization Punish Counterfeiting Copy Rights	Property Law Education Commerce Law of ownership & exchange Banking & credit Laws Professional License Insurance Law Family Laws Public Health & quarantine Law Public Works Law Land use, Water, Mineral resources Law Judiciary & criminal Procedures Law Cooperation Law		Tax State, Exports Change State-Boundaries Violate the Bill of Rights Enter Treaties Impair Obligation of Contracts
Germany	Foreign Affairs & Defense Immigration, citizenship & neutralization Economic and Monetary policy (Currency, Customs, Excise) Customs, Trading		Civil Law, Refugee & Expellee matters Public Welfare Land Management Public Health Mass-media Collects of vital Statistics Regional Planning Customer Protection	Treaties Consultation of Lander

<sup>14</sup> Styler, Nico, and Jaap De Visser "Fragile Federations": The Dynamics of devolution; in Francesco Palermo and Elisabeth Alber (eds) *Federalism as Decision Making* (Brill/Nijhoff, 2015). p. 120-35.

	<p>Area &amp; treaties Nuclear Energy Criminal Police office Air Transport, Railways, Posts &amp; telecommunications Industrial Property rights Copy Rights</p>		<p>Registration of Birth, Death &amp; Marriage Law of Association Law relating to residence &amp; establishment of Foreign Nationals Labor &amp; Economic Matters Law Nature Conservation</p>	
<b>Ethiopia</b>	<p>Foreign Affairs &amp; Defense Immigration, citizenship &amp; neutralization Economic and Monetary policy (Currency, Customs, Excise) Formulate &amp; implanted Country's policies, Strategies &amp; Plan(Socio- economic) Establish National Standard &amp; basic Policies( Education, Health, Science &amp; Technology) Tertiary Education International Trade &amp; customs Transportation, physical Infrastructure &amp; Airports Legislated &amp; administration Land Natural Resources, Air, Railways, Postal, Waterways and Telecommunications</p>	<p>Administration Land State Police&amp; Public Order Education (Primary, Secondary) Health Services State Peace Culture &amp; Language Affairs Enforce and maintain law and order State Courts</p>	<p>Taxes on profit, sales , excise and PIT</p>	

<b>India</b>	Foreign Affairs Defense Immigration, citizenship & Aliens Monetary policy Railways, Posts, highways & Telecommunications Extradition Aircraft % Customs Trade and Commerce Establishment of Courts	Public order Police Administration of Justice Public Health Education(Secondary Primary) Agriculture Fisheries	Criminal law Registration Birth, Marriage and Death Certificate Trade Unions Electricity Transfer of Property Forest Population Control and family Planning Economic and Social planning Education(Technical, Medical & Universities) Administration of Justice charities	
<b>South Africa</b>	Foreign Affairs Defense Immigration, citizenship & neutralization Monetary policy customs Water, Forest & Airports Science & Technology Tertiary Education Trade & Industry Mineral & energy Public Enterprise Home Affairs, Public Service and Administration	Provincial Planning Provincial Libraries Provincial Cultural Matters Provincial Recreation & Amenities Provincial Museum & Veterinary Services Provincial Roads & Traffic Liquor License Provincial Sports Abattoirs Ambulances	Agriculture Airports other than International & national Airports Animal Control & disease Cultural Matters & Public Transport Indigenous law & Customary Law Population Control & development Regional Planning & development Road Traffic Regulations Trade & Tourism Health & Education Environment & Soil Conservation Welfare & housing	

### Sources<sup>15</sup>

The conceptual comparative study of distribution powers and responsibilities in federations, varied from federation to federation according to the particular circumstances and balances of interests within each other federation. In most federations, international relationship, defense, the

<sup>15</sup> Constitution of United States, Basic Law for the Federal Republic of Germany. Constitution of Federal Democratic Republic of Ethiopia. South Africa's Constitution of 1996. Constitution of India

functioned of economic and monetary policy including, currency, customs and excise, international trade and interstate trade, major taxing power (corporate and income taxes sometimes shared), interregional transportation, major physical infrastructure, and pensions have been graded under exclusive federal government or once in a while under concurrent legal power. The social policy( primary and secondary education, health services, social welfare and labor relations) maintenance of law and security and local governments have usually been designated exclusive to the regional/state governments, some parts those areas specially those concerning to social service and income security are shared. But areas for which the distribution of power and responsibilities has varied are agriculture, natural resources, postsecondary education, environment, criminal law, civil law, courts and police in a number of cases these have represented shared responsibilities.

In some federations sweeping federal powers over foreign affairs and treaties has sometimes been used override legal power and responsibilities that would be belong to the governments of the regional or province.<sup>16</sup> In a few federations, the federal treaty power has fixed by the requirement that where treaties where effect the distribution of power of regional governments consultation must occur or their permission must be prevailed. In the case of Canada, as a result of judicial interpretation of federal constitution, implementing regional or state legislation is required where treaties related to areas in the exclusive regional powers.<sup>17</sup> In Germany such treaties have required the endorsement of a majority in the Bundesrat framed of delegates of the land governments, and since 1993 the Germany Basic Law has required extensive consultation or agreement of the Lander (Watts, 2008).

The second important issue is the process, by which a federation is established are frames the character of the distribution of power and responsibilities, where the process of establishment involves the aggregation of previously distinct units giving up some of their sovereignty to establish a new federal government, the constitutional distribution of power and responsibilities usually takes the form of specifying the new limited set of exclusive and concurrent federal powers with the residual powers remaining reserved to the regional governments. United State of

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<sup>16</sup> . See Ronald L. Watts, *Comparing Federal System*,( Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press Montreal & Kingston. London. Ithaca 3<sup>rd</sup>ed,(2008) pp.117-118.

<sup>17</sup> . See Ronald L. Watts, *Comparing Federal Systems*, (Published by McGill-Queen's University press, 2008), pp.146-155.

America is classical example of this, by contrast where the creation of a federation involves a process of devolution from a formerly unitary state, the reverse arrangement is often the case, with the powers of regional governments being specified and the residual autonomy remaining with federal government as in Belgium and Spain. Some federations, such as India grew out of a combination of process of aggregation and devolution and this case lists constitution specifying exclusive federal, exclusive provincial or state and concurrent power.<sup>18</sup>The different geographic, historical economic, security, demographic, linguistic cultural, intellectual and international factors and the interrelation of these have been significant, in contributing to the particular strength of the motives for union and for regional identity and therefore, have affected the specific distribution of powers and responsibilities in each federation. Generally the more territorial homogeneity with in a society, the greater powers and responsibilities allocated to the federal government (Watts, 2008).

The abrupt the diversity, particularly where linguistic and cultural differences are well established, the greater relatively autonomous powers assigned to the regional/ province or states union of government, for example, the constitutions of Canada and Belgium have inclined to emphasis the exclusivity of powers rather than shared or concurrent powers, but in some cases where territorial social diversity and fragmentation is strong, it has been considered worthy as in India and Ethiopia to give the federal government sufficiently strong and even overriding powers to resist possible tendencies to balkanization. Some federations, such as South Africa, India and to a lesser extent Canada where the constitutions set out three exhaustive and comprehensive list including, exclusive federal exclusive states and concurrent legislative powers, the residual power has been relative less significance. But the scope of cases like Nigeria, Russia, Brazil, Pakistan and Mexico the extensiveness of federal exclusive and concurrent lists of authority has actual left little room for exclusive constituents' unit legislation. The assignment of residual powers to the states was intended to underline their autonomy and the limited nature of powers assigned to the federal government.<sup>19</sup>

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<sup>18</sup> See Seburu, Rotmi, 'India: centralized federation; in John Loughlin, John Kincaid and Wilfried Swenden (eds) Routledge *handbook of Regionalism and Federalism* (Routledge, 2013).

<sup>19</sup> . Kymlicka, W.(2006). *Emerging Western models of multinational federalism: are they relevant for Africa?* In D. Turton(Ed.) (2006). *Ethnic Federalism: the Ethiopian experience in comparative prospective*. Oxford, Athens, Addis Ababa: James Currey, Ohio University Press & Addis Ababa University Press.

## **2.6 Mechanisms of Distributions of Powers and Responsibilities**

### **2.6.1 List exclusive Central Powers**

In most federations some of exclusive powers are allotted to the federal government, but the extent of these varies. The allocation of exclusive federal legal power is relatively limited in the United States and Australia. Where Germany, India, Malaysia, Argentina, Brazil, Mexico, Nigeria, Russia and Ethiopia the exclusive legal power allotted to the federal legislature is more extensive, but the mechanism of distribution of powers in these federations also includes large areas of concurrent legal power and responsibilities. Article I, section 8, of United States Constitution delegates eighteen specifically powers to the congress of the United States. Almost all of these powers deals with commerce, foreign affairs, military affairs, among the most important powers are the power to collect taxes, in order to pay debts and provide for the common defense and general welfare, the power to regulate commerce with foreign nationals. While the state government is responsible for property law, education, estate and inheritance law, commerce laws of ownership and exchange, banking and credit laws, labour law and professional licensure, insurance laws, family laws, public health and quarantine laws, public works laws, including eminent domain, building codes, corporations law, land use laws, water and mineral resource laws, judiciary and criminal procedure laws, electoral laws, including parties, civil service laws. The local government is responsible for the adaptation and implementation of state law to local conditions, public works, contracts for public works, licensing of public accommodations, assessable improvements, and basic public services (McCulloch v. Maryland, 1819).

According to Russian Constitution of December 12, 1993, the Federation Treaty, and other treaties (dogovory) that delineate objects of legal power and powers. The Constitution provides that the federation has legal power over the following: foreign policy and international relations of the Russian Federation, international treaties and agreements of the Russian Federation, issues of war and peace. The federation government and local government share legal power over 14 items ranging from use and disposal of land, subsoil, water and other natural resources to measures against catastrophes, natural calamities, epidemics, elimination. Russian regional legal powers are allocated powers not specifically reserved to the federal government or exercised joint, those powers include managing municipal property, establishing and executing regional

budgets, establishing and collecting regional taxes, and maintaining law and order. In many countries exclusive list is the key functional areas was allocated to the central government. In Nigeria, 68 functional areas are included in the exclusive federal list in addition to the while the non-federal government such as South-Sudan is not far behind with 58 items on the exclusive national list, but the residual powers, domiciliation in the centre and is all-embracing given the very limited list of exclusive Regional powers.<sup>20</sup>

### **2.6.2 List of Exclusive Federal, Exclusive of the States and Concurrent Powers.**

In the lengthy the exclusive federal, Exclusive States and Concurrent in most countries that states are apportioned very few exclusive powers. Furthermore, they often do not relate to significant functional area, even the area of inclusivity of states legislation is not always protected against national interventions. The India federation at present consists of twenty-eight states and several other territories.<sup>21</sup> The Seventh schedule contains three legislative lists which enumerate subjects of administration viz., Union, State and Concurrent lists. The union list consists of 97 subjects, the more important of which are defense, railway, posts and telegraph, currency etc. The state list consists of 66 subjects, including public order, police, administration of justice, public health, education, agriculture etc. The concurrent list embraced 47 subjects including criminal law, marriage, divorce, trade unions, electricity etc. The residuary powers have been vested in the central government, where whenever there is a conflict between centre and the states; it will be decided by the Supreme Court, whose decision is final. Federal government means a dual government, because the central and the state governments are working on parallel lines, usually, the national government will not interfere in the state affairs.<sup>22</sup>

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<sup>20</sup> Styler, Nico, “*The Symbiotic relationship between Decentralization and Constitutionalism in Africa*’ in Charles M Fombad and Nico Styler (eds) *decentralization and Constitutionalism in Africa* (OUP, Forthcoming).

<sup>21</sup> Constitution of India Article 270, 370, 371, 371A-G

<sup>22</sup> Constitution of India Article 368: The seventh schedule of the constitution broadly divided and distributes competences, treating states on an equal basis. Article 370, 371, 371A-G further modifies this generality in order to provide for special arrangement and particular class states.

### 2.6.3 List the Concurrent Power and responsibilities

Canada constitutionally specified areas of concurrent legal power and responsibilities are agriculture, immigration, old age of pensions and benefits, and export of non-renewable natural resources, forest products and electrical energy. The protracted list of concurrence powers given recompense most in all federal system countries. The Kenyan Constitution of 2010 may be to the consequence that all listed county matters are concurrent (Bosire, 2010). The federal constitutional distribution of powers and responsibilities in the Australian Federation has demonstrated to be exceeding flexible and established with conceived as a decentralized federation, with the bulk of powers and remaining in the hands of the state. In reality, there has been a stabilize accretion of power to the common wealth government since shortly after federation in 1991. Although formal amendments of the constitution has been limited, changing interpretation by the high court and the exercise of financial control by the commonwealth have resulted in growing the distribution of powers and responsibilities being exercised by the common wealth( Saunders, 1996). Australian constitution clearly articulates the powers of the commonwealth parliament (Cons 1991, Sec. 51&52). The constitution gives few exclusive powers and responsibilities to the commonwealth parliament<sup>23</sup>, these includes defense, external affairs, coinage and commonwealth places, and the external affairs power allows that federal government to enter into treaties and conventions and allows the commonwealth parliament to introduce domestic law the terms of those international instruments. Several powers in historically have been exercise predominantly by the states, including land management agriculture, the environment health care, education and criminal law but recently years, the commonwealth has come to play and increasingly significant role in shaping policy and legislate regimes in areas. The commonwealth has to come to dominate the federal landscape, under the convey terms of the constitution it can be reasonable to said that Australian is being as a cooperative federal system, although the academic literature has seen some debate as to whether or not provides and accurate description (Galligan, 1995). The bulk of legislative authority under the federal constitution is held concurrently between commonwealth and the states. The commonwealth has determined to exercise its capacity that will have coverage of the area to the extent of the scope of the legislative power, which were established comprehensive legislative

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<sup>23</sup> .Moore, W. H. (1902). *The constitution of the commonwealth of Australia*. CF Maxwell (G. Partridge & Company).

schemes in the areas of citizenship, immigration and telecommunication, thus leaving very little for determination of states.<sup>24</sup> The states have authority over purely interstate activities such as trade and commerce, state banking and state insurance (Sec 51)

The extensive concurrence powers often reveals mechanisms or practices that favor the centre. There are countries of federal system that central government sets the policy and framework in a shared functional area and the States are reduced to implementers of national legislation, depicting the system at the best as a form of executive federalism. In South Africa, the national government so compress legislated major concurrence areas, such as health, housing and the environment that very little remains of the provincial legislative authority.<sup>25</sup> Some of non federal countries such as, Sudan and South-Sudan, the national government legislate framework laws on all concurrent, exclusive and residual matters leading some reviewers to the conclusion, that there are no exclusive powers on the states, all powers of states being concurrence powers.<sup>26</sup> In Ethiopia federal government may determine the national standards and basic policy in Major states functions such as health and education.<sup>27</sup> Concurrence has a number of advantages in federations. It has provided an element of flexibility in the distribution of powers, enabling the federal government to postpone the exercise of potential authority in the particular field until it becomes a matter of federal importance. The regional governments can thus be left in the meantime to pursue their own initiatives. A problem of Sudanese's constitution is that although it provides areas of concurrent legal power no pramouncy or clear criteria are specified for the courts to establish which law should prevail in cases of conflict (Watts, 2008).

#### **2.6.4 List Residual Powers to States/Regional/ Province Government**

The residual authority assignment by the constitutional legal power over those matters not otherwise listed in the constitution. In most federations especially, who created by a process of aggregating previously separate units. The residual power has been retained by the regional/State governments. There are a very few countries where list on the distribution of powers and responsibilities authorize on allocation of residual powers to the States, and this a play very

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<sup>24</sup> . Australian Citizenship Act 1948.

<sup>25</sup> See Stytlar and Yash Pal Ghai (eds) *Kenya-South Africa Dialogue on Devolution* (Juta, 2015).

<sup>26</sup> . *Transitional constitution of the republic of South Sudan* 2011.

<sup>27</sup> . *Federal Democratic Republic of Ethiopian Constitution*, Article 52(2).

important role in enhancing government. For example, the Somalia and DRC is the only countries where no provision is made for residual powers, which should not cause too many headaches given the lengthy list of national exclusive and concurrent powers. Residual powers mostly fall to the national government with South Africa and Kenya are typical example, at same time there is a residual powers do fall to the regions/states in Nigeria and Ethiopia.<sup>28</sup> It has little meaning to drawn-out residual powers. States that the federal government of Nigeria may in terms of its broad powers in the exclusive list, legitimate intervene in virtually, every matter of policy important, reducing the scope of the states' residual power to what the federal government voluntary leaves them.<sup>29</sup> In South Sudan, residual powers can go either way, depending on where the power is the best exercised. However, this provision is preceded by 33 concurrent powers, 42 exclusive powers and 58 exclusive federal powers, which reduces the likelihood of residual powers becoming a significant source of government. The greater the enumerated of powers the less the scope of the residual powers (Watts, 2008).

## 2.7 Conclusion

The essential nature of federalism is to be sought for not in the shadings of legal and constitutional terminology, but in the forces, economic, social, political, cultural that have made the outward forms of federalism necessary. The essence of federalism lies not in the constitutional or institutional structure but the society itself. And the federal government is a device by which the federal qualities of the society are articulated and protected<sup>30</sup>. Federations are not static organizations, and overtime the distribution of power and responsibilities in each has had to adopt and evolve to respond the changing needs and circumstances and the development of new issue and policy areas. Federations established during the eighteenth or nineteenth centuries have had to work out which governments should be responsible for energy and environment issues. This adaption has required a balance between flexibility and rigidity.

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<sup>28</sup>. See YP Ghai 'Ethnicity, nationhood and pluralism: 2010 constitution; in YP Ghai and J Cottrell Ghai (eds) *Ethnicity, Nationhood and Pluralism: Kenyan Perspectives* (2013) 75-106. Ottawa and Nairobi: Global Centre for Pluralism and Katiba Institute.

<sup>29</sup>. See Seburu, Rotmi, 'Nigeria: centralized federation; in John Loughlin, John Kincaid and Wilfried Swenden (eds) *Routledge handbook of Regionalism and Federalism* (Routledge, 2013). P.200-250.

<sup>30</sup> W.S Livingston, *Federalism and Constitutional Change*(Oxford: Clarendon Press, 1956),pp.1-2

In the distribution of power and responsibility within federal systems, the principle of subsidiarity has been adopted as the basis. This is the principle that only subjects that cannot be adequately dealt with by a lower order of government should be performed by the higher order of government. As a principle, it has had considerable appeal, but by itself as a principle, however, it leaves open the issues of who decides on its application to a particular subject matter. This is not merely a technical issue, but in many ways may have to do with fundamental values and issues of identity. If the decision is made by the higher order of government, that leaves the lower order vulnerable while if it is made by the government that leaves the order, they may resist transferring responsibilities. In most federations some legislative powers are assigned exclusively to the federal government, but the extent of these varies. The allocation of exclusive federal legal power is relatively limited in the United States and Austria, with most federal powers being as shared or concurrent powers. In Germany, India and Ethiopia the exclusive legal power assigned to the federal legislature is more extensive, but the distribution of powers and responsibilities in these federations also includes areas of concurrent legal power. Constitutional asymmetry among the regional units within a federation introduces complexity. Nevertheless, some federations have found that the only way to accommodate the varying pressures for state autonomy has been to incorporate asymmetry of distribution powers and responsibilities in the constitution.

## **CHAPTER THREE**

### **SOMALIA FEDERALISM: ORIGINAL AND STRUCTURE**

#### **3.1 Introduction**

As was mentioned in chapter one. The aim of this chapter is to give general overview to the areas (formation of federal system of Somalia) that should have emphasis as to enhance the wellbeing of federal system of Somalia, based on the principle, philosophical historical, culture and political bases of Somali people, regarding how political transformation of Somalia from colonialism, political systems in Somalia from 1960-1991, peace reconciliation and transitional government, analyzing the proposals of FMs and federal government and challenges the division of power and responsibilities of Somalia federal system.

#### **3.2 Somalia Territory, Population and Ethnic Composition**

Somalia is a country that is situated in the Horn of Africa. It is bordered by the Indian Ocean from the east and the Gulf of Aden to the north, Kenya to the southwest, Ethiopia to the west, and the republic of Djibouti to the northwest. It is a country that is strategically located in a very important global trade and shipping route which makes the country a very significant place in the world. The ethnic homogeneous, Somali society is distinct from rest of multiethnic sub-Saharan African societies with common language, culture, and religion (Castagno 1959; Martin 1966; Lewis, 2002). Somali people inhabited the Horn of Africa region for many centuries practicing pastoralism in the north and agricultural practices mainly in the southern regions. The Somali peninsula has been stateless in the pre-colonial era though there have been some chiefdoms based on clans in the area applying local customary laws (Lewis, 2002).

The population of approximately 14 million (World Bank 2017). Almost 80% is made up of five major clan families: Darood, Hawiye, Dir, and the Digil and Mirifle (Teutsch, 1999; Lewis, 2002). Prior to European colonial arrival, Somalis did not have a central state in the sense of a Western, Weberian bureaucratic state. However, they used home-grown conflict resolution mechanisms of Xeer and Islam for resolving disputes among individuals and groups. Socio-economically, Somalis have depended on livestock and farming and many are pastoral-nomads (Lewis, 2002).

### 3.3 Transitional Political Systems in Somalia in 1960-1991

In 1960, the former British and Italian territories merged, by mutual agreement within days of independence to form the Somali Democratic Republic. The Nationalists of both north and south united behind the leadership of the Somali Youth League, where the two regional united to form Independent Somali Republic under civil government.<sup>31</sup> However, this was instance of unification as the only beginning of Somali state nation (Thomson, 2016). The country embarked upon a parliamentary civilian political system, and the country experienced the first African democracy. There were four general elections, were held based on a clan multi-party system in the first decade.<sup>32</sup> The civilian governments worked well somehow, through marred by corruption, nepotism, misrule and tribalism which have resulted in a lack of progress in the country and increased politicization of clan issues, and stiff clan competitions in the politics became a result of a failed political system and gave rise to popular discontent and need for change. In that regard, the political parties who were running for election have reached 64 clan based parties (Kelly, 1999). In 1969, a military seized power and established Somali Democratic Republic led by Mohamed Siad Barre. The Barr's Military dissolved the Parliament and Supreme Court, some prominent party leaders were imprisoned and suspended the constitution and imposed a scientific socialist ideology under very centralized Military government.<sup>33</sup> The Junta Military justified the seizure of power, because of the Corruption and Nepotisms that caused the failure of the civil government and later resulted the Killing of the Democratic elected President in October 15, 1969. This was a signal of power consolidation and paves a road for Authoritarian style system. In his reign of 21 year of period, the people and the country witnessed a lot of ups and downs including the state-building and Institutional processes. Firstly 1969-1976, this was believed to be one of the prosperous period in Somalia, because the regime was new therefore, attracted the population by removing the corrupted government and emphasized the rebuild, the country by which the civil government didn't think about. self-help schemes were introduced to give the people the ownership to participate the country's building process, most of the young people were taking part, the building the country voluntarily in a part

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<sup>31</sup> The down of Somalia State: Abdisalam M Issa Salwe1996 P3435. [www.bulugley.com](http://www.bulugley.com) 16 January 2009.

<sup>32</sup> See Adam 1995:69. Somali's in 1960 multiparty politics degenerated in to agreed and corruption. Somalia's parliamentary, once a symbolic of democracy had turn in to a sordid their votes for personal rewards with scant regard for the interests of their constituents(Lewis 19972:399)

<sup>33</sup> ([www.somalitday.com](http://www.somalitday.com) and Moshe Y. Sachs,, world Mark Press Volume 2 1988, P. 290 ). This Government collapsed in 1991 and civil war broke out.

time voluntary jobs, and the government successfully accomplished the new Somali script (Af-Somali) written in Latin alphabet.<sup>34</sup> The other factors that the regime had transformed were the Security Sector, Foreign Policy and Education; the state had expanded and created new provinces from the existing 8 into 18 provinces.<sup>35</sup> However the speedy progress declined in the late 1970s. due to the cruel acts of the tyrannical regime included, in 1988 atrocities against the Somalia civilians in Hargaisa by the military regime, this led the country's unity has been disintegrating, political conditions deteriorated and clan loyalties came to the fore, and eventually rebel groups emerged very soon and the country was mired in political waves and instability that led to the fall of Barre's 21 year regime. This early daunting shift was a disappointing challenge and contradicting to all promises of the Revolution which was to eradicate clannish and injustices in all sphere of life.<sup>36</sup>

### **3. 4 Formation of Federal System of Somalia**

The issue of federalism has been hotly debated in Somalia for the past decade. Following the collapse of the military dictatorship in 1991, few Somalis openly advocate for the return to a centralized authoritarian state that monopolizes power in Mogadishu specifically, Central, South and Mogadishu great advocate on Unitary system, some Somalis argued that form of decentralization is necessary, (Puntland, Jubaland and Southwestern states). Some people believe that The consensus on the desirability of federalism has been driven largely by international donor agencies, The United States of America (US), The United Kingdom (UK) and neighboring countries, including Kenya and Ethiopia. However, the ideological commitment necessary to make federalism work is not entirely shared by some of the all the role-players at home. Right from the country's formative years, Somali leaders have evinced considerable skepticism about it. Normatively, some of Somalis are divided on the viability of division of power and responsibility federal system of Somalia to the chronic problem of Somali politics. Others see it

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<sup>34</sup> Mukhtar, M. (1989). "The Emergence and Role of Political Parties in the Inter-River Region of Somalia from 1947 to 1960." *Ufahamu* 17(2):157-163.

<sup>35</sup> See Gorman (1998:40) argued that "Barre's early rule brought about an enhancement of State Making, by means of banning Clannish, revitalizing nationalism, and introducing socialism, amongst others, the dictator propelled the shared of common, national rules of mind and Somalia experience for the first time of the establishment of an efficient state"

<sup>36</sup> Castagno(1970:20), Lewis( 1979:39) Laitin (!982:60) and Adam(2008:1) observed that Barre was careful not to overly disturb clan balance at the central political level. See also Compagnon(1995:215). However, it's true that a free Siyad's rise to power in 1969 the interriverine clans were underrepresented in the ministry and in regional and district position of leadership( Besteman 1996a:583)

through a clan prism.<sup>37</sup> Some Somali scholars argued that the state collapsed, the concern therefore, is to recentralize and bring back the state order not decentralization. Some scholars argued that could be fit into a proper federal state in the short run if the division of power and responsibilities is fine-fitted in accordance with the federal principles, although some scholars recommend even confederation for Somalia to start with because there is lack of statehood in the institutional and legal sense. However, there was wide positive perception of federalism among some of Somali population, leading by the let prominent the Hizbia Mustaqil Al-Somali (HDMS) political party leaders, Abdulqadir Mohamed Aden Zobe, who advocated federation, this was an idea believed, as only way out from centralized corrupted state systems, as well as the limitation of resource domination, but the ideology of Federalism of Somalia was choked off by other clans, because their prejudice based centralized government dominated by themselves instead of power sharing system that pave the way for the benefiting of whoever control the state System.<sup>38</sup> After many years of political instability, crises and conflict, federalism is back again on the agenda. Since the fall of President Barre , there was a lot of efforts to restore peace, stability and state building functions, which is finally culminated three major transitional governments arrangements were established (Transitional National government 200-2004. 2004-2008. 2009-2012). But federalism in Somalia are instrument of conflict resolution as well as solution of political crises, mistrust among people and politicians, also the choice of federalism as approach of state/ nation building and political principle of governance. But what is the matter of Somali federal system is how best divide the power and responsibility among levels of government and mechanism to use the proper implementation of federalism based on the principle and philosophical of federalism.

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<sup>37</sup>Clannis as a political ideology determines everything in Somalia, power, resources distribution, expansion of territory and even recruitment of jobs. Darod Clan Alliances that dominated Puntland and Jubaland States are strongly proponents of federalism; also Digil and Mirifle who founders of federalism in Somalia are strong supportive federalism. Hawiye Clan Alliance dominated Central, South and Mogadishu great advocate on Unitary system, while the group Somalis call minority in a Number, Such as, Bantu, Mushunguli, Banadiri, Eyl, Bajun, Barawe, Jarer. Etc. stayed patrons clan that support their causes from the large alliance. There has been a strong suggestion of hostility to federalism within Alshabaab and Somali Islamism classified as moderate, conservative or hard-line, tend to favor a strong central state. Also Dir clan dominant of Somaliland prefer succession and uncertainty of state policies remain conspicuous.

<sup>38</sup> Dowden, Richard. (2011). "Don't force statehood on Somalia." African Arguments. <http://africanarguments.org/2011/10/20/don't-forcestatehood-on-somalia-by-richard-dowden/> (accessed January 26, 2014).

### **3.5 Peace Reconciliations and Transitional Government of Somalia**

The reconciliation conference held in Addis Ababa, from 15 to 27 March 1993 was considered by many Somalis as the best encounter among the factions representing a cross-section of the Somalia.<sup>39</sup> Ultimately on 27 March after a marathon session at the Ethiopian Palace in Addis Ababa, an agreement was signed by all leaders claiming to represent the various factions of Somali Society, they signed the agreement under the supervision of the late prime minister of the Ethiopian Government, Meles Zenawi.<sup>40</sup> Eleven months the Addis Ababa Agreement, the group the led by Ali Mahdi Mohamed and other groups met in Cairo, Egypt, from 1 to 7 March 1994 conference in order to restore the sovereignty of the Somalia state, a national reconciliation conference were convened on May 15, 1994 to elect President and vice president and to appointed a prime minister.

#### **3.5.1 Arta Transitional Government**

The beginning of 2000, president of Djibouti Ismael Omar Gelle launch a reconciliation and novel peace plan for Somalia, under auspices of the local regional organization IGAD ( the Intergovernmental Authority on Development comprising Somalia, Djibouti, Ethiopia, Eritria, Kenya, South-Sudan Uganda and Sudan). The AU, EU and US as well as Egypt, Italy and Libya, quickly endorsed the project which was to mount a Somali Reconciliation Conference in Djibouti, at the hillside resort of Arta. This was billed as a grassroots Endeavour with Delegates and representatives across clans spectrum and embracing all the social categories inclusive civil society, traditional elders, religious, scholars, intellectuals, Artists, women's and warlords, with UN assistance, believes that this wide array of people could assume responsibility as protagonists in the peace process. Grassroots pressure to reach an agreement can sometimes even compel leaders to return to the negotiating table after having failed to reach a settlement (Prendergast, Plumb, 2002). They had opened to have conference to create new inclusive governance reflecting political realities which are based on clan quotas and more curiously gender, the seats were allocated accordingly 44 seats each Darod, Hawiye, Digil Mirifle and Dir

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<sup>39</sup> Somalia: The missed Opportunities', Mohamed Sahnoum, United States Institute of Peace, Washington, DC 1994, pp.50-59.

<sup>40</sup> Somali- State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction, Brookings Occasional Papers, Washington D.C., 1995, 54.

Clan. Also 24 minorities and 25 for women and the balance 20 picked randomly international community. The assembly chose as president of the resulting national assembly and Transitional National Government (TNG) Abdiqassim Salad Hassan a former enthusiastic exponent of Siyad's Scientific Socialist and at one point minister of the interior.<sup>41</sup> Clansmen divisions in Somalia particularly in Mogadishu are welcomed this new TNG, but when the government moved to Mogadishu things turning out rather differently. Despite ardent support from UN officials, Arabs, EU whose grasp of Somali reality was always weak and the TNG proved singularly unpopular and never succeeded in controlling more than a few villages in the capital. Two years later the TNG Artta it collapsed, retaining only a fantasy existence promoted by the UN and the EU with the Unhelpful result of concealing and confusing the real situation in Somalia context. (*Somali Peace Process*, pp 109). Federalism emerging as a viable political system to bring a semblance of peace in Somalia, the country tried out many systems of governance since independence. It followed the British model of a parliamentary system until a coup d'état in 1969 at which point the military government as Somali republic and latter become scientifically socialist state. Since 2004 the country has moved toward a federal system. But demand of federalism was created by pre-colonial clan conflicts, colonial and independence, This leads to Somali people don't trust each other specifically when comes resource sharing, power sharing, political representatives which is abused some clan dominate the higher ranks of the government, welfare service never been delivered, minorities or clan those who not be presented the higher political position to receive their share of national resource.

### **3.5.2 Mbagathi Transitional Federal Government of Somalia**

The next attempt of international community to restore, Somalia hope was in Kenya, Mbagathi 2002 October, support by UN who covered most of the costs. Ethiopia and Kenya which had experienced Somalia irredentism and hold huge Somali refugee were involved. After long surviving the country established government in 2004 Kenya led by Abdullahi Yusuf, and fight for Islamic court union in Mogadishu.

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<sup>41</sup> Adam, H. (1994). "Somalia: Federalism and Self-determination." In *Conflict and Peace in the Horn of Africa: Federalism and Its Alternatives*, ed. P. Woodward and M. Forsyth. Aldershot: Dartmouth.

### **3.6 Process of Federal Provisional Constitution**

Provisional constitutional of Somalia process, dates back to the establishment of the Transitional Federal Charter (TFC) in 2004 and has been a cornerstone of the September 2011 Roadmap to chart Somalia's path out of transition and towards permanent and representative government. The UN Special Representative of the Secretary-General (UNSRSG), Augustine Mahiga, described the Roadmap as "the most inclusive process of all the efforts to rebuild Somalia's governance", with the UN's role merely to facilitate a Somali-led process. Mahiga signed the Roadmap along with six Somali Principal signatories: the President and Prime Minister of the Transitional Federal Government (TFG), the Speaker of the Transitional Federal Parliament, the President of Puntland, the President of Galmudug, and the Chair of the Islamist group *Ahlu Sunna Wal Jama'a*. (Ainte 2011). There were consultative conferences were held in Garowe, Puntland, in December 2011 and February 2012, involving the TFG and other Somali stakeholders. These agreed the Garowe Principles, which developed language on the content of the constitution, for example relating to federalism, and also outlined plans for a National Constituent Assembly (NCA) to finalize the Provisional Constitution. The constitutional process was built on three primary objectives: to unite the republic: to lend legitimacy to future political leadership, to introduce institutions that are representative, responsive and accountable to the people. Constitutional process is contested which were January 2012, from 185 Somali parliamentarians wrote to the UN to protest that the Roadmap had not been submitted to parliament for approval, while Somali Diaspora leader Abdi Dirshe has complained that the level of external oversight of the Roadmap has undermined Somalia's sovereignty.<sup>42</sup>

### **3.7 Conclusion**

The colonial period in Somalia, state building process has never been successful, since the first Government was democratically a recognized clan system as institution, but institutions were very corrupt and weak, the system was widely exploiting clan politics and civil servants and police were recruited on clan bases. The worst to mention is that the massive political parties

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<sup>42</sup> .UK *Daily Telegraph* in August 2012, Abdirashid Hashi Quoted that the International Crisis Group described the Provisional Constitution as essentially handing over from one interim authority to another, from one transition to another.

were clan motivated trends. These behaviors were from colonial legacy which latter inherited massive youth unemployment, poverty and a culture of corruption in all spheres of government levels. Federal type of arrangement featured prominently as peacemaking and state-building device in Fragile States. The aim was to keep the state enact or settled conflict by accommodating minority groups or clans/ethnic political dominant in an inclusive system of government. This was also the common pattern in Africa. The following African States have devolved powers in their constitutions since 1990: South Africa(1993,1996) Ethiopia(1995) Nigeria (1999) the Comoros( 1996,2001) the DRC( 2005) Sudan (2005) Kenya( 2010) South Sudan(2011) and Somalia(2012) which is still not yet the provisional constitution seeks to bring the failed state of Somalia back to life. The driver of federalization of Somalia is the prevailing by mistrust in the Somali political elites.<sup>43</sup> This led to stresses that the formation of federal Member States (FMS) unilaterally by powerful clans at the expense of other clans without legal and political consensus sparks fresh political and social turmoil in all regions of Somalia. the Somali society everywhere (*Ibid*). Continuously, there are conflict between federal government and federal member states. When President Farmajo came to Power, there was tension and conflict between the Federal Government and its Member State on the issue of the Gulf Crises, the government chose to be neutral on the Saudi Arabia led blockage on Qatar, therefore, the member states accused the federal government on taking a wrong side, in this issue and argued that they had a good relationship with UAE and Saudi Arabia, this has created a political mess in Somalia, some of the Member State president travelled to the Dubai and Abu Dubai and had an agreement with PDW. This accommodate that Somalia's lack of political pluralism, democracy, rule of law, open and democratic contestation of powers and functioning yet government institutions, such as a strong judiciary and law enforcement agencies will affect the division of power and responsibilities of federal system of Somali.

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<sup>43</sup> Elmi, A. A. (2014). Decentralization options for Somalia. *The Heritage Institute for Policy Studies. The Heritage Institute for Policy Studies.*

## **CHAPTER FOUR**

### **Proposals of Dividing Power and Responsibilities between Federal Government and FMS in Somalia.**

#### **4.1 Introduction**

As was mentioned in the preceding chapters 2, there are different proposals regarding how best to divide powers between federal and federal member states in Somalia. The federal government has its own proposal and FMS have also their own view on the matter. The main purpose of the study is to evaluate critically, the proposals of both the federal government and FMS in light of federal principles of division of powers and responsibilities. Distribution of power and responsibilities between national and sub national governments has a subject of enduring debate among practionaries and scholars' alike in the word of contemporary federalism, constitutional and beyond. The paper highlights to some of key features of these two types of proposals through a few sample countries and to provide a general view in order to lay a foundation to further analysis of two proposals. To end this chapter examines my own proposal of dividing powers and responsibilities that underpin principles of dividing of powers in federal system. It also aims to examine how competences are divided in federal systems with a view to how best to divide in federal systems of Somalia.

#### **4.2 Assigning Legal Power and Responsibilities**

A federation also known a federal state is a type of sovereignty characterized by a union of partially self governing states or regions united by a central(federal government) in a federation, the self governing states of the components is typically constitution entrenched and may not be altered by a unilateral decision of the central government. There were different approaches to distribute powers within federations. The dualistic federal system countries assigned different power and responsibilities to each order of government then delivers and administrators its own responsibilities. The constitutions of kind of dualistic system of clear dividing power and responsibilities are mostly concurrent powers in which both orders of government can make laws. This typical example; Canada and Belgium have few concurrence powers and responsibilities, while Australia has very extensive concurrence. Also this kind of approach dualistic order of government there can be de facto concurrence when spheres of government have different powers and responsibilities that bear on a question; this kind of shared power and

typical it does not involve paramount. The other model of dividing power and responsibilities are under the interlocking federalism system countries, typical example is Germany and South Africa, some subject matters are exclusively responsible to one spheres of government eg, Defense and foreign affairs exclusively federal government. But most subject matters are concurrent powers, where the central government sets framework legislation that regional government can complement with their own responsibilities and law making. As well as, the federal government has a small civil service in the regions/ province, largely limited to its area of exclusively. These are administrative federalism because the principle of powers and responsibilities of the regional/ province are administrative. Also the challenges of this model is restricting the detailed of central policy making so as to leave space for decision makings and laws at the level of regional/province government, for example the Germany government provides for joint decision making in these area of concurrency powers, while the federal laws are approved by a majority vote of the representatives' of the Lander in the Bundesrat. Somalia, could be applicable interlock federalism that enables all spheres of government each will have the decision and consultation of decision making and legislation to implement federal system of the country.

#### **4.3 Proposal of FMS and Federal Government of Somalia on Division of Power and Responsibilities**

The constitution simply provides a under frame of the federal system and many of the elements are yet to be filled including FMS, Upper house and lower house division of their powers clearly,, division of powers and functions between federal member state and federal government, division of taxes. Since its adoption in 2012 the federal constitution has made scarcely contribution to ensuring probably of division of powers between different spheres of governments. But each one they proposed on their favor of having more power. Article 54 of Provisional constitution states that, the Allocation of powers and resources shall be negotiated and agreed upon by the federal Government and the Federal Member States (Pending the formation of federal member states) except in the matters concerning: 1-Foreign Affairs, 2-National Defense, 3- Citizenship and Immigration and 4-Monetary Policy, could be the powers and responsibilities of the federal government. The following indicates tendencies regarding the proposal of federal government of Somalia of division of power and responsibilities across the federal government and federal member states. Concurrence means both governments can make

laws, but federal government is paramount. Federal government proposed that subordinate to the national government in such areas as management of:

- foreign affairs,
- defense,
- Monetary policy,
- citizenship,
- Strategy & policy of natural resources,
- human right,
- National heritage,
- census,
- postal service
- Custom airport,
- Physical infrastructure,
- agriculture, higher and tertiary education,
- Environment protection, health, un-employment
- And policy of energy gas and electric, interstate and external trade.

Also federal member states should carry out legal power included:

- health care,
- primary and secondary education administration,
- State policies, maintain law and order,
- Family and child,
- municipal affairs
- Clan conflicts, law making, treaty implementation, livestock and environment protection

The federal member state proposed to 20 powers will be state matter include:

Education, health, environment, , more tax responsibilities include custom administration and sitting rate, establishment of state courts, maintaining state militia and police, regional court systems, income security, customs/ exercise taxes, corporate and personal taxes, establishment of local governance ,and consultation of treaties will be matter of states. the concurrent powers include, health legislation and regulations, tertiary education, Pharmacy, ambulance, and drug control, TVET, environment and livestock and. Also states proposed that supreme and constitutional courts are to establish in the constitutional watch dog and are thus not a head of

power. This economically and other factors can not suitable federal member states, because the national government is responsible for handling matters that affect the country as a whole, for example, defending the nation against foreign threats and promoting national economic prosperity. Sub national units are responsible for matters that lie within their regions, which include ensuring the well-being of their people by administering education, health care, public safety, and other public services

The FMS proposed the equitable sharing of resource wealth is important in the demanding decentralization of state matter. If oil of commercial quantity is discovered, it is likely to compound regional competition for resources. This will have a profound impact on both demands for greater local autonomy and efforts to maintain centralized government. The donor community has also demonstrated preference to a decentralized system of governance in Somalia. Many donors have, over the past decade, openly worked with federal member states entities. The U.S. government formalized this approach in what it called the 'Dual Track Policy' in Somalia. Given the incapacity of Mogadishu-based governments to extend authority far beyond the capital and other major cities, the approach to working with non-central-state actors in Somalia can be explained in practical, as opposed to ideological, terms. By working with federal member states actors, donors have gained significantly greater access to parts of Somalia not under the authority of the Federal government of Somalia. Still, and for better or worse, by working with regional administrations by-passing the government in Mogadishu donors has arguably legitimized the authority of FMS actors at the expense of the federal government.

#### **4.4 Strengths and Weaknesses of FMS and Federal Government Proposals**

All federations have a legislative division of power and responsibilities that constraints at least some extent, each order of government from making laws in areas of others legal power. However, they normally allow responsibilities on legal power different spheres of exclusively legislative jurisdiction. The federal government of Somalia proposed more powers to influence the policies and program activities of regional government notably through legal power and responsibilities. Most of the power and responsibilities are emerged same as from previously unitary regimes and even not considered some of federal member states governments exist before this proposed. This causes conflict between the federal government and regional

governments. The federal government has to develop new principles and concept of subsidiary that the central government should take on powers only when it is necessary to achieve an objective and when it adds value in comparison to what government regional or state government achieves on their own legal power. It's notable that federal government has exclusively powers in the areas of defense (military strength the ability to mobilize nation's industrial might and applied scientific and technological knowledge to tasks of security and defense) and foreign policy which are classical central power of federations, but regional government/ states specifically those who exist before federal government are extremely demanding spiritual consultation of foreign policies. But the final decisions of assigned legal power will be reflects questions of efficiency and effectiveness. Local government bodies proposed that to manage independently, implement, of municipal property; form, adopt and implemented local budget including introduce local taxes duties, ensure the protection of public order and solve other issues related on local important. This created that Federal member states to have conflict on local government to claim of power and responsibilities beyond state constitution. In most federations, international relationship, defense, the functioned of economic and monetary policy including, currency, customs and excise, international trade and interstate trade, major taxing power (corporate and income taxes sometimes shared), interregional transportation, major physical infrastructure, and pensions have been graded under exclusive federal governments Federal member states and local government can share legal powers ranging from use and disposal of land, subsoil, water and other natural resources to measures against catastrophes, natural calamities, epidemics, elimination. But, the member states should take on powers only when it is necessary to achieve an efficient and effectiveness and when it adds value in comparison to what the of local government, allowing member states action only when local governments cannot achieve the desired result on their own. The theory should offer certain designs of proper relations between spheres of government, larger political system. Such arguments should provide criteria for the allocation and use of political authority, on the basis of some conception of federal member states or local governance.

#### **4.5 Asymmetrical Division of Power and Responsibilities between FMS and Federal Government**

The asymmetric is applied to many aspects of difference between the regional/state government of federations, such as political weight, language rights and status. Clearly, different regional or state government has different political weights because of their population, wealth or strategic position. For example, Puntland state had been established before federal government and also has strategic position while Southwest regions have a more population and Jubaland poses different issues. The Somali Federal Constitution essentially has decentralized characteristics. The Constitution clearly demands under Chapter 5 article 48 the creation of two levels of government, the National Federal Government level and Federal Member State level, which is composed of the Federal Member State governments, and local governments. The Constitution further separates the Federal power entrusted into Legislative, Executive and Judiciary. According to Article 55, the Federal Parliament is bicameral consisting of two houses: the House of the People and the Upper House. The legislative power of the Federal Government is vested in the Federal Parliament. The House of the People comprises 275 representatives. On the other hand, the Upper House of the Federal Parliament represents the interests of the Federal Member States (Puntland 11, Hirshabelle8, Galmudug8, Jubaland8, Southwest 8 and 11 to be represented from Somaliland which is missed).

The proposal of Puntland state government, included the Asymmetrical divisions of power between regional governments in Somalia are necessary. However, special treatment for one regional/ state government can make pressure to limit the weight of representatives from that unit in the central government's decision making on these subjects. In practices, most constitutional asymmetries of powers in federations are of relatively secondary powers or special arrangements for every small and recognizably distinct regional/state government. However, Malaysia provides the Borneo states special powers over native laws, communications, fisheries, forestry and immigration. India has similar provisions for Jammu and Kashmir, Spain also engaged in bilateral arrangements, notably in giving special powers to the autonomous communities that had historic nationalities, again the difference have greatly diminished over time, with the exception of ancient historical fiscal rights for the Bosque country and Navarra( Anderson, 2008). The

history of most countries, where one or two minority groups fought for their inclusion, very few constitutions provide for a symmetrical deal or more powers for such groups.

#### 4.6 Options for dividing powers for Federal Government of Somalia and FMS

Federal constitutions have been written over the last 200 years in widely different context. More recent constitutions reflect lessons from the experiences, good and bad of earlier constitutions. It is not surprising, therefore, that there are great variations in the approach taken to the division of power and responsibilities among federations. A few powers always assigned to the federal government and other almost always to the regional/ state governments, but for many powers have a pattern of tendencies, strong or weak, frequently with outliers. Sometimes there is no clear pattern. In Somalia, if the division of power and resources between two levels of government is appropriated. Federalism can be a solution for the political crises and instability in Somalia. But, what matters is how best divide power and resources based on principles of federalism. The below table gives a rough sense of Somalia best applicable criteria of allocating powers and responsibilities within federation complex matter of Somalia that reflects not just the next of the constitution, but also court decisions and other development.

**for dividing powers for federal      Table2: Option government and FMS**

<b>Powers&amp; Responsibilities</b>	<b>Criteria of Allocation of power and responsibilities</b>					
	<b>N= National Government.</b>			<b>S= Federal member States.</b>		
	<b>L= Local government</b>					
	<b>Financial capacity/ Economic of Scale</b>	<b>Political stability</b>	<b>Consumer sovereignty</b>	<b>Institutional capacity/Skill</b>	<b>Accountability and transparency</b>	<b>Self rule</b>
National Defense: Military strength to mobilize national industrial, applied science and technology to task of security and defense. Armed forces command, Recruitment	N	N	N	N	N	N
	N	N	<sup>41</sup> N	N	N	N

Call to arms and sending troops	N	N	N	N	N	N
Terrorist and extremism	N	N	N	N	N	N
	N	N	N	N	N	N
Foreign Affairs& international relation:						
➤ Conventions & treaties Signatures.	N	N	N	N	N	N
➤ International organization representation	N	N	N	N	N	N
➤ Embassies and representation offices.	N	N	N	N	N	N
Economic Policy: Making: Monitor/fiscal Policy	N	N & S	N	N	N	N
<b>Citizenship, immigration &amp; Naturalization:</b>						
✓ National recognition	N	N	N	N	N	N
✓ Passport issues	N	N	S & L	N	N	N
✓ Identity documents	N	N	S & L	N	N	N
✓ Emigration(Inte rnal & external)	N	N	N	N	N	N
✓ Borders control	N	N	N	N	N	N
✓ Immigrants( Contingent & origin)	N	N	N	N	N	N
✓ Immigrant( stay & labor origin)	N	N	N	N	N	N
✓ Rights to Asylum ( Regulations& granting)	N	N & S	N & S	N	N & S	N&S
	N	N	N	N	N	N

Communication( Domestic & Interl)	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Education:						
➤ Primary& Secondary	<b>S</b>	<b>S</b>	<b>L</b>	<b>S &amp; L</b>	<b>S</b>	<b>S &amp; L</b>
➤ Tertiary	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
➤ National standard policy strategy and formulation	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
➤ Issuance & Recognition of official academics	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
➤ Professional training	<b>N</b>	<b>N&amp;S</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
➤ Science & technology Research	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Human Right Protection	<b>N</b>	<b>N</b>	<b>N &amp; S &amp; L</b>	<b>N</b>	<b>N</b>	<b>N</b>
International Trade & Commerce	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Airports , Ports and Customs	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Maritime Transport	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Air navigation	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Formulate & implanted Country's policies, Strategies & Plan(Socio-economic) Establish National Standard & basic	<b>N</b>	<b>N &amp; S</b>	<b>S, N, L</b>	<b>N</b>	<b>N</b>	<b>N, S &amp; L</b>
Copyrights	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Civil, criminal law and organization of courts	<b>S</b>	<b>S</b>	<b>S &amp; L</b>	<b>N &amp; S</b>	<b>N &amp; S</b>	<b>S</b>

Natural Resource( Forest, river Etc	<b>N</b>	<b>N, S &amp; L</b>	<b>N, S &amp; L</b>	<b>N &amp; S</b>	<b>N</b>	<b>N, S &amp; L</b>
Energy( Gas, Coal Hydro, Nuclear)	<b>N</b>	<b>N &amp; S</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Family and child rights	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>
Agriculture and livestock	<b>N</b>	<b>N &amp; S</b>	<b>N, S &amp; L</b>	<b>N</b>	<b>N &amp; S</b>	<b>N &amp; S</b>
Environment	<b>L</b>	<b>L</b>	<b>L</b>	<b>L</b>	<b>L</b>	<b>L</b>
Transportation ➤ Domestic ➤ Internationa l	<b>N</b>	<b>N</b>	<b>L</b>	<b>N</b>	<b>N</b>	<b>N</b>
Internal security, law and order and policing	<b>S</b>	<b>S</b>	<b>S &amp; L</b>	<b>S</b>	<b>S</b>	<b>S &amp; L</b>
Religious and culture policies						
Insurance	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
Social welfare, Health care, Employment, labour and worker	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>
Administration Land State Police& Public Order	<b>S</b>	<b>S</b>	<b>S &amp; L</b>	<b>S</b>	<b>S</b>	<b>S</b>
Regional & local governance planning	<b>S &amp; L</b>	<b>S &amp; L</b>	<b>S &amp; L</b>	<b>S &amp; L</b>	<b>S &amp; L</b>	<b>S &amp; L</b>

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The evaluation, how various allocation criteria (Financial capacity/ economic of scale, Political instability, public service delivery, institutional capacity/skills, accountability and transparency as well as self rule) which suitable for federal government, FMS or Local government and for best possible way of division of power and responsibilities. The economics of scale and institutional capacity of a certain services required areas larger than a local legal power for cost-effectives and efficiencies for example, defense, public transportation, physical infrastructure. Factors that relevance the administrative feasibility criterion, centralized administration comes generally leads to lower, the administration costs associated with financing public services. Monetary policy is customary to argue that the federal government should be responsible for

monetary policies because such policies cannot be carried out effectively by legal power. Local pursuit of such fiscal policies leads too much of the gains being lost to outside jurisdictions. A monetary policy has little scope for being carried out by state/ regional governments, According to the subsidiarity principle power and responsibility should be exercised by the lowest order of government (the government closest to the people) unless a convincing case can be made for assigning these to higher orders of government. Regional/ state governments, In most federations especially, who created by a process of aggregating previously separate units. The residual power has been retained by the regional/State governments. There are a very few countries where list on the distribution of powers and responsibilities authorize on allocation of residual powers to the States, and this a play very important role in enhancing government. in their pursuit of labor and capital, may indulge in beggar-thy-neighbor policies and the process, erect barriers to goods and factor mobility, thus the division of power and responsibilities of government regulatory functions create the potential for disharmonies economic relations among regional governments, regulations of economic activity such as trade and investment is generally best to national governments.

The issues of Sovereignty of nature and extent of the power and responsibilities of federal member states of Somalia have been complicated by consideration of sovereignty, especially in terms of the powers of defense and international relation with respect and consultation of federal member states. Many governments have found it easy to concede considerable powers to small regions, as opposed to large entities: they are less likely to marshal international support or attempt succession. For instance some of non federal governments, such as, Hong Kong has been given extensive powers, but Tibet- whose original territory was a large as Chine itself has been granted few. Some countries when the community seeking autonomy acknowledged the sovereignty of the states, negotiations made relatively good progress, many others confronted with demands for autonomy in China, Sri-lanka, Philippines and now Nepal have been worried about the breakup of the states and their resistance increased conflict. India's relationship with Kashmir and Nagaland has been fraught because important elements in these places have agitated for succession. Somalia is even more extreme, although for international law purpose it is a single state, there is no single government that exercises sovereignty there is separate sovereignty and political entitles that functioned independently- Somaliland and Puntland. In many federations sweeping federal powers over foreign affairs and treaties has sometimes been

used override legal power and responsibilities that would be belong to the governments of the regional or province.<sup>44</sup> In a few federations, the federal treaty power has fixed by the requirement that where treaties where effect the distribution of power of regional governments consultation must occur or their permission must be prevailed. In the case of Canada, as a result of judicial interpretation of federal constitution, implementing regional or state legislation is required where treaties related to areas in the exclusive regional powers.<sup>45</sup> In Germany such treaties have required the endorsement of a majority in the Bundesrat framed of delegates of the land governments, and since 1993 the Germany Basic Law has required extensive consultation or agreement of the Lander (Watts 2008).

Dealing with conflicts over powers and responsibilities in federations can deal with conflicts over the distribution of powers by using the courts, emergency powers, constitutional amendments, upper house of parliamentary, political compromise and elections. The classical way of resolve difference over how to interpret the division of power is by references to the courts, trough a few federations have more political process such as referendums and upper houses. Many federations also have special provisions, that is the most extreme being emergency powers permit the federal government in certain circumstances, notably emergencies to suspend the normal authority of the government in a regional or state governments. Very often, the conflicts are not over the legal interpretation of what the powers are, but over what the respective powers or roles of the two orders should be. Such disputes must be addressed politically. The government can negotiate to try to reach an agreement on how to operate within the existing constitution. Or they may agree to amend the constitution, which in most federations a special majority and not always agree. The different political parties can take their respective cases to the population during elections to seek support for their vie

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<sup>44</sup> . See Ronald L. Watts, *Comparing Federal System*,( Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press Montreal & Kingston. London. Ithaca 3<sup>rd</sup>ed,(2008) pp.117-118.

<sup>45</sup> . See Ronald L. Watts, *Comparing Federal Systems*, (Published by McGill-Queen's University press, 2008), pp.146-155.

## 4.7 Conclusion

The principles of dividing competences between federal and state governments may admit the following criteria or principles, such as subsidiarity, institutional capacity, populations, accountability and transparency, symmetric or asymmetrical, political weight, history, geography, strategic consideration or man power skills. For example, economics of scale of sealed services demanded areas larger than a local legal power for cost-efficiencies stipulated conditions, for example, defense, public transportation, physical infrastructure. This has expressed itself in the design of federations by the distribution of powers and responsibilities between those assigned to federal member states of government, for the purpose related to the expression states identity. The specific form and allocation of distribution of powers has varied, however, relating to the underlying degrees and kinds of common interests and diversity within a particular society in question.

The constitutions of kind of dualistic system of clear dividing power and responsibilities are mostly concurrent powers in which both orders of government can make laws. This typical example; Canada and Belgium have few concurrence powers and responsibilities, while Australia has very extensive concurrence. Also this kind of approach dualistic order of government there can be de facto concurrence when spheres of government have different powers and responsibilities that bear on a question; this kind of shared power and typical it does not involve paramount. The other model of dividing power and responsibilities are under the interlocking federalism system countries, typical example is Germany and South Africa, some subject matters are exclusively responsible to one spheres of government eg, defense and foreign affairs exclusively federal government. But most subject matters are concurrent powers, where the central government sets framework legislation that regional government can complement with their own responsibilities and law making. As well as, the federal government has a small civil service in the regions/ province, largely limited to its area of exclusively. These are administrative federalism because the principle of powers and responsibilities of the regional/ province are administrative. Also the challenges of this model is restricting the detailed of central policy making so as to leave space for decision makings and laws at the level of regional/province government.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.0 INTRODUCTION**

This chapter draws conclusions based on discussions in the three guiding questions, what are the proposals in terms of division of powers between the FMS and the federal government? Redesign in light of established federal principles, the appropriateness divisions of powers and responsibilities in Somalia? Is there a better option in terms of dividing functions and powers between the federal government and FMS? with specific reference to the three research questions outlined in Chapter 1. introduction problem, the process of adopting federalism in Somalia, the major disagreement several issues include the division of power. Chapter Two, the comparative studies of patterns in the Distribution of powers and responsibilities within Federations and chapter three analysis the political transition of Somali, where Chapter Four, there are different proposals regarding how best to divide powers between federal and federal member states in Somalia. The federal government has its own proposal and FMS have also their own view on the matter. This study is exclusively based on extensive review of relevant literature. It was also make comparative analysis based on the key findings of case studies of four countries and the outlook of the relationship between Somalia and federal system countries. The research design, types data needed, methods of data collection, sampling techniques, data analysis and details of data interpretation mechanism as well as study site selection and it gave an account for how the research secondary are selected. The study managed to arrive at concrete findings and recommendations.

#### **5.1 SUMMARY OF THE CHAPTERS**

Federalism becomes a national value, when the various components of the nation pride themselves in a system that enables them to co-exist with different cultures, languages and religions. Most of federal system countries have a common feature has been existing at one and the same time of powerful needs to be united for certain determination, and of well established motives for autonomous regional governments for other intentions. Most of federal systems establish two levels of government, with both levels being elected by the people and each level

assigned different functions and the constitution is federal if it provides for two levels of government each of which has some guaranty of its contained autonomy within its sphere.

Somalia, after decades of civil war and wide spread of mistrust among Somali people, politicians, clan leaders and international community see that, the federalism emerging as viable political system to bring a semblance of peace in Somalia, the country tried out many systems of governance since independence. It followed the British model of a parliamentary system until a coup d'état in 1969 of military government, 1988 atrocities against the Somalia civilians in Hargaisa by the military regime and the 1991 clan cleansing committed by Warlords' in Mogadishu and some other parts of Somalia reinforced the mistrust.. Since 2004 the country has moved toward a federal system. Also This leads to Somali people don't trust each other specifically when comes resource sharing, power sharing, political representatives which is abused some clan dominate the higher ranks of the government, welfare service never been delivered, minorities or clan those who not be presented the higher political position to receive their share of national resource. Somalia's provisional constitution has established a parliamentary system of government, with the president of Somalia as head of state and selects prime minister as head of government. The country has bicameral legislature, which consists of the Senate (upper house) and national assembly of Somalia (lower house). The constitution simply provides a space of the federal system and many of the elements are yet to be filled including FMS, Upper house and lower house division of their powers clearly,, division of powers and functions between federal member state and federal government, division of taxes. Since its adoption in 2012 the federal constitution has made scarcely any contribution to ensuring national institutional building.

The principles of dividing competences between federal and state governments may acknowledge the following criteria or principles, such as subsidiarity, institutional capacity, populations, accountability and transparence, symmetric or asymmetrical, political weight, history, geography or strategic consideration. The subsidiary principle that, the central government should take on powers only when it is necessary to achieve an efficient and effectiveness and when it adds value in comparison to what the governments of the regional/ province, could achieve on their own while accommodative, the principle has proven problematic in practices, include a necessity condition, allowing central unit action only when

sub-units cannot achieve the desired result on their own. Somalia Federal government and Federal member states has to consider the allocation of power and responsibilities based on criteria (Financial capacity/ economic of scale, Political instability, public service delivery, institutional capacity/skills, accountability and transparency as well as self rule) which suitable for federal government, FMS or Local government and for best possible way of division of power and responsibilities.

## **5.2 SYNTHESIS OF THE FINDINGS**

### **What are the proposals in terms of division of powers between the FMS and the federal government?**

Article 54 of Provisional constitution states that, the Allocation of powers and resources shall be negotiated and agreed upon by the federal Government and the Federal Member States (Pending the formation of federal member states) except in the matters concerning: 1-Foreign Affairs, 2-National Defense, 3- Citizenship and Immigration and 4-Monetary Policy, could be the powers and responsibilities of the federal government. Where the Federal government proposed that to the national government exclusive powers in such areas of foreign affairs, defense, Monetary policy, citizenship, Strategy & policy of natural resources, human right, National heritage, census, postal service Custom airport, Physical infrastructure, agriculture, higher and tertiary education, Environment protection, health, un-employment and policy of energy gas and electric, interstate and external trade, while the federal member states should carried out legal power included: health care, primary and secondary education administration, State policies, maintain law and order, Family and child, municipal affairs Clan conflicts, law making, treaty implementation, livestock and environment protection. This refused the federal member states and the come on state proposed to 20 powers will be state matter include: Education, health, environment, more tax responsibilities include custom administration and sitting rate, establishment of state courts, maintaining state militia and police, regional court systems, income security, customs/ exercise taxes, corporate and personal taxes, establishment of local governance ,and consultation of treaties will be matter of states.

**Is there a better option in terms of dividing functions and powers between the federal government and FMS?**

The principles of dividing competences between federal and state governments may acknowledge the following criteria or principles, such as subsidiarity, institutional capacity, populations, accountability and transparency, symmetric or asymmetrical, political weight, history, geography or strategic consideration. For example, economics of scale of performance of duties, demanded areas larger than a local legal power for cost-efficiencies stipulated conditions, for example, defense, public transportation, physical infrastructure. Federal government of Somalia and federal member states can be use the criteria of allocation of power and responsibilities based on Financial capacity/ economic of scale, Political instability, public service delivery, institutional capacity/skills, accountability and transparency as well as self rule and can be based on which is suitable for federal government, FMS or Local government. The economics of scale and institutional capacity of a certain services required areas larger than a local legal power for cost-effectives and efficiencies for example, defense, public transportation, physical infrastructure.

**Which is the basic design of the system ( a list of a federal power, a list State powers, a double list, and other Solutions?) are there any rules or principles that presume the power is vested in a certain sphere of government? Lessons from Other countries.**

The basic design of Australian a list of federal powers with residual power being left to the states, the allocation of residual power to the States has not been very effective because there is no provision that clearly reserves particular subject- matters to State jurisdiction. The consequence has been that the High Court has interpreted the Commonwealth's legislation powers broadly, in a manner that trespasses upon traditional areas of State responsibilities, but the States re not able to prevent such incursions because there is nothing in the constitution that preserved those subject areas of the States alone. Bu the Canadian federal system, the basic design contained in Section 91 and 92 of the constitution Act 1867 is a double list exclusive federal(Sec 91) and provincial (Sec 92) power and responsibilities. In addition Section 93 confers the exclusive power and responsibilities over education to the provinces and a small number of concurrent powers are listed in section 92A (Export from provinces of Natural

Resources). Also the preamble of Section 91, preceding the list of enumerated federal powers and responsibilities, confers on the federal Parliament power over all matters. Also The Brazilian federal Constitution adopts a complex system combining a cooperative model of allocation of powers and responsibilities with a model of enumeration of powers and responsibilities. Federation powers and responsibilities are established in a long and detailed list( Art 21&22), and States have residual powers, but federal constitution also enumerated in Article 25,also Municipalities powers and responsibilities are mentioned Article 30, but, they also have residual power. The Federal constitution mentioned common powers of the federation, States, Federal District and Municipalities too (Article 23&24). In Belgium, communities and regions have their autonomy recognition in radical terms, to avoid conflicts between the federal State, the communities and the Regions, the constitution established a system based on the exclusive of powers, in both the issue level and the geographic level. According to the decision of the Constitution Court, the powers and responsibilities expressly assigned have to be broadly interpreted. The Court states that communities and regions have plenary power over the issue assigned and thus, they can completely regulate the matter.

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