

Public Sector Contracts, Concessions and Procurement Third Report

Summary and Recommendations

- a) This is the third in a series of FGC reports; the First Report was released on January 8, 2015 and the Second Report on October 31, 2015. These reports can be found on the FGC portal of the Ministry of Finance's website at mof.gov.so. Details on all the contracts that have come to the attention of the FGC can be found in the matrix that accompanies this report -- *Contracts and Concessions of Interest to the FGC, as of August 30, 2016*.
- b) As this report describes, the level of cooperation with the FGC by Federal Government of Somalia (FGS) line ministries continues to improve, albeit imperfectly. To date, 27 signed or draft Federal Government contracts and 1 regional contract have been identified; of these, a total of 26 have so far been handed to the FGC for review. The FGC has issued 16 Confidential Assessments (CAs), and another 4 CAs are currently in process. Although the line ministry associated with a particular contract is not obliged to follow the FGC's recommendations, ministries have by and large acted on the advice provided them. The 16 CAs have recommended a variety of improvements, from outright cancellation to allowing a contract to lapse to renegotiation, and in 15 cases out of 16 the action taken by the FGS has been compatible with this advice. Once the FGC review process and the line ministry's response to it is concluded, that particular FGC 'file' can be closed, and both the contract and the Confidential Assessment can be published on the MOF's website. So far, 10 of the 28 contract files have been closed.
- c) While the FGC will continue to carry out Confidential Assessments, increasingly positive FGS reactions to its work will allow the FGC to focus on three additional lines of procurement-related work. These are described below.
- d) The first is **supporting the work of the Interim National Procurement Board** (the INPB, see paragraph 12 ff below). The INPB was established by the Council of Ministers on March 19, 2015 as a transitional body to bridge the institutional gap that exists, and will remain, until the institutions envisaged under the *Public Procurement, Disposal and Concessions Act 2015* find their feet. *Annex 1* sets out the FGC's suggestions, current as of June 25, 2016, on how to ensure that the INPB can manage the transitional process effectively over the coming months.

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- e) The second is to **help build Federal Member States' public procurement capacity**. On January 25, 2016 the FGC held an initial meeting with the Finance Ministers of a number of Federal Member States (FMS) to explain its mandate and its work. It was agreed that this forum should continue to meet on a quarterly basis. The FGC is encouraging FMS to make use of the FGC review process on a voluntary basis¹. At the same time, the FGC has requested an FGS Legal Opinion on the respective roles and obligations of the FGS and FMS in relation to procurement, with a view to discussing this with FMS at a future meeting of the FGC/FMS forum.
- f) The third is to **support the rationalization of inter-governmental fiscal relations**. The FGC will continue to explore how it can help the FGS and the FMS to agree on revenue-sharing arrangements. The Terms of Reference (TORs) of the FGC include offering advice on fiscal federalism, and the need for clear and mutually-beneficial revenue-sharing frameworks is evident from the FGC's work on oil & gas and fisheries contracting. The FGC does not wish to complicate ongoing discussions between the FGS and the FMS, or to supplant facilitation by international partners. The FGC seeks, rather, to play a catalytic role (as it did in 2014 when initiating work on the Use of Country Systems), by offering 'in-time' technical advice to all parties (for example, on successful Federal-regional revenue-sharing formulae in countries with institutional capacities and *de facto* revenue and expenditure assignments comparable to Somalia). A model Production Sharing Agreement (PSA) is nearing completion, and the FGC will need to review the proposed template, as well as any draft PSAs that are subsequently drawn up with oil and gas companies.
- g) The FGC's work on contracts and concessions was always intended to be temporary, serving as a bridge until Federal Government capacity and accountability mechanisms have been established. The lengthy delays in passing the *Public Procurement, Concessions and Disposal Act* and in activating the INPB have prolonged the period in which the FGC needs to continue reviewing contracts and concessions. The mandate of the FGC has been extended up until the end of April 2017, and it is reasonable to anticipate a continuing need for FGC involvement in procurement up to that point.

¹ To date, only Galmudug Region has approached the FGC, asking in September 2014 for FGC views on an oil Production Sharing Agreement contract between Galmudug State/Galmudug Somali Petroleum Corporation and Petro Quest Africa. See also footnote 15.

A. The FGC and Public Procurement

1. The Financial Governance Program and the Financial Governance Committee were established by agreement between the Federal Government of Somalia and the international community in early 2014. The April 23, 2014 TORs of the Financial Governance Program require the FGC to "*provide advice on existing concessions [and] contracts the Federal Government of Somalia has entered into*". At the FGC meeting of May 23, 2014, this remit was extended to include reviewing all *draft* concessions and contracts worth over US\$5 million, until such time as capable new national institutions could take over the review function.
2. The FGC's mandate creates an obligation by the Federal Government to deliver all relevant contracts to the Committee for review, and to take account of the substance of the FGC's reviews. FGC reviews are confidential in nature, and have been carried out by one of the International Financial Institution (IFI) delegates serving on the FGC². This is the third report on FGC contract reviews; the first was dated January 8, 2015, the second October 31, 2015, and both can now be found on the FGC portal of the Somali Ministry of Finance's website at mof.gov.so.
3. To date, 27 *Federal Government* contracts and concessions and 1 *Regional Government*³ concession have come to the FGC's attention⁴; of these, 26 have so far been given to the FGC for review. To date the FGC has provided 16 Confidential Assessments⁵, and CAs of another 4 contracts are currently in process (see *Table 1* below and the attached matrix, *Contracts and Concessions of Interest to the FGC, as of August 30, 2016* for more details).
4. The 28 contracts that the FGC is aware of deal with seismic data acquisition and marketing, oil and gas exploration, fisheries development and licensing, Mogadishu port and airport development, electricity provision, regional ports and port-related infrastructure development, patrol boat construction, import-export quality assurance, security sector food supply, telecommunications and revenue collection.
5. As has been stated by the FGC on many occasions, value for money and

² The reviewer is the World Bank's IFI delegate to the FGC, with technical support from World Bank staff, and in some cases in 2014 from the African Development Bank's African Legal Support Facility (ALSF).

³ The concession agreement between Galmudug State, Galmudug Somali Petroleum Corporation and Petro Quest Africa.

⁴ It should be noted that this list *excludes* the asset recovery agreement between the Central Bank of Somalia and Shulman, Rogers, Gandal, Pordy & Ecker PA, which was reviewed separately in November 2013 by the UNODC/World Bank's Stolen Asset Recovery (StAR) Initiative.

⁵ Supplementary Confidential Assessments (SCAs) -- i.e. follow up analyses -- were also provided in 3 cases.

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transparency are best served through competitive public tendering, other than in exceptional cases (which require clear, documented justification). So far, only 2 of the contracts of which the FGC has become aware responded to a pre-defined scope of services and were tendered competitively. The slow progress towards competitive procurement reflects poorly on all development partners. Parliament took 19 months to pass the *Public Procurement, Concessions and Disposal Act 2015*; the Executive has meanwhile done little to introduce competitive procurement; donors remain hesitant to deploy the kind of on-site technical support needed to support its evolution, even though safe 'third party duty of care' arrangements can be used to field consultants outside Mogadishu International Airport.

Table 1 -- FGC Reviews

| Contracts and Concessions coming to the attention of the FGC -- by order of acquisition | | | | | | | |
|--|--|--|----------------------------|---|--|--------------------------|-------------------------------|
| | Company | Date provided | FGC alerted by whom | Received in draft, or already signed | CA/Supplementary CA/other comments | Ministry response | File closed/web posted |
| 2013 | | | | | | | |
| 1 | AGETCO | Documentation not available | SEMG | | | No action possible | |
| 2014 | | | | | | | |
| 2 | CGG/Robertson | 3/1/14 | FGS | D | CA/SCA | Ongoing | |
| 3 | Soma | 3/2/14 | FGS | S | CA | Complete | Y |
| 4 | Simatech | 3/2/14 | FGS | S | CA | Complete | Y |
| 5 | Favori | 3/2/14 | FGS | S | CA | Renegotiations ongoing | |
| 6 | AMOSC | 4/1/14 | SEMG | S | CA | Complete | Y |
| 7 | Spectrum | 4/14/15 | ALSF | D | CA/SCA | Complete | Y |
| 8 | Albayrak | 4/22/14 | FGS | S | CA/SCA/supp. Comments | Renegotiations ongoing | |
| 9 | FishGuard | 4/29/14 | Donors | S | CA/supp. comments | Complete | Y Submitted for posting |
| 10 | TGS-NOPEC | 7/15/14 | FGS | D | CA | Complete | Y |
| 11 | <i>Petro Quest (Regional concession)</i> | 9/23/14 | FGS | S | <i>Informal comments</i> | <i>Complete</i> | <i>Y</i> |
| 12 | Great Horn | 10/10/14 | SEMG | S | CA | Complete | Awaiting company no objection |
| 13 | Polaris | 11/5/14 | Donors | S | CA | Complete | Y |
| 14 | Modern Technology | 2014 concession, documentation received 2016 | SEMG | S (?) | CA process will be initiated once documentation translated | | |
| 2015 | | | | | | | |
| 16 | Mubadala | 7/10/15 | SEMG | S | CA | Complete | Awaiting company no objection |
| 17 | ADCO | 9/8/15 | SEMG | S | Informal comments | Complete | Y |
| 18 | PGM-Proje | 11/22/15 | FGS | S | CA | Complete | Y |
| 2016 | | | | | | | |

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| | | | | | | | |
|----|------------------------------------|---------------------------|------|-------|--|--------------------------------------|--|
| 19 | Perkins Logistics | 3/21/16 | INPB | S | CA | Revised documentation to be reviewed | |
| 20 | M and T (port scanner) | 3/31/16 | INPB | D | CA | Awaited | |
| 21 | Horn Logistics | 3/31/16 | INPB | S | CA | Revised documentation to be reviewed | |
| 22 | Finsol (payroll tax collection) | 7/30/16 | FGS | D | Tender has been suspended | | |
| 23 | Finsol (nontax revenue collection) | 7/30/16 | FGS | D | Tender has been suspended | | |
| 24 | VBH Holdings | 7/30/16 | INPB | D | CA in process, to be discussed by INPB | | |
| 25 | Smart | 8/03/16 (English version) | SEMG | S | CA in process, to be discussed by INPB | | |
| 26 | Model Oil and Gas PSA | 18/8/16 | FGS | D | CA in process | | |
| 27 | M&T Property Transfer Tax | 30/8/16 | FGS | S | CA in process, to be discussed by INPB | | |
| 28 | Aruba and Bulsho Hotels | Not yet; 2016 concession | FGS | D (?) | | | |

6. As can be seen in *Table 1*, 10 of the 28 drafts and contracts so far identified were brought to the FGC's attention by non-Government interlocutors⁶. While the frequency of these unofficial 'sightings' has diminished significantly since 2014, the Modern Technology Ltd and Smart General Service Limited contracts were brought to the FGC's attention by the Somalia Eritrea Monitoring Group less than three months ago. This leaves the FGC unable to claim with any confidence that it is aware of all draft and signed Federal Government contracts.

7. There is clear reduction, however, in the freelancing which marked the FGS' approach to procurement in the first two years of the FGS' tenure. The change in official attitudes towards this behavior was demonstrated by the reaction to the 'unsanctioned' signing of an import-export quality control concession (with Proje Gözetim Mühendislik) by the Minister of Commerce and Industry on April 28, 2015; this triggered a May 18, 2015 Prime Ministerial Order making it clear that all international agreements must be approved, prior to signature, by the Prime Minister's Office and the Council of Ministers -- or else be considered invalid.

8. Federal Government responsiveness to FGC reviews has improved over the life of the FGC. An FGC Confidential Assessment is an advisory opinion, not an FGC instruction, but the FGC does expect a reaction to its reviews (even if is disagreement with the FGC's

⁶ These were, as indicated in Table 1, the Somalia-Eritrea Monitoring Group (SEMG), the Africa Legal Support Facility (ALSF) and bilateral donors.

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recommendations). This expectation is substantiated by the TORs for the Interim National Procurement Board. These TORs require federal ministries and agencies to provide all draft contracts to the INPB, which must also "share all such draft contracts and concession agreements with the FGC for a Confidential Assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". To this point, no line ministry has provided any written reaction to an FGC Confidential Assessment -- other than in the cases of the CGG/Robertson GeoSpec International and Spectrum ASA agreements, in the form of proposed amendments to the draft contracts. Reactions have generally been elicited by the FGC pestering the concerned ministry until it agrees to meet and discuss the contract. What is more encouraging, though, is that ministries have by and large agreed with the FGC's recommendations, and have acted upon them, even though this has often taken time (either because of a lack of technical capacity, or because of initial resistance from officials associated with the original contract). The 16 CAs have recommended a variety of improvements, from outright cancellation, to allowing a contract to lapse; to renegotiation - - and in 15 cases out of 16, the actions taken by the FGS have been compatible with the FGC's advice⁷. The only instance in which the Government preferred not to follow the FGC's suggestions was in the case of the Soma Oil and Gas Exploration Limited concession.

9. FGC Confidential Assessments have *not* recommend wholesale cancellation of all of the contracts reviewed, even though almost none of them were subject to competitive tender, and under a strict interpretation of mid-Twentieth Century legacy laws are therefore invalid. In view of the ambivalent status of the old legislation and the legal limbo caused by delays in passing the *Public Procurement, Concessions and Disposal Act*, the FGC has taken a pragmatic position on these agreements, looking less at process and more at the value for money to the nation embodied in a particular contract⁸.

10. In its First Report of January 8, 2015, the FGC recommended that all contracts and concessions awarded by the Federal Government should be published on the Ministry of

⁷ It would be claiming to much to suggest that FGS action was always the *result* of FGC advice, though. In the case of the FAVORI LLC Mogadishu International Airport management concession, for example, pressure from Parliament played an important part in forcing the Ministry of Transportation and Aviation to approach FAVORI -- while in the case of the Albayrak Turizm İnşaat Ticaret A.Ş. (CN) Mogadishu Seaport management concession, renegotiations are being driven more by Albayrak's wish to revise the concession's revenue-sharing provisions. In both cases, though, the FGC's advice is providing important guidance for the renegotiation process.

⁸ Legacy legislation also made certain stipulations which -- in the absence of the new Act -- were either redundant or unrealistic (public procurement was covered in the *Financial and Accounting Procedures of the State*, Laws No. 02 of December 29, 1961 and No. 317 of December 17, 1962, as amended by a Decree of the President of the Supreme Revolutionary Council of 23 December 1971; under Article 53 of the Stores Regulations enacted under this amendment, a Minister could only enter into a contract of up to 1,500 Somali Shillings, above which sum he/she needed to proceed through a National Tender Board that no longer functioned).

Finance's website within two weeks of signature. This recommendation was never implemented. The current Chair of the FGC prefers that the FGC review process should conclude before the contract, and alongside it, the Confidential Assessment, is published. This process of 'closing the file' has now taken place in 9 instances, with another 3 expected to conclude shortly. These contract 'packages' can be found on the FGC portal of the Somali Ministry of Finance's website.

B. Towards Regular Procurement: the Procurement Act, the INPB and transitional provisions

11. **The Procurement Act.** The draft *Public Procurement, Concessions and Disposal Act 2015* (the Act) was approved by the Council of Ministers on May 22, 2014, but further progress towards its passage and ratification has been slow. The Act was finally approved by Parliament on December 12, 2015, and has just been signed into law, by HE the President on August 10, 2016. An official English translation of the Act is not yet available.

12. **The Interim National Procurement Board.** In light of the delays in passing the Act, and in order to broaden out and better institutionalize the work of the FGC on procurement, the First Report of January 8, 2015 recommended the creation of an interim public procurement body to bridge the institutional gap that existed, and will remain, until the institutions envisaged under the Act find their feet⁹.

13. Pursuant to this, the Council of Ministers on March 19, 2015 established an Interim National Procurement Board with responsibility for "reviewing and advising on government contracts and concessions; in particular, on whether the contracts serve the best interest of the Somali state and its citizens and whether further renegotiations are required to achieve this objective." The TORs for the INPB established a Board of five, chaired by the Minister of Finance¹⁰. The TORs also recognized that "establishing

⁹ The report stated that "it is unrealistic to try and establish competitive tendering immediately. The norm today is that private companies approach Federal Government ministries and agencies with draft contracts and concessions. Under an interim approach, the ministries/agencies could instead forward these draft contracts and concessions to a special procurement board whose operations would be linked to the review function accorded to the FGC. After board clearance, drafts valued at over US\$5 million would be forwarded to the FGC, which would provide a Confidential Assessment (which might propose further renegotiation). The ministry or agency would then send the draft contract, along with the advice provided by the board/FGC, to the Cabinet for decision. FGC Assessments would subsequently be made public. Any contracts or concessions signed without following this approach would have no validity". Over a year and a half has passed since the January 8 report, though, and the FGC would now argue that it is time to begin introducing competitive tendering -- see paragraph 16.

¹⁰ The four other members are the Minister of Foreign Affairs and Investment Promotion, the Minister of Justice, the Minister of Planning and International Cooperation and whichever minister is responsible for the contract or concession under consideration. The Board is supported by a Technical Advisor for Concessions (non-voting) who also acts as the Board's Secretary.

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competitive tendering processes will be challenging, and in most cases it can be expected that private companies will continue to approach Federal Government ministries and agencies with draft concession proposals". Government ministries and agencies are obliged to provide all draft contracts to the INPB, which must also share these with the FGC for review, as noted in paragraph 8 above. Any contract or concession valued at US\$5 million or over that is signed without following these procedures "will have no legal validity". The TORs make clear the transitional nature of the institution: "The INPB will be gradually transitioned to a fully-fledged Inter-Ministerial Concessions Committee (IMCC) after the *Public Procurement, Disposal and Concessions Act* is passed and enacted by Parliament. Every three months from the establishment of the INBP, the Minister of Finance shall conduct a review of the INPB's work with a view to proposing to the Federal Government how the transition towards the creation of the Public Procurement Authority and the IMCC envisaged in the Act should be managed".

14. The INPB first met, after a long delay, on September 19, 2015, and reviewed its TORs. The Board decided to recommend to the Council of Ministers that the threshold for contracts to be reviewed by the INPB review be lowered from US\$5 million to US\$2 million and to adjust the job of the proposed Concessions Advisor to include helping lay the groundwork for the formation of the IMCC. The INPB has since met three times, but -- as indicated in *Annex 1* -- has yet to make much of an impact.

15. With its Technical Advisor/Secretary now on board, this situation is expected to change. *Annex 1* sets out the FGC's suggestions of June 25, 2016 on how to ensure that the INPB can be vitalized, and can manage the transitional process more effectively over the coming months.

16. In its meeting of August 9th 2016, the INPB agreed to revisit its ToRs once again in line with these proposals, and in light of the recently signed Procurement Act, to ensure their alignment with its legal provisions. The revised ToRs are expected to make a further adjustment to the INPB review thresholds, so that all concessions, irrespective of value, are subjected to INPB review. This adjustment is in line with the Procurement Act.

17. **Introducing competitive procurement.** Both the First Report of January 8, 2015 and the INPB's TORs recognize that potential suppliers will continue to approach the FGS with draft contracts, and that it is unrealistic to switch at once to a fully competitive system in which the Federal Government initiates calls for proposals on the basis of clear terms of reference. Nonetheless, it is important that competition should be introduced whenever *feasible*. This was recognized in the INPB's call for competitive bids for food supplies to the

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security forces, itself mandated by HE the President¹¹; the FGC also stressed this principle in its April 26, 2016 Confidential Assessment of the draft M and T Solutions Limited proposal for providing and operating scanners in Mogadishu Port, stating that "this draft contract should be rejected and then put out to competitive public tender on the basis of a proper scope of work", while observing that "in 2012-14, when certain clear needs had to be met quickly, when FGS capacity to deliver services or manage competitive procurement was limited, and when the *Public Procurement, Concessions and Disposal Act* had not been passed by Parliament, extenuating circumstances existed and the non-competitive award of contracts was more acceptable. This is no longer the case".

18. Federal Member States and the FGC. *Annex 1* also touches on the prospective procurement relationship between the Federal Government and Federal Member States. On January 25, 2016 the FGC held an initial meeting with the Finance Ministers of various FMS to explain its mandate and work program, and it was agreed that this forum should continue to meet on a quarterly basis (with the second meeting now scheduled for August 16, 2016). The legalities of FMS procurement and of the Federal/FMS procurement relationship are somewhat ambiguous, and are not covered under the Procurement Act. The Transitional Constitution states that any exploitation of the country's natural resources by any FMS created after the promulgation of the Transitional Constitution requires consultation with the Federal Government, but this is a requirement that does not cover all procurement situations, or all FMS¹². To this point the FGC has focused on encouraging FMS to avail themselves, on a voluntary basis, of the reviews undertaken by the FGC, while reassuring them that using this service will not set any legal precedents¹³. At the same time, the FGC has requested an FGS Legal Opinion on the respective roles and obligations of the FGS and FMS in procurement, to be discussed with the FMS at a future meeting of the FGC/FMS forum (at its June 14, 2016 meeting the FGC noted with concern that Puntland FMS had signed a concession for Berbera port without substantive

¹¹ The President announced on September 9, 2015 that future food and logistics contracting for security sector institutions will be managed by the INPB: "Further to recent consultations and an internal review of the financial governance of our security sector, the Federal Government today confirmed the following commitments.....All tenders for logistic supplies will be carried out through the Interim Procurement Board" -- Government Press Release entitled *The President: We are Committed to Substantive Security Sector Reform*.

¹² Article 44 of the Provisional Constitution of the Federal Republic of Somalia ("Natural Resources"): "The allocation of the natural resources of the Federal Republic of Somalia shall be negotiated by, and agreed upon, by the Federal Government and the Federal Member States in accordance with this Constitution". Article 142: "Federal Member States existing prior to the provisional adoption of this Provisional Constitution by a National Constituent Assembly shall retain and exercise powers endowed by their own State Constitution".

¹³ Subsequent to the January 25, 2016 meeting, the Galmudug Petroleum and Minerals Agency approached USAID to request an FGC review of a new draft oil prospecting contract with Petro Quest Africa (an earlier version of this contract was submitted to the FGC in 2014, but became redundant when the political construction and borders of the Galmudug FMS were changed in 2015 -- see paragraph 3). As yet, though, the FGC has not received a copy of the new draft.

consultation, resolving to offer an FGC review to the Government of Somaliland in order to "help Somaliland get the best possible deal that it can").

19. Supporting the rationalization of inter-governmental fiscal relations. The FGC will continue to explore how it can help the FGS and the FMS to agree on revenue-sharing arrangements. The Terms of Reference (TORs) of the FGC include offering advice on fiscal federalism, and the need for clear and mutually-beneficial revenue-sharing frameworks is evident from the FGC's work on oil & gas and fisheries contracting¹⁴. The FGC does not wish to complicate ongoing discussions between the FGS and the FMS, or to supplant facilitation by international partners. The FGC seeks, rather, to play a catalytic role (as it did in 2014 when initiating work on the Use of Country Systems), by offering 'in-time' technical advice to all parties (for example, on successful Federal-regional revenue-sharing formulae in countries with institutional capacities and *de facto* revenue and expenditure assignments comparable to Somalia). A model Production Sharing Agreement (PSA) is nearing completion, and the FGC will need to review the proposed template, as well as any draft PSAs that are subsequently drawn up with oil and gas companies.

¹⁴ The First and Second FGC *Reports on Public Sector Contracts, Concessions and Procurement* dealt with this issue in some detail. In relation to oil and gas, the Second Report observed that "it is a fact of history that violent conflict can erupt in fragile environments where petroleum resource rights and income sharing arrangements are in dispute. In a situation in which no Federal/Regional legal or fiscal regime for resource sharing yet exists and where there are legal ambiguities alongside mutual suspicion between the Federal Government and some Regional Governments, there is a danger of pre-emptive -- or defensive -- action by one or other party. A foretaste of potential trouble can be seen in the apparent 'tit-for-tat' awards of seismic data acquisition and marketing contracts by Puntland and then the Federal Government in September 2015. On September 1, 2015 the Puntland Regional Government announced that it had concluded a geophysical data acquisition contract the ION Geophysical Corporation of Houston, Texas; this was followed on September 5 by the accelerated signature of a seismic data acquisition and brokerage contract between the Federal Government and Spectrum ASA of Norway". In relation to fisheries, the Second Report states that "Despite the stipulations in the 2014 Fisheries Law and the April 6, 2014 Beau Vallon Communiqué that revenues must be shared between the Federal and Regional governments, there is currently no operative agreement on the issuance of licenses or the sharing of license revenues, nor any evidence that revenue from the licenses sold by the Ministry has been paid to the Regions (or indeed into the Federal Government's Single Treasury Account). Puntland, moreover, has also been issuing its own fishing licenses. FAO estimates that the country as a whole should be able to earn in excess of US\$10 million per annum in fishing licenses without compromising the sustainability of Indian Ocean tuna stocks; this compares with an estimated maximum of US\$2 million earned by all parties so far this year. Attracting the more credible EU and global fishing fleets will require a revenue-sharing agreement to which Federal and Regional political leaders commit themselves".

The Somalia Financial Governance Committee

The Public Procurement, Disposal and Concessions Act and the transitional roles of the Interim National Procurement Board and the FGC

June 25, 2016

A. Background

The FGC and public procurement

The FGC was established in early 2014, and was charged by the Federal Government of Somalia (FGS) with reviewing all contracts and concessions signed by the FGS valued at US\$5 million or above, as well as with reviewing any draft agreements meeting this criterion.

The FGC has been informed of 22 such contracts, and has received copies of 17 of these. It has prepared 16 Confidential Assessments (CAs), 3 Supplementary Confidential Assessments and 3 Notes to Files/Informal Commentaries on these agreements. The FGC does not require FGS signatories to follow its advice; it does, however, expect signatories to respond, and to explain their rationale if they decide not to accept the FGC's advice. Responsiveness of this kind has been slow to emerge, but with the exception of one ministry, which received its first FGC CAs in May 2016¹⁵, all FGS signatories have by now communicated with the FGC on the agreements reviewed.

On March 8, 2016, by mutual agreement between the FGS and the Somalia Donors Group, the FGC's mandate was renewed until the end of April 2017. The TORs for the FGC are unchanged; thus the FGC will continue to review FGS contracts and concessions valued at US\$5 million or above for another 9 months.

The Interim National Procurement Board (INPB)

In order to broaden out the ownership of its work, and in view of delays in passing the *Public Procurement, Disposal and Concessions Act* (the Act), the FGC recommended in January 2015¹⁶ that an interim FGS advisory body be created to review new contracts and concessions. On March 19, 2015 the Council of Ministers established the Interim National Procurement Board (INPB), with responsibility for “reviewing and advising on government contracts and concessions; in particular, on whether the contracts serve in best interest of the Somali state and its citizens and whether further renegotiations are required to achieve this objective.” The TORs for the INPB (see *Attachment*) require a Board of five, chaired by the Minister of Finance (the four other members are the Minister of Foreign Affairs, the

¹⁵ The Ministry of Internal Security, in relation to the Confidential Assessments of the Perkins Logistics and Horn Logistics contracts delivered in May 4, 2016.

¹⁶ See *FGC Reviews of Public Sector Contract and Concessions*, FGC, January 8, 2015.

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Minister of Justice, the Minister of Planning & International Cooperation, and whichever minister is responsible for the agreement under consideration). The Board's composition sought to prefigure that of the Inter-Ministerial Concessions Committee to be created under the Act (but see below). The Board is to be supported by an internationally-recruited Technical Advisor for Concessions (non-voting), who also acts as the Board's Secretary.

The INPB's TORs recognize that "establishing competitive tendering processes will be challenging, and in most cases it can be expected that private companies will continue to approach Federal Government ministries and agencies with draft concession proposals". Government ministries and agencies are obliged to provide all draft contracts above the established threshold (currently US\$2 million) to the INPB, which will "share all such draft contracts and concession agreements with the FGC for a Confidential Assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". Any contract or concession signed without following these procedures "will have no legal validity".

In addition to this review function, the INPB is responsible for making an inventory of "all contracts and concessions that have been entered into by the Federal Government", for identifying any new contracts and concessions and ensuring they are passed to the FGC, for monitoring "the implementation of all relevant contracts and concessions signed by Federal Government officials" and for ensuring publication of award decisions and contracts on a dedicated website "within two weeks of their signature".

With respect to contracts and concessions signed by Federal Member States, the TORs indicate that the INPB "will liaise with Regional Governments [and] will inventory all contracts valued at US\$1 million or equivalent and above, and all concessions entered into by Regional Governments, and will track their implementation".

On September 9, 2015 His Excellency President Hassan Sheikh Mohamoud announced that future food and logistics contracting for security sector institutions would be managed by the INPB¹⁷.

The INPB is a transitional body designed to bridge the gap between today and a future in which the procurement institutions envisaged under the new Procurement Act are up and running. Thus the INPB's TORs state that the INPB "will be gradually transitioned to a fully-fledged Inter-Ministerial Concessions Committee (IMCC) after the *Public Procurement, Disposal and Concessions Act* is passed and enacted by Parliament. Every three months from the establishment of the INPB, the Minister of Finance shall conduct a review of the INPB's work with a view to proposing to the Federal Government how the transition towards the creation of the Public Procurement Authority and the IMCC envisaged in the Act should be managed".

¹⁷ "Further to recent consultations and an internal review of the financial governance of our security sector, the Federal Government today confirmed the following commitments.....All tenders for logistic supplies will be carried out through the Interim Procurement Board" -- Government Press Release entitled *The President: We are Committed to Substantive Security Sector Reform*.

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The INPB has not been particularly effective so far. Its first meeting took place only six months after its creation, on September 19, 2015; it has met only twice since then. The Minister of Foreign Affairs has so far not attended any INPB meetings.

Nor have FGS ministries complied with the Council of Ministers' Decision of March 19, 2015, or the President's announcement of September 9, 2015. Since March 2015, FGS ministries have signed at least 4 contracts/concessions that ought to have been reviewed in draft both by the INPB and the FGC, but were not provided to either until after signature¹⁸.

- The first of these, between PGM Proje and the Ministry of Commerce and Industry for import-export quality control services, was signed on April 28, 2015. It took five months for the Ministry of Finance to be given a copy of the contract by the Ministry of Commerce, despite several requests. The agreement was reviewed both by the MOF's legal expert¹⁹ (on behalf of the INPB) and by the FGC. These reviews led to renegotiations, and ultimately to a satisfactory contract.
- The second, between Smart General Service Ltd. and the Ministry of Finance for the collection of road tax, was signed on September 20, 2015. This concession came to light only recently, and will be reviewed by the FGC once an English translation is available.
- The third and fourth, between Perkins Logistics and Horn Logistics and the Ministry of Internal Security (MOIS), for the supply of food to the Somali National Police and the National Intelligence & Security Agency respectively, were signed on November 26, 2015. The contracts were bid competitively, in accordance with the INPB's instructions -- but were then signed without MOIS asking for an INPB or FGC review of the drafts. The signed contracts were later reviewed by the MOF (on behalf of the INPB) and by the FGC, with both recommending renegotiation. A response to these reviews is awaited.

In contrast, a fifth contract was correctly submitted to the MOF and the FGC in draft form (between M & T Solutions Limited and the Ministry of Internal Security, for scanning services at Mogadishu Port, dated December 7, 2015). Both the MOF and the FGC agreed that the agreement was flawed and required extensive revision. The FGC went further, however, and argued in its Confidential Assessment of April 26, 2016 that "this draft contract should be rejected and then put out to competitive public tender on the basis of a proper scope of work", prefacing this by observing that "in 2012-14, when certain clear needs had to be met quickly, when FGS capacity to deliver services or manage competitive procurement was limited, and when the *Public Procurement, Concessions and Disposal Act* had not been passed by Parliament, extenuating circumstances existed and the non-competitive award of contracts was more acceptable. This is no longer the case".

MOF's legal adviser, working on behalf of the INPB, produced excellent opinions that the FGC was able to complement and support. It should be noted, though, that the

¹⁸ "At least" in the sense that the FGC cannot be sure whether or not other contracts have also been signed.

¹⁹ Funded by the Africa Legal Support Facility, ALSF.

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INPB *itself* did not carry out this work. As pointed out in the minutes of the January 12, 2016 INPB meeting, "members of the INPB underscored lack of its own capacity, legal as well as technical, to effectively review contracts/concessions....not much progress was made in addressing outstanding concessions/contracts already reviewed by FGC due to lack of technical and legal support...it was resolved, in the interim, for the INPB to use the services of the Solicitor General and ALSF-funded lawyer with Ministry of Finance for reviewing contracts on behalf of INPB".

The INPB has not so far made an inventory of contracts, monitored contract implementation, or established a website on which awards and contracts can be made available to the public.

The INPB's somewhat disappointing record is largely explained by two factors. The first is that several FGS ministries have chosen to ignore its mandate. The second is the lack of a dedicated Secretariat. This in turn is due to delays in agreeing a TOR for the international Concessions Adviser, and even longer delays in that person's recruitment by the World Bank. An Adviser has now been recruited, and a national counterpart is under recruitment.

The Public Procurement, Disposal and Concessions Act 2015

The draft Act was approved by the Council of Ministers on May 22, 2014, and by Parliament, with certain amendments, in a third and final Reading on December 12, 2015. It has not yet been signed into law by HE the President.

The Act provides for the creation of a decentralized procurement system, in which a *Public Procurement Authority* (PPA) will be established to monitor and oversee compliance with the Act by 'Procuring Entities' -- i.e. any public institution given a budget with which to procure goods or services. The PPA will be managed by a Board consisting of 9 persons, appointed by the President on the advice of the Council of Ministers: a Chair "who shall not be in the public service", 4 public officials and 4 private sector appointees. The Board will be served by a Secretariat headed by a Director, who will also manage the PPA. In addition, an *Independent Procurement Review Panel* (IPRP) will be set up to investigate complaints and appeals from bidders. The IPRP will have 5 members, to be appointed by the Minister of Finance: 3 "from among nominees of professional, trade, or civil society organizations", and 2 selected from the private sector.

The Act also creates an *Inter-Ministerial Concessions Committee* (IMCC). According to Article 116 of the English translation²⁰, the IMCC will comprise seven ex-officio members. Implicitly, five of these are permanent members, and two will vary depending on the concession under consideration. The IMCC Chair is the "Accounting Officer" of the Ministry

²⁰ The English version is dated November 23, 2015, and precedes the final version approved (with certain changes) by Parliament.

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of Finance²¹; the other permanent members are the Accounting Officers of the Ministry of Justice, the Ministry of Planning & International Coordination, the Ministry of Federal Affairs²² and the Attorney General; in addition, two other Accounting Officers will be appointed by the Council of Ministers to represent the interest of other relevant sectors; they may *not* include the "Minister responsible for the sector". The non-member Secretary of the IMCC is the Director of the Concessions Technical Unit (CTU) that will be established in the Ministry of Finance and will serve as the IMCC's technical arm. It should be noted that this composition is somewhat different from the draft, and thereby from the current composition of the INPB.

The IMCC and the CTU will review and approve concession bid documents prior to bid invitation, review evaluation reports to ensure proper procedure has been followed, evaluate bids, constitute negotiation teams, and approve negotiations benchmarks and the award of concessions. The CTU also oversees the management of concessions. The Minister of Finance, it should be noted, is charged with developing an annual concessions plan and with issuing a Certificate for Concession, without which a Procuring Entity cannot solicit a concession.

The IMCC must also ensure that regulations are issued that will bring the procedures for issuing any oil/gas or mineral concessions (for prospecting, reconnaissance and/or exploitation) in line with the Act. These regulations are to be issued within 180 days of the Act coming into force²³.

B. Proposed Transitional Arrangements

Timeframe and authority

It is unclear when the Act will come into force, or how long it will take for the key institutions to become functional. At the INPB meeting of January 12, 2016 "it was resolved that the Chair [of the INPB] propose to the Federal Government how the transition towards the creation of the Public Procurement Authority and the Inter-Ministerial Concessions Committee envisaged in the Act should be managed". This paper has been written in conformity with the INPB's resolution.

²¹ An "Accounting Officer" is defined in the English version of the Act as "the person appointed as the Chief Executive Officer of a Procuring Entity." The definition creates ambiguity over whether this person is the Minister or the senior civil servant in a ministry, but the language of Article 116, Clause 3 (e) suggests that the term is meant to denote a Minister: to wit, "Two other Accounting Officers appointed by the Council of Ministers representing the collective interests of various sectors the economy (sic) connected with the concession other than the Minister responsible for the sector." The final Somali version of the Act is expected to clarify that the Minister is intended, though it has been pointed out that the meaning of the term "Accounting Officer" will need to be similarly defined in the PFM Act (which is still in draft form).

²² This is apparently an error of translation, and should be the "Minister of Foreign Affairs", in his capacity as chairperson of the National Investment Commission.

²³ Under this same Article 160, it is stipulated that the Public Procurement Authority must ensure that "the issue of any license for prospecting, reconnaissance and exploitation shall be done in competitive manner and without the grant of a monopoly to any party."

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Article 177 of the Act stipulates that it will come into force not later than 12 months after signature by the President, or gazetting by the Minister of Finance, "whichever is earlier"²⁴. This provides the legal space for the INPB and the FGC to function after the Act is signed.

It is reasonable to assume that it will take up to a year for the institutions created under the Act to become operational; it is therefore proposed that a strengthened and empowered INPB, supported by the FGC²⁵, should oversee public procurement until the Act comes into force. At that point all procurement-related functions would be handed over to the Public Procurement Authority, the Inter-Ministerial Concessions Committee and the other entities created under the Act.

For an effective transition of this kind to take place, a number of steps are required. They are listed below.

Recommended actions

1. **Increasing the authority of the INPB.** Currently the INPB is responsible for "reviewing and advising on government contracts and concessions". It now needs to be given oversight authorities similar to those accorded to the PPA and the IMCC under the Act. This will require an amendment to the INPB's TORs, and a directive from the Council of Ministers to replace the directive of March 19, 2015. This new directive should, *inter alia*, specify whether the INPB will hand over authority for *non*-concessions procurement before the end of the transition period (once the Public Procurement Authority and the first Procurement Committees and Procurement Units have come into being)²⁶. Target date for a revision of the INPB's TORs: August 15, 2016 (INPB focal point: INPB Chair and Minister of Finance, with assistance from the Concessions Adviser). Target date for the new directive: August 31, 2016 (INPB focal point: INPB Chair and Minister of Finance).
2. **Improving the functionality of the INPB.** The following actions are recommended:
 - The INPB should meet regularly from July 2016 onwards, now that the Adviser has been recruited; summary minutes of these meetings should be made public on the MOF's website. Target date for next meeting: late July 2015 (INPB focal point: INPB Chair and Minister of Finance)
 - The composition of the INPB should be adjusted to better mirror that of the IMCC. Target date for inclusion in INPB's revised TORs : August 14, 2016 (INPB focal point: INPB Chair and Minister of Finance)

²⁴ The gazetting requires completion of a number of tasks, including appointment of the Board of the Public Procurement Authority and its Director, appointment of the members of the Independent Procurement Review Panel and the establishment of Procurement Committees and Procurement Units in at least 12 Procuring Entities.

²⁵ The FGC's current mandate runs through April 2017.

²⁶ It should also specify that contracts redrafted under the advice of the FGC/INPB need to be reviewed again prior to signature; this point has not been clearly understood by all ministries.

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- The recruitment of a national counterpart to the Concessions Adviser should commence without delay. Until such time as this post can be filled, MOF should depute its legal expert to work with the Concessions Adviser. Target date to complete recruitment: August 31, 2015 (FGC focal point: Mariam Mohamed)
- 3-monthly reviews of INPB progress and of the transition towards the IMCC should be initiated, as per the INPB's TORs. Target date for the first such review: October 31, 2016 (INPB focal point: INPB Chair and Minister of Finance)
- The legal relationship between the INPB (and in future, the IMCC) and the Regional States should be clarified. An FGS Legal Opinion on the respective roles and obligations of the FGS and Federal States in procurement, as provided for under the Provisional Constitution and the Procurement Act, should be prepared and discussed with the Regional States by the FGC in one of its quarterly meetings with Regional Finance Ministers. Target date for the Legal Opinion: October 31, 2016 (FGC focal point: Solicitor General)

3. Specific INPB tasks for 2016/2017. The following are suggested:

- Working with the FGC, the INPB should quickly compile an inventory of all ongoing or proposed contracts that require INPB review²⁷, and should schedule INPB discussions of these reviews, along with the FGC's Confidential Assessments where these are also required. Target date for inventory and schedule: July 2016 INPB meeting (INPB focal point: Concessions Adviser)
- Article 15 of the Act requires the Minister of Finance, on the advice of the Public Procurement Authority, to issue implementing Regulations. The INPB should review the sections of the Act pertaining to concessions management, and should seek to provide input into the process of developing these Regulations (through the PPA if it has been created by then). Target date: September 30, 2016 (INPB Focal point: Concessions Adviser)
- The *Roadmap for Implementation of the Procurement Act* drafted by the World Bank spells out a program of capacity building support for procurement personnel and for the new institutions created by the Act. The INPB should determine how the the INPB and the FGC can best support this Roadmap²⁸. Target date: September 30, 2016 (INPB focal point: Concessions Adviser)

²⁷ At the present time, and to the FGC's knowledge, these are a) the revised FAVORI and Albayrak concession contracts that will emerge from the ongoing negotiations processes; b) the Smart General Service Ltd. concession; c) in the security sector, (i) the revised Perkins Logistics and Horn Logistics contracts; (ii) additional food contracts that will be needed to cater to the Somali National Army and the Custodial Corps; (ii) fuel and other 'logistics' supply contracts for the various security services; d) a revised bidding process to provide the services offered by M&T Solutions Limited; e) the concessions under consideration for the reconstruction of the Aruba and Bulsho hotels in Mogadishu (reported in the INPB's minutes of January 12, 2016); f) two prominent contracts signed by Regional Member States: the Berbera Port concession (Somaliland), and the ION Geophysical Corporation (Puntland) and g) a proposed contract between the Galmudug Petroleum and Minerals Agency (GPMA) and Petro Quest Africa, which it is understood that GPMA will submit to the FGC for review.

²⁸ The minutes of the January 12, 2016 INPB meeting state that the INPB "reviewed and adopted the *Roadmap for Implementation of the Procurement Act* drafted by the World Bank".

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- The INPB's TORs require that it inventory all Regional concessions, and all contracts valued at US\$1 million or above, and track their implementation. The Regional States should be informed of this, and the work then initiated. The results of the work would then be discussed in the FGC's quarterly meetings with Regional Finance Ministers. Target date for initial notification: September 30, 2016 (INPB focal point: INPB Chair and Minister of Finance)

4. **Clarifying the role of the FGC through April 2017.** The main procurement-related role of the FGC during this transition will be to support the work of the INPB, and to facilitate the emergence of the Public Procurement Authority, the IMCC and other key bodies envisaged under the Act. No change in the FGC's TORs is required. In addition,

- The World Bank FGC delegate should work with the INPB to wrap up all ongoing reviews of contracts and concessions, as well as obtain and undertake reviews of known or suspected contracts that have not so far been shared with the FGC; these are listed in footnote 38. The FGC is also responsible for reviewing FGS contracts known to have been signed *before* the INPB was established in March, 2015²⁹. Target date for completion of work on all known contracts: October 31, 2016 (FGC focal point: World Bank delegate).
- The posting of contracts and concessions reviewed by the FGC, along with the FGC's Confidential Assessments, will shortly begin on the FGC's web portal on the MOF website; the contracts/concessions will have been vetted by the Solicitor General for commercial confidentiality purposes, and if necessary redacted or summarized; the CAs will have been suitably redacted by the World Bank delegate. These postings mean that the INPB does not need to re-post the same material: INPB reviews can be posted alongside the relevant FGC Confidential Assessment. Target date for posting the first batch of 14 agreements/CAs: June 30, 2016, with the remainder to be issued as each 'file' is closed (FGC focal point: World Bank delegate).

Saman Mohamed Dahir, MP and Chair of the Parliamentary Committee on Finance and Planning and FGC Member

Osman Guled, Solicitor General of Somalia and FGC Member

Nigel Roberts, FGC World Bank delegate and FGC Member

²⁹ These include the Ministry of Defence contracts with AMO Shipping Company Ltd. and the Atlantic Offshore Marine Group; the security-related food and 'logistics' supply contracts given to AGETCO and others prior to 2015; the CGG Data Services AG/Robertson Geospec International concession; and the Modern Technology Ltd. contract.

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Contracts and Concessions of Interest to the FGC

Organized by Ministry

Updated as of August 30, 2016

Green: file closed

Light blue: only redactions and web postings are required to close the file

Purple: work remains to be done by the ministry, the company or the FGC

Red indicates serious non-cooperation by Federal Government ministries

| Contract (CT) Concession (CN) | Date signed/by whom, inc. Fed (F) Region (R) | Sent to FGC for review | Confidential Assessment delivered | Status of the Government's response | Next steps | Contract to Solicitor General for review for potential commercial liability | Contract and CA published on the FGC website |
|---|--|-----------------------------------|---|---|--|--|---|
| Sector/service provided | If supplied as a draft, so indicated | | | | | | |
| Central Bank of Somalia | | | | | | | |
| Shulman, Rogers, Gandal, Pordy & Ecker PA (SR) (CN) National frozen assets recovery agreement | Engagement Letter of July 12, 2013, worldwide Power of Attorney of July 15, 2013 Governor of Central Bank of Somalia (CBS) F | | No Confidential Assessment. This engagement was reviewed in November 2013 by the UN Office of Drugs and Crime/ World Bank Stolen Asset Recovery (StAR) Initiative | The CBS Governor revoked SR's worldwide Power of Attorney on May 13, 2014 and cancelled the Engagement Letter on July 14, 2014. Subsequent efforts have focused on retrieving client files and information on accounts and on winding up residual financial details. CBS engaged the DC law firm Kobre and Kim to assist. The CBS Governor sent letters to SR on July 14 and September 17, 2014 requesting return of the files. SR indicated a wish to deliver them in person to HE the President, and a meeting with SR took place in Istanbul on April 22, 2015 involving the President and the Minster of Finance. The President made it clear that the point of contact for future discussion should be the Minister of Finance. No files were returned, and it may be presumed that SR wishes to resolve all outstanding financial matters prior to, or in tandem with handing them over. On July 5, 2015 the Minister of Finance informed SR that until the FGS is able to examine the client files, the FGS possesses no basis for reviewing any claims by SR for further payment. | No recent interaction with SR. After review by the the State Solicitor General (the SSG is member of the FGC), the contracts and correspondence were ready to be published on the FGC website. | Agreement, Power of Attorney, revocations of both sent to SSG on May 25, 2016. | August 2, 2016 |
| Ministry of Petroleum and Mineral Resources | | | | | | | |
| CGG Data Services AG/Robertson GeoSpec International Ltd. (CN) Collation, | Draft of February 26, 2014 Minster of Petroleum and Mineral Resources F | March 1, 2014 May 16, 2015 | March 8, 2014 Supplementary June 23, 2015 | An initial Confidential Assessment (CA) was completed in March, 2014, and the CCG contract was again reviewed alongside the TGS- NOPEC draft on September 6, 2014. These comments were passed onto the Council of Ministers but were not fully embodied in the first revised draft. A Supplementary CA of a second revision of the contract was carried out on June 23, 2015. The amendments proposed in the original CA | The final version of the agreement should be sent to the FC for review before being sent to the Council of Ministers for approval prior to | | |

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| <p>analysis and marketing to oil exploration companies of data on Somalia's petroleum deposits; rebuilding of Somalia's national petroleum database and associated training</p> | | | | <p>of March 8, 2014 were substantially addressed in this draft. Some residual issues remained, principally the need to define the exclusivity period (it was 10 years in the original, and the CA had recommended this be reduced to a maximum of 5-7 years).</p> <p>A further set of changes were reviewed by the FGS on September 23. The exclusivity period has been set at 8 years. Two further amendments have been proposed by the FGC, and these have reportedly been incorporated into the final version.</p> <p>A discussion on March 8, 2016 resolved a conundrum about a clause pertaining to the FGC's financial rules.</p> <p>It is unclear to the FGC why agreement on the final version of the contract has been delayed so long. Attempts to elicit an explanation from the Ministry have not been fruitful.</p> | <p>signature. At that point it should be reviewed by the SSG for confidentiality, and subsequently published on the FGC website; a redacted version of the Confidential Assessment and Supplementary CA should also be published there.</p> | | |
| <p>Soma Oil and Gas Exploration Limited (CN)</p> <p>Seismic surveying and oil and gas production in areas not the subject to prior grants of petroleum rights; after delivering the survey results, Soma has a year of exclusivity to negotiate Production Sharing Agreements (PSAs) with the Federal Government in 12 offshore blocks of "potential prospectivity" of</p> | <p>August 6, 2013</p> <p>Minister of Natural Resources F</p> | <p>March 2, 2014</p> | <p>April 23, 2014</p> <p>The draft PSA cited by Bloomberg has been seen by the FGC. It is an amended, unsigned version of the PSA draft originally annexed to the signed Soma contract. It is not clear when the amendments were made, though the Somalia Eritrea Monitoring Group report on Soma suggests that it was sent to the Ministry by Soma in December 2014.</p> | <p>The CA recommended an amicable process of renegotiation of some of the contract's more troublesome clauses should be initiated by the FGS (e.g. by the Somali Petroleum Corporation taking an increased share in the PSAs, and in the provisions made for local community development).</p> <p>On May 29, 2015 Bloomberg reported on the terms of "A draft production-sharing agreement, obtained by Bloomberg from an official close to the negotiations" which adjusted the original draft PSA attached to the agreement of August 6, 2013 and awarded Soma 90% of the earnings from the PSA.</p> <p>The Ministry of Petroleum on May 31, 2015 denied the existence of any such new draft in a Press Release, stating: "Somalia is not accepting PSA deals at the moment. When the fiscal terms design is over, Somalia will invite companies to come forward with their PSAs. The article, of Ilya Gridneff of Bloomberg talks of a draft deal but Somalia did not receive any draft deal nor it is accepting proposals for PSAs now."</p> <p>AfDB's Africa Legal Support Facility (ALSF) and the World Bank are currently assisting the Ministry of Petroleum to draft a model PSA for the sector.</p> <p>On August 3, 2015 the Somalia Eritrea Monitoring Group released a report on the Capacity Building Agreement signed with Soma by the Minister of Petroleum on April 27, 2014. The SEMG report describes</p> | <p>Following review by the the State Solicitor General, the contract was ready to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | <p>June 30, 2016</p> | <p>August 2, 2016</p> |

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| <p>its own choosing, up to a total of 60,000 km sq. (declared to be the maximum permissible under the Petroleum Law of 2008). The PSAs thus negotiated would remain in force for 8 years; should a "commercial discovery" be made, up to 25 years of exploitation would be permitted following agreement on a detailed development plan.</p> | | | | <p>how 'capacity building' in this case amounted largely to the payment of monthly stipends to serving staff of the Ministry, and alleges that this set up a conflict of interest and was likely part of a 'quid pro quo' designed to protect the Soma contract, not least from the FGC. The FGC was not aware of the existence of the Capacity Building Agreement prior to publication of the SEMG report.</p> <p>On August 13 the Ministry of Petroleum denied any wrongdoing in interviews with journalists. The Prime Minister subsequently created an investigatory committee consisting of Federal Government officials from outside the Ministry to investigate whether any laws or regulations had been transgressed, and to recommend remedies if they had. The committee was chaired by the Prime Minister's Senior Policy Adviser and FGC Member Osman Yusuf. The committee's report concluded that:</p> <p>"The Committee saw no evidence that the Ministry and the company reached a deal on a 'quid pro quo' basis as claimed by SEMG, in view of the fact it is a common practice for the extractive industry to provide such an arrangement to emerging countries. It is normal for emerging countries employees to receive allowances and, in special instances, salaries from exploration companies as Soma did in the case of Somalia.</p> <p>The Committee has thoroughly examined this issue and found that the Ministry acted in good faith by requesting the capacity building arrangement and that no special interests were involved favoring Soma. The only purpose of the Ministry's request, as we were told, was to provide incentives to the employees and experts and, for some of the employees, supplementing their meager government salaries".</p> <p>Nonetheless, the report concludes by stating that "the Ministry must make sure that such mismanagement never be repeated as money intended for capacity building was used to pay for running costs without prior information and approval from Soma. The Committee recommends that the Ministry should take disciplinary measures against those involved and restructure its accounting and finance services".</p> <p>To date, no disciplinary action has taken place.</p> <p>Finally, after many requests, the Ministry provided the FGC on February 20, 2016 with responses to the April 23, 2014 Confidential Assessment. The Ministry made it clear that it did not intend to renegotiate the</p> | | | |
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| | | | | <p>Soma contract. The Ministry's response, though, contains the following important commitments:</p> <p>"In collaboration with the World Bank, the Federal Government is working with the Federal Member States to develop a shared vision on Somali petroleum sector development. The ultimate objective of this initiative is to find durable solutions for ownership, control and revenue sharing agreement between the Federal Government and Federal State Members. Until this agreement is finalized between the Federal Member States and the Federal Government, no PSA will be granted. The entire data gathered by Soma Oil and Gas is now stored at the Data Room of the Ministry of Petroleum and Mineral Resources. The derivative of the data is with Spectrum with whom we have an agreement to broker and market data to interested companies. The Somali Government is currently not in a position to grant any award to any company, including Soma, until certain conditions are met. The strings attached to awarding blocks include revising and amending the Petroleum Law 2008 of Somalia, and Production Sharing Agreement model and fiscal terms need to be developed. The World Bank and African Development (which has hired IMMMA Associates) are assisting us in developing these documents, which are prerequisites to awarding PSAs. Regarding Soma serving a Notice of Application for any portion of the Evaluation Area, our final version of PSA will define the terms of agreement in relation to the required timeframe for starting and ending such an operation. The new PSA will set out the Government participation percentage and that percentage will be carried out by the Somali Petroleum Corporation (state owned). The new PSA will also discuss the entirety of the process of providing community development obligations".</p> | | | |
| <p>TGS-NOPEC Geophysical Company ASA (CN)</p> <p>Acquisition and processing of geophysical data and its promotion, marketing and</p> | <p>Draft May 30, 2014</p> <p>Federal Government (ministry not specified) F</p> | <p>July 15, 2014</p> | <p>September 6, 2015</p> | <p>The CA recommended that the CGG/Robertson contract (see above) was superior, and that the two contracts were incompatible because they overlapped with respect to services to be provided and geographical coverage. In addition, it was felt that the draft CGG/Robertson agreement offered superior terms on revenue sharing, data ownership and the length of the exclusivity – while also providing for the rebuilding of Somalia's national petroleum database and associated training.</p> <p>The Ministry indicated to the FGC that it did not wish to pursue this contract.</p> | <p>The Ministry informed TGS-NOPEC on October 7, 2015, of its decision not to pursue this agreement, using a draft letter provided by the FGC. TGS-NOPEC acknowledged</p> | <p>June 30, 2016</p> | <p>August 2, 2016</p> |

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| <p>licensing to oil exploration companies and other parties; the contract was initiated by Galmudug Region, and related to the collection and marketing of oil and gas data in that region.</p> | | | | | <p>this letter. This information was provided to the FGC only on January 23, 2016.</p> <p>The contract could then be reviewed by the SSG for confidentiality, and subsequently published on the FGC website, and a redacted version of the Confidential Assessment and Supplementary CA also published there.</p> | | |
| <p>Spectrum ASA (CN)</p> <p>Collation, analysis and marketing of data on Somalia's petroleum deposits</p> | <p>Draft September 4, 2015</p> <p>Ministry of Petroleum and Mineral Resources F</p> | <p>April 14, 2015</p> | <p>July 3, 2015</p> <p>Supplementary July 15, 2015</p> | <p>After a rocky start and up until the last hurdle, this contract offers an example of how the FGS and the FGC can cooperate effectively.</p> <p>A draft agreement between the then Minister of Petroleum and Mineral Resources and Spectrum ASA (Spectrum) of Norway, drawn up in October 2014, was brought to the FGC's attention by the Africa Legal Support Facility in mid-November, 2014, but was not forwarded for FGC review by the Ministry at that time. Nonetheless, after its meeting of April 12, 2015 the FGC decided to review it.</p> <p>The Ministry responded to the CA on July 11, 2015, providing key clarifications and taking account of most of the recommendations of the Assessment. A Supplementary Confidential Assessment was sent on July 15, 2015 and the Ministry addressed all outstanding issues within its remit in its response/redraft of July 20, 2015. The final draft offers fair terms and provides adequate protections for the State and the Government, and is in synch with the revised draft CGG/Robertson Geospec agreement of May 11, 2015 as well as with Soma's seismic data collection work (which Spectrum proposes to 'infill') -- both in terms of areas of coverage, and rights to data marketing. In the expectation that both the Spectrum and CGG/Robertson contracts will be signed, the Confidential</p> | <p>A copy of the signed agreement was eventually sent to the FGC for review on April 27, 2016. Apart from this delay, the review process and the final outcome represent a model of cooperation between an FGS ministry and the FGC.</p> <p>Following review by the State Solicitor General, the contract was able to be published on the</p> | <p>July 1, 2016</p> | <p>August 2, 2016</p> |

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| | | | | <p>Assessment recommended that the Ministry of Petroleum and Mineral Resources ensure that the training and capacity building programs provided for in both draft contracts (as well as through ongoing Soma activity) should be carefully synchronized.</p> <p>Subsequent to this process, and following the publication of the SEMG report on Soma that criticized the Soma/Ministry of Petroleum capacity building program, Spectrum ASA requested the removal from the agreement of the capacity building Annex, which provided for US\$1.070 million in capacity payments to the Ministry over and above FGS' agreed share of license fees. In place of this, early revenue payments amounting to US\$1.35 million are to be remitted to the FGS' Treasury Single Account in CBS -- not as additional payments, as previously proposed, but to be set off against the FGS' share of licence fees. This arrangement leaves MOF free to allocate capacity building funds to the Ministry as part of the regular Budget process, and represents a more transparent and superior arrangement to what had been proposed.</p> <p>The contract was signed on September 4, 2015 without referring the final version to the FGC. This appears to have occurred because the FGS wanted to respond quickly to the announcement on September 1 of the conclusion of a geophysical data acquisition contract between the Puntland Regional Government and the ION Geophysical Corporation of Houston, Texas. The final version is consistent with the advice provided by the FGC.</p> | FGC website, and a redacted version of the Confidential Assessment and Supplementary Assessment made available to the public. | | |
| Petro Quest Africa (CN) Oil production sharing agreement | February 2, 2013, Galmudug State and Galmudug Somali Petroleum Corporation R | September 23, 2014 | Reviewed by ALSF on December 24, 2014, and initial informal FGC questions were passed on on October 16, 2014. | A full CA was not carried out. The previous self-styled Galmudug Regional Government has been transformed into a larger Galmuduug Regional State, incorporating the former Galmuduug (Mudug) Region and the Galgaduud Region. The public entities that signed the contract with Petro Quest Africa no longer exist, thereby invalidating the agreement. The current Ministry of Petroleum and Mineral Resources of the Regional Federal State of Galmuduug has taken no steps to activate any substitute arrangements. | Following review by the State Solicitor General, the contract was able to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public. | July 1, 2016 | August 2, 2016 |
| Mubadala Oil and Gas Holding Company LLC | June 18, 2014 Minister of Petroleum and | July 10, 2015 | October 6, 2015 | The FGC was given to understand that nothing beyond an MOU existed, but the Ministry of Petroleum and Mineral Resources delivered a copy of a signed Cooperation Agreement for review on July 10, 2015. | The period of agreement expired on June 17, 2016. | July 1, 2016 | FGC chair is seeking no objection |

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| <p>(CN)</p> <p>Seismic data analysis, petroleum exploitation, petroleum capacity building</p> | <p>Mineral Resources F</p> | | | <p>The Cooperation Agreement envisaged an exchange process whereby the Federal Government provided Mubadala, free of cost, with seismic and other data on Somalia's offshore blocks in return for analytical reports on that data. Mubadala was then permitted to keep a copy of the data and to select offshore blocks for which it would be provided preferential rights to negotiate Production Sharing Agreements (PSAs). The agreement was comparable to the Soma contract, in this case trading data analysis for the right to negotiate PSAs without competition. The data collection and brokerage agreements with Spectrum ASA and CGG/Robertson GeoSpec enable Somalia to pursue a strategy involving open geophysical data sales and a competitive system of PSA allocations.</p> <p>The Ministry has indicated to the FGC that it wishes to reconsider the petroleum exploration model embodied in the Soma and Mubadala contracts, whereby exclusive PSA selection and negotiation rights are awarded in return for geophysical data acquisition and/or analysis.</p> | <p>Following review by the State Solicitor General, the contract can, subject to Mubadala's agreement, be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | | <p>from Mubadala to publication of the contract.</p> |
| <p>Model Oil and Gas Production Sharing agreement</p> | <p>Supplied as draft F</p> | <p>August 18, 2016</p> | <p>CA in process</p> | | | | |
| <p>Ministry of Transportation and Aviation</p> | | | | | | | |
| <p>Favori LLC (CN)</p> <p>Renovation and day-to-day operations of Mogadishu International Airport for a concession period of 15 years, to include ground handling, security, catering, terminal management and cargo management. Airport renovation encompasses the</p> | <p>June 30, 2013</p> <p>Minister of Information, Post, Telecommunication and Transportation F</p> | <p>March 2, 2014</p> | <p>April 23, 2014</p> | <p>Parliament objected to the process of contractor selection on May 27, 2014 and has persisted in its concerns with the lack of competitive bidding for Federal Government contracts and concessions.</p> <p>The CA pointed out that the agreement lacks precision, and that this could give rise to misunderstandings -- for example, over the exact nature of certain planned improvements (e.g. "widening of the internal roads of the actual terminal building"), and of the equipment to be provided. Other examples of vagueness include an absence of discussion of Favori's fee structure, or of how Favori proposed to calculate its costs (other than by using "international accounting standards of profit and loss"). With respect to revenue sharing, the contract does not specify any revenue targets or financial performance benchmarks/levels of service. While either party may terminate the agreement at 90 days notice "by giving reasonable reasons", it is not clear who is responsible for defining what is 'reasonable'.</p> <p>An amicable renegotiation of the contract was proposed in the CA.</p> | <p>As the renegotiation process proceeds, the Ministry should submit revised drafts of the contract to the Interim National Procurement Board (INPB) and to the FGC for review, prior to contract finalization and submission to the PMO and Council of Ministers for their endorsement. When</p> | | |

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| <p>construction of terminal buildings, the widening and paving of internal roads, lighting, and the construction of offices.</p> | | | | <p>The Federal Government reported in 2014 that Favori had agreed to renegotiate, but it is unclear how far this process went under the previous Council of Ministers.</p> <p>After an extended hiatus, it was reported to the FGC that the Ministry and Favori agreed on August 29, 2015 to renegotiate the contract on the basis of the FGC's recommendations. Legal support is being provided by the firm of Latham and Watkins, contracted through the Africa Legal Support Facility (ALSF). An initial 2-day meeting to explore the issues for renegotiation took place in Istanbul on February 15-16, 2016.</p> | <p>interviewed by the FGC on April 26, 2016, though, the Minister did not appear aware of this requirement, nor particularly supportive of it.</p> | | |
| <p>Modern Technology Ltd (CN) Manufacture of car licence plates</p> | <p>23 July 2014 Minister of Information, Post, Telecommunication and Transportation F</p> | <p>Somali version received from SEMG sent for translation 30 Aug 2016</p> | <p>In progress</p> | <p>The Somali Eritrea Monitoring Group has reported that the Ministry agreed on a concession for the manufacturing of car plates with Modern Technology Ltd.</p> | | | |
| <p>Ministry of Defense</p> | | | | | | | |
| <p>AMO Shipping Company Ltd. (CT) Supply of 6 marine patrol boats and ancillary vessels</p> | <p>July 29, 2013 Minister of Defence F</p> | <p>April 1, 2014</p> | <p>June 1, 2014</p> | <p>The cost to the Federal Government of the contract was €132 million. There was no provision in the 2014 or 2015 Budgets for these outlays, and there is no realistic prospect that the contract can be financed from Treasury resources. The contract stipulates that 25 percent of the contract was payable upon signature, a condition that was not met.</p> <p>The CA recommended cancellation on these grounds, to be initiated through exploratory discussions intended to ascertain whether any patrol boat hulls had been laid down, and whether they had been sold to other parties (as was reported to the FGC). No such action was taken.</p> <p>In September 2015 the Ministry, now under new leadership, asked the FGC to help draft a termination letter. The FGC once again recommended that the Ministry contact AMOSC to ascertain whether any hulls were laid down, whether they were sold, and whether the company has any objection to an amicable termination of the contract.</p> <p>The Ministry remained unresponsive to FGC requests for meetings or for information until June 13, 2016, when the FGC finally met with the Minister of Defence. He explained that his predecessor had quickly ascertained that AMOSC was hoping that the FGS would raise the money to pay for these vessels from donors, and was told in early 2014 that the FGS was not interested in pursuing the</p> | <p>The Minister of Defence has assured the FGC that AMOSC hold no expectations concerning this contract, and that it is in effect defunct.</p> <p>Following review by the State Solicitor General, the contract should be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | <p>July 1, 2016</p> | <p>August 2, 2016</p> |

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| <p>Atlantic Marine and Offshore Group (CT)</p> <p>Equipment, services and training to develop a national coast guard</p> | <p>Minister of Defence F</p> | <p>Not necessary</p> | <p>Not necessary</p> | <p>contract on such a basis.</p> <p>The FGC was informed by the Ministry that no such contract existed. AMOG's website, however, described and shows a photograph of a July 29, 2013 signing ceremony with FGS officials, and claimed that the ceremony related to this specific contract.</p> <p>After trying for over a year to clarify the situation with the Ministry of Defence, the FGC met the Minister on June 13, 2016. It then became clear that no such contract was signed: it had been proposed by AMOG alongside the AMOSC patrol boat contract, and was abandoned when the patrol boat scheme was revealed to be infeasible.</p> | | <p>Not necessary</p> | <p>Not necessary</p> |
| <p>AGETCO and others (CT)</p> <p>Food and logistics supplies to the Somali National Army, the Somali Police Force, the National Intelligence and Security Agency and the Custodial Corps</p> | <p>2013 onwards</p> <p>Ministry of Defense, others F</p> | <p>Documentation not available</p> | | <p>Large transactions are known to have taken place between the various branches of Somalia's national security apparatus and various private suppliers in relation to 'rations' (i.e. basic foodstuffs) and logistics requirements (uniforms, petrol, spare parts, fuel, etc). It appears unlikely that formal contracts exist, though invoices must do. The FGC has requested that the Ministry of Finance share whatever relevant invoices it has (i.e. those likely to exceed US\$5 million in turnover during the lifetime of the contract in question).</p> | <p>The Ministry of Finance has concluded there is no documentation relating to these legacy arrangements.</p> | <p>Not possible</p> | <p>Not possible</p> |
| <p>Ministry of Ports and Shipping</p> | | | | | | | |
| <p>Albayrak Turizm İnşaat Ticaret A.Ş. (CN)</p> <p>Renovation and day-to-day operations of Mogadishu Port. Albayrak is granted the "exclusive right to finance, rehabilitate, operate, manage, maintain, develop and optimize the</p> | <p>October 24, 2013</p> <p>Minister of Public Works and Reconstruction, Marine Transport, Ports and Energy F</p> | <p>April 22, 2014</p> | <p>June 1, 2014</p> <p>Supplementary Confidential Assessment of the Annexes, September 3, 2014</p> <p>Parts of the signed agreement have still not been located/shared with the FGC</p> | <p>The CA and the SCA found that the agreement established the basic parameters of a workable commercial relationship, but lacked important clarity. There are no measurable performance indicators; there is no clear analytical basis for the division of revenue between Albayrak and the Federal Government; and the agreement's dispute resolution mechanisms appear inadequate, given the inexperience of Somalia's maritime regulator. The CA also indicated that the length of the concession was worth reconsidering, with a promise of renewal if key performance indicators were met. International experience, it was noted, shows that ambiguity in a contract of this kind can lead to labor disputes, non-competitive port costs and repressed government revenues. The Confidential Assessment recommended that the Federal Government seek an amicable renegotiation of the contract's more troubling clauses.</p> <p>Following receipt of the CA, the Prime Minister instructed the Cabinet Subcommittee on Infrastructure to discuss the agreement in</p> | <p>Working with the World Bank, the FGC has provided advice to the Ministry and to the Ports Authority on how to approach the negotiations. The World Bank is ready to play a neutral third party role in the coming months, focusing on establishing an agreed set of future costs and</p> | | |

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| <p>Port of Mogadishu” for a period of 20 years, with the possibility of renewal.</p> | | | | <p>light of the CA, and instructed the Minister of Ports and Marine Transport and the Minister of Finance to review the contract (including its implications for employment in Mogadishu Port). A report was prepared for the Prime Minister by the two ministries, and shared with the FGC on October 6, 2014. The report noted that the agreement has the potential "to bring the Mogadishu port to prudent industry practices and standards", to increase Mogadishu's overall productivity, and to thereby enhance the prospect of peace and stability. It also drew attention to the lack of a "credible procurement and concessions process", and recommended that the "Federal Government of Somalia would be best-served to review the difficult and unclear parts of the contract", and that the agreement should be renegotiated "without compromising its overall integrity". The report proposed that clear performance guidelines should be introduced; costed and timed investment plans should be submitted, both by Albayrak and the Federal Government; and that steps should be taken to ensure that the performance of the company is supervised by a qualified supervising engineer (to be recruited if necessary from abroad).</p> <p>Following this, the Minister of Ports visited Albayrak in Turkey in November 2014 to arrange for renegotiations. Shortly thereafter, the the Council of Ministers was dissolved, and no further negotiations have taken place since.</p> <p>Albayrak in late 2015 indicated to the Federal Government that it was not satisfied with the revenue sharing arrangement specified in the concession agreement, and was losing money over the contract. In January 2016, in contravention of the provisions of the contract, Albayrak limited its monthly revenue payment for December 2015 to Federal Treasury to US\$1 million, and thereafter ceased revenue payments. The Finance Minister/Chair of the FGC then took over the negotiation process, and on March 15, 2016 concluded an Interim Agreement with Albayrak, pending formal renegotiation. Under the Temporary Agreement the FGS agreed to absorb part of the costs of providing security in the port, and to reduce port handling charges.</p> <p>In preparation for full contract renegotiation, in which Albayrak is seeking a revision of the current revenue sharing arrangement, the World Bank has been asked to provide forward-looking traffic forecasts, an essential element in the calculation of the port's revenue potential. The ALSF has been asked to provide technical expertise to assist the FGS in the renegotiation process.</p> | <p>income projections to underpin a revised agreement. As the renegotiation process proceeds, the Ministry should submit revised drafts of the contract to the Interim National Procurement Board (INPB) and to the FGC for review, prior to contract finalization and submission to the PMO and Council of Ministers for their endorsement.</p> | | |
| <p>Mogadishu Port Container</p> | <p>November 10, 2012</p> | <p>March 2, 2014</p> | <p>April 23, 2014</p> | <p>The CA found that that the lease did not offer a solid basis for the management of container traffic at the Mogadishu Port. It did not</p> | <p>The Port Authority and</p> | <p>July 1, 2016</p> | <p>August 2, 2016</p> |

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| <p>Terminal and Simatech International (CN)</p> <p>Lease and concession for operating the Mogadishu container port</p> | <p>General Manager of Mogadishu Sea Port Authority F</p> | | | <p>cover the essential financial and technical issues that should form part of any such government contract; it was silent about institutional roles, the contractor's reporting and information requirements, invoicing methods, tax obligations, custodianship of the property, and end-of-lease obligations (vis-à-vis structures erected on the land, environmental cleanup measures, etc.). The charges specified in the lease were also abnormally high when compared with international norms.</p> <p>The contract was overtaken by events -- i.e. by the Albayrak port management contract. A general termination letter to all contractors in the port area was sent by the Manager of the Mogadishu Port Authority on September 13, 2014.</p> <p>The FGC advised in September 2014 that a specific termination letter was needed from the Port Authority, and a proforma letter was drafted for FGS use. A letter was not sent. In discussions with the Ministry in September 2015, the FGC again offered to assist with a letter.</p> | <p>Ministry on 4/26/16 informed the FGC that the matter is closed and no further action is needed, or expected by Simatech. The FGC therefore concluded that the contract could now be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | | |
| <p>Great Horn Development Company (MOU, Framework Agreement)</p> <p>Harbor and fishing port development, road construction</p> | <p>September 8, 2013 (MOU); April 29, 2014 (Framework Agreement)</p> <p>Minister of Ports and Marine Transport F</p> | <p>October 10, 2014</p> | <p>December 4, 2014</p> | <p>The Ministry of Finance is still looking for the missing MOU.</p> <p>The FA provides GHDC (and its potential sub-contractors) a six month period of exclusivity in which to plan, develop/rehabilitate and operate various ports and related road infrastructure (the ports in question are a new commercial port for Mogadishu at Elma'an, new fisheries harbors at Gara'ad, Egue and Barawe, and the existing ports of Kismayo and Bosaso). That period has now passed.</p> <p>The CA noted that the FA makes no mention of the role of any Federal Member State. Given that the framework agreement provides for exclusivities in areas under the <i>de facto</i> control of the Puntland and Jubbaland FMSs, it is unclear how the FGS and GHDC could deliver the contract. No evidence of any appropriate follow-up had been provided to the FGC.</p> <p>Moreover, in discussion with the FGC in September 2015, an official representing the Ministry appeared unaware that his Ministry had signed this contract. This position was reiterated in April 2016 when the Framework Agreement was copied to the Ministry.</p> | <p>The Ministry has confirmed that the contract is 'dead' and that no further follow up is required.</p> <p>Following review by the SSG, the contract can, after requesting GHDC's permission, be published on FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | <p>July 1, 2016</p> | <p>FGC Chair has written to Great Horn seeking their no objection for publication of the contract</p> |

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| Ministry of Fisheries and Marine Resources | | | | | | | |
| <p>Somalia-FishGuard Ltd. (CN)</p> <p>Protection, licensing, policy and institutional development of Somali's fisheries sector</p> | <p>July 25, 2013</p> <p>Minister of National Resources F</p> | <p>April 29, 2014</p> | <p>July 4, 2014</p> | <p>The CA pointed to serious difficulties in the agreement. One was its level of ambition: it is most unusual to contract a single firm to manage every aspect of a country's fisheries sector, including policy advice, legislative drafting, licensing, patrolling/enforcement, research, conservation and industrial development. The 15-year length of the exclusivity was well above industry norms. The agreement did not clearly specify the capital, equipment, facilities, training and personnel that would be provided, nor does it establish delivery schedules or embody quality standards/performance benchmarks. While the cost-sharing responsibilities of the parties were imprecise, the share of gross revenues accruing to FishGuard appeared high when compared with other such contracts. The agreement also embodied a potential conflict of interest: FishGuard was responsible both for selling fisheries licenses and for conserving the country's fisheries resources (these responsibilities are typically separated in fisheries service contracts). The CA recommended either cancellation, or renegotiation of a contract with a much more limited scope.</p> <p>On November 21, 2014 the (then) Minister of Fisheries and Marine Resources wrote to Somalia-FishGuard proposing that the agreement be replaced by a more tightly focused instrument concentrating on support for the creation of a Somalia Fisheries Protection Force.</p> <p>FishGuard responded to this on March 20, 2015, and suggested reducing the period of exclusivity somewhat, and addressing the above-mentioned conflict of interest by withdrawing from managing conservation matters on the Ministry's behalf. More fundamental differences between the Ministry and FishGuard had emerged, though. Officials in the previous and the present Ministry have issued a number of tuna fishing licenses, mostly to Chinese companies, without involving FishGuard. FishGuard was claiming a share of those license fees, in accordance with the provisions of its contract. FishGuard itself did not manage to issue any fishing licenses. By mid-2015 FishGuard had effectively given up on the contract.</p> <p>The larger issue is the need to rationalize the issue of licensing and</p> | <p>The Ministry of Fisheries and Marine Resources has ascertained that FishGuard has no further interest in pursuing the contract, nor in taking any form of legal action. FishGuard personnel are understood by the Ministry to have been engaged in representing a Taiwanese company in pursuit of Somali fishing licences, which would not have been compatible with continuing the role contracted under the FishGuard contract. The Ministry now considers the file closed.</p> <p>Following review by the State Solicitor General, the contract was able to be</p> | <p>July 3, 2016</p> | <p>File submitted to FGC Secretariat for posting on website</p> |

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| | | | | <p>come to a Federal-Regional Agreement on fisheries management and revenue sharing. At present the Federal and the Puntland ministries of fisheries are issuing licenses; FishGuard, despite being contracted to do this, is not.</p> <p>Uncertainty over FishGuard's role and divided views on the contract within the Government have interfered with the orderly development of Somalia's fisheries sector. There is currently no operative agreement on the issuance of licenses or the sharing of license revenues. FAO estimates that the country as a whole can earn in excess of US\$10 million per annum from fishing licenses without compromising the sustainability of Indian Ocean tuna stocks. Attracting the more credible EU and global fishing fleets will require a resource management and revenue-sharing agreement to which Federal and Regional political leaders commit themselves. Achieving such an agreement, in today's atmosphere of competition and mistrust, will itself involve institutional and monitoring arrangements of the kind agreed to in principle in Addis Ababa last year, but never enacted.</p> <p>A further complication arose with the entry into the licensing field of an NGO consortium (Secure Fisheries working with Oceans Beyond Piracy and Shuraako). The consortium proposed to the President that it assist with issuing tuna licences. This cuts across the multi-donor and agency agreements brokered over the past year by FAO; nor is it clear that the consortium has the expertise and experience to take on this task.</p> | <p>published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | | |
| Ministry of Power and Water | | | | | | | |
| <p>Polaris Energy SDN BHD (BOT CN)</p> <p>Electricity generation, transmission and distribution</p> | <p>June 2014 (undated)</p> <p>Minister of Water and Energy F</p> | <p>November 5, 2014</p> | <p>February 13, 2015</p> | <p>The proposed project planned to supply electricity to Mogadishu, and consisted of a "fast track" Phase 1 of between 75 MW and 88 MW movable gas/diesel-fired electrical power plants, and a "long term" Phase 2 of 450 MW dual fuel/coal fired electrical power plants. For Phase 2, Polaris intended to partner with China National Electrical Engineering Corporation (CNEEC), "or equivalent". The estimated cost of Phase 1 was US\$200 million, which the MOA stated would be a "grant from Polaris to the People of Somalia". Phase 2 was estimated at c. US\$1 billion, and the MOA indicated that "this option will require Government to government collaboration in which Polaris shall act as a facilitator".</p> <p>The Confidential Assessment pointed to a number of serious concerns, including the technical design and feasibility of the projects proposed by Polaris, and the need for a careful assessment of Polaris' capacity to both finance and implement the proposed program. The CA also recommended that the MOA be adjusted to</p> | <p>The FGC has advised the Ministry on how best to go about initiating a needs assessment and competitive bidding process, and a sector development dialogue has been initiated by the World Bank and other donors.</p> <p>After the July 2015 meeting</p> | <p>July 4, 2016</p> | <p>August 2, 2016</p> |

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| | | | | <p>make clear that it was a <i>non-binding</i> statement of intent, and must be followed by a formal, detailed agreement that addresses key issues left unspecified in the current MOA. It was proposed that any such formal agreement should be confined to Phase 1 – and that the much larger Phase 2 project should be tendered competitively, on the basis of a specified scope of work and TORs that should only be drawn up after a power needs assessment has been carried out. In addition, the Assessment recommended that the Federal Government should reconsider the wisdom of agreeing to a Phase 1 power solution that uses gas. First of all, no gas has yet been extracted from the Afgooye field; second, alternatives to the gas/diesel plant proposed in the MOA using either diesel or HFO (heavy fuel oil) are likely to be considerably cheaper; and third, oil and gas concessions should not be handed out to foreign interests in the <i>ad hoc</i> manner described in Polaris’ public statements about the program.</p> <p>A letter covering the CA was sent to previous Finance Minister/FGC Chair on February 13, 2015 for onward transmission to new Minister of Water and Energy. This draft letter was translated and shared informally by the new Minister of Finance/Chair of the FGC. The CA recommended that Polaris focus on Phase 1.</p> <p>In July 2015, the Minister of Finance and the Minister of Power and Water met with Polaris representatives and conveyed this message. They also clarified that Somalia would not be able to contemplate the proposed Phase 2 US\$1 billion "Government to Government guarantee" implicitly involving the PRC, and that no Afgooye gas concession could be considered unless all of Phase 2’s arrangements were firmly in place.</p> <p>The Minister subsequently informed the FGC that he wished to carry out a thorough review of the country’s and the capital’s energy needs, and that he favored an open bidding process on a different and more sustainable power solution.</p> | <p>there has been no further approach by Polaris. The matter can now be considered closed. Following review by the State Solicitor General, the contract was able to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | | |
| Ministry of Commerce and Industry | | | | | | | |
| <p>Proje Gözetim Mühendislik (PGM Proje) (CN)</p> <p>Import/export quality assurance contract</p> | <p>April 28, 2015</p> <p>Revised agreement signed on January 15, 2016</p> <p>Minister of Industry and Commerce F</p> | <p>November 22, 2015</p> | <p>December 1, 2015 (Note to Files)</p> <p>April 28, 2016 (Note to Files)</p> | <p>On 18 May, 2015, the Prime Minister issued an order forbidding officials from signing international contracts without the authorization of the Prime Minister’s Office and the Council of Ministers. The contract was allowed to stand, however.</p> <p>The Ministry of Finance requested a copy of the contract for review, but five months elapsed before it was provided. MOF’s review was released on November 13, 2015. This review was endorsed and added to by the FC.</p> | <p>The FGC provided two Notes to Files, the first of which was shared with the Ministry of Commerce and Industry prior to final renegotiation.</p> | <p>July 4, 2016</p> | <p>August 2, 2016</p> |

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| | | | | <p>The contract was then renegotiated. Although the comments made in the MOF and FGC reviews were substantively incorporated, the contract was signed without further reference to MOF or to the FGC. This should not have happened, and the review process needs further reinforcement at the level of the COM.</p> | <p>Following review by the State Solicitor General, the contract should be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p> | | |
| Ministry of Internal Security | | | | | | | |
| <p>M and T Solutions Ltd (CN) Scanning services for Mogadishu Port</p> | <p>Draft December 7, 2015 Minister of Internal Security F</p> | <p>March 31, 2016</p> | <p>April 26, 2016</p> | <p>This draft was submitted for FGC review, in line with the PM's above-noted directive of 18 May, 2015. The FGC review was preceded by an MOF review conducted on behalf of the INPB, with which the FGC is in substantive agreement.</p> <p>The CA found the draft poorly written and lacking in precision in a number of key areas, such as specification of the kind of scanning equipment to be used, the precise services to be performed, and how they would be delivered; the CA also recommended that the Federal Government develop standard provisions for all FGS contracts, to be used, with appropriate variations, in drafting those sections of public contracts dealing with Force Majeure, Termination, Dispute Resolution and Compensation.</p> | <p>The FGC recommended that the contract be cancelled and rebid competitively, since there is no apparent justification for sole-sourcing a contract of this type. The Ministry has apparently been considering this recommendation since it was provided in April, and has yet to revert to the FGC.</p> | | |
| <p>Perkins Logistics (CT) and Horn Logistics (CT) Supply of basic</p> | <p>Agreement signed on November 26, 2015 Ministry of Internal Security F</p> | <p>March 21, 2016</p> | <p>CA May 4, 2016 SCA in process</p> | <p>These 5-year contract are valued at US\$24 million (Perkins) and US\$16.1 million (Horn).</p> <p>H.E. the President in his September 9, 2015 speech on security sector reform indicated that "All tenders for logistic supplies will be carried out through the Interim Procurement Board" (Government Press Release), meaning that the substantial contracts for both food</p> | <p>MOF and the FGC have both recommended that the contracts should be revised. FGC has received</p> | | |

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| <p>foodstuffs for the Somali National Police (Perkins) and the National Intelligence and Security Agency (Horn)</p> | | | | <p>and logistical supplies must now be reviewed by the INPB, and in cases where the annual value of the contract exceeds US\$5 million, by the FGC as well. "Logistics supplies" in this context include contracts for food, petrol, spare parts and clothing for the national security forces.</p> <p>The FGC review was preceded by an MOF review conducted on behalf of the INPB, with which the FGC is in substantive agreement.</p> <p>Although both contracts were competitively bid against specifications set out by the INPB, the draft contracts were not submitted to the INPB or the FGC for review prior to signature. Both MOF and the FGC have indicated that the contracts need to be amended,. The most important point made is that a five year contract for the supply of basic commodities is excessive: the tenders should be repeated every year.</p> <p>The FGC has also requested further information on the bid award process: to date, bid documents and bid assessments have not yet been provided to the FGC for review.</p> <p>The FGC has been informed by the Minister of Finance that MOIS is receptive to the changes proposed by MOF (on behalf of the INPB) and the FGC. Depending on the extent to which the contracts have been amended, a Supplementary Confidential Assessment may or may not be needed.</p> | <p>revised documentation.</p> | | |
| <p>Ministry of Finance</p> | | | | | | | |
| <p>The ADCO Group of Companies (CN) Khat tax collection concession</p> | <p>Agreement was first signed on June 6, 2011, and was subsequently amended and renewed four times, most recently on September 2, 2014</p> <p>Minister of Finance F</p> | <p>August 9, 2015</p> | <p>The FGC's full comment on the contract were published in the <i>Public Sector Contracts and Concessions: the FGC and the Confidential Assessments Second Bi-Annual Report</i> of 31 October, 2015.</p> | <p>In 2011 the Transitional Federal Government decided to invite the ADCO to collect the import tariffs due on khat shipments to Mogadishu on its behalf. At that time the TFG was collecting approximately US\$75,000 per month: ADCO had proposed to remit US\$120,000 per month to the Treasury if it were granted this concession. ADCO's proposed role was supported by a letter dated May 18, 2011 signed by several other khat importers. After authorization by the Deputy Prime Minister, the Minister of Finance signed an initial agreement with ADCO on June 6, 2011. This agreement was renewed four more times, with the monthly sum payable by ADCO continually adjusted upwards until it reached US\$800,000 at the time of the final renewal on September 2, 2011. The most recent renewal of the agreement signed by the previous Chair of the FGC/Minister of Finance in September 2014.</p> <p>The contracts consist of one side of Ministry of Finance official letterhead on which MOF acknowledges that ADCO has conformed with the stipulations of the previous contract, and extends the</p> | <p>Following review by the the State Solicitor General, the contract and associated papers were able to be published on the FGC website.</p> | <p>July 4, 2016</p> | <p>August 2, 2016</p> |

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| | | | | <p>concession while adjusting the monthly sum due to MOF. No description of ADCO's obligations is provided, nor are any details of the account(s) into which ADCO payments should be made. The FGC found that the manner in which the contract was awarded lacked transparency, and the contract itself to be more of a handshake than a serious legal agreement.</p> <p>The most disturbing aspect of the contract from the FGC's perspective, though, is that its previous Chairman signed the last renewal of the concession without mentioning its existence to the FGC.</p> | | | |
| <p>Smart General Service Ltd (CN)</p> <p>Collection of road tax</p> | <p>September 20, 2015</p> <p>Minster of Finance F</p> | <p>Somali version provided on May 18, 2016</p> <p>English version provided on August 3, 2016</p> | <p>CA in process</p> | <p>The Minister of Finance signed an agreement for the collection of road tax which entitles the private Somali company to 40 percent of the tax income, in exchange for investments in an improved the system. The FGC accepts that this was an oversight by the Chair of the FGC.</p> | <p>Contract to be discussed at next meeting of INPB, scheduled 19th September.</p> | | |
| <p>M and T Solutions Ltd (CN)</p> <p>Collection of property transfer tax</p> | <p>February 1, 2016</p> <p>Minister of Finance F</p> | <p>30 August 2016</p> | <p>CA in process</p> | <p>The Minister of Finance signed an agreement for development and management of an online Property Transfer Tax system which entitles the private Somali company to 30% of the tax income, in exchange for establishment and management of the system to December 2020.</p> | <p>Contract to be discussed at next meeting of INPB, scheduled 19th September.</p> | | |
| <p>Finsol (CN)</p> <p>Collection of non-tax revenues (development of system, provision of software and hardware, system oversight and maintenance, staff training)</p> | <p>Draft</p> <p>July 20, 2016</p> <p>Minister of Finance F</p> | <p>July 30, 2016</p> | <p>Suspended</p> | <p>The FGC review will build on a July 27, 2016 review by MOF's legal adviser, undertaken on behalf of the INPB.</p> | <p>Process has been pended</p> | | |

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| Finsol (CN) Development and operation of a payroll tax management system (development of system, provision of software and hardware, system oversight and maintenance, staff training) | Draft July 20, 2016 Minister of Finance F | July 30, 2016 | Suspended | The FGC review will build on a July 27, 2016 review by MOF's legal adviser, undertaken on behalf of the INPB. | Process has been pended. | | |
| Ministry of Information and Tourism | | | | | | | |
| Bulsho Hotel (CN) Rebuild and operate the Bulsho Hotel - ? | 2016 - ? Status unknown F | | | | FGC Chair has written to the Ministry of Tourism requesting copies of all concessions for FGC review | | |
| Aruba Hotel (CN) Rebuild and operate the Aruba Hotel - ? | 2016 - ? Status unknown F | | | | FGC Chair has written to the Ministry of Tourism requesting copies of all concessions for FGC review | | |
| Ministry of Posts and Telecommunications | | | | | | | |
| VBH Holdings SPA (CN) Development and operation of an international telecoms gateway | Draft June 20, 2016 Minister of Posts and Telecommunications F | July 30, 2016 | CA in process | | Contract to be discussed at next meeting of INPB, scheduled 19th September | | |
| Not Known | | | | | | | |
| The National Theatre | Date not known | Not required | Not necessary | It is understood that the Chinese Government verbally offered to rehabilitate various public works that it had earlier financed, such as | | Not necessary | Not necessary |

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| <p>(unknown) Infrastructure rehabilitation</p> | <p>Counterpart authority not known F</p> | | | <p>the National Theater and a national hospital. A grant cooperation agreement has reportedly been signed by MFA with the PRC.</p> <p>This is a bilateral grant, and does not need to be reviewed by the FGC.</p> | | | |
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