



JUMHUURIYADDA SOOMAALIYA
جمهورية الصومال

CONSULTATION DRAFT CONSTITUTION

of the Somali Republic

Drafted by the
Independent Federal Constitution Commission

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Preamble

In the name of God, the Most Merciful, the Most Compassionate

We, the Somali people, with firm faith in God Almighty and relying on His mercy

- ❖ Bear witness that there is no one worthy of worship but Allah and that the Prophet Mohammed SAW is indeed a true messenger and prophet;
- ❖ Reject all forms of violence and acknowledge the injustices and shortcomings of our past;
- ❖ Stand united to bring an end to the long conflict and strife in our country;
- ❖ Acknowledge the inspiring tireless struggle of our people for a better life, and our leaders historic struggles and sacrifices to liberate and unite our country;
- ❖ Reaffirm that Somalia is one country;
- ❖ Commit ourselves to the establishment of durable peace, the promotion of national unity, and good governance.

Therefore, recognizing the foundations laid by Shari'ah, we freely decide and choose to adopt this Constitution as a bridge between a divided past and a united future for all the people of Somalia.

May God Almighty grant us mercy and unite our people to work for the prosperity and success of our homeland. **Amen**

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Chapter 1 – Declaration of the Republic

Article 1. Founding Principles

- (1) The Constitution of Somalia is based on the foundations laid by the Holy Quran and Sunna and promotes the higher objectives (maqasid) of Shari'ah and social justice.
- (2) The identity of the Somali Republic consists of the Arab nation, the peoples of Africa and the Islamic world.
- (3) The Constitution of Somalia promotes respect for human rights, and the achievement of social justice, the rule of law, general standards of international law and justice, participatory consultative and inclusive government, separation of powers between the legislature, executive and an independent judiciary, with appropriate checks and balances to ensure accountability, transparency and responsiveness to the people.
- (4) Women must be included in all national institutions in particular all elected and appointed positions across the three branches of Government and national independent commissions.

Article 2. State and religion

- (1) Islam is the religion of the Somali Republic.
- (2) No religion other than Islam can be propagated in the Republic.
- (3) No law which is not compliant with the general principles and with Shari'ah can be enacted.

Article 3. Supremacy of the Constitution

- (1) The Constitution of Somalia, based on the foundations laid by Shari'ah, is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all departments of government.
- (2) In accordance with Chapter 10 of the Constitution, a court may invalidate any law, or administrative action, that is contrary to the Constitution.

Article 4. Sovereignty of the Republic

- (1) Somalia is a sovereign, representative, democratic and federal Republic.
- (2) The Somali people are one and indivisible.
- (3) The sovereignty of the Somali Republic is inviolable.

Article 5. Official Languages

The official languages of the Somali Republic are Somali, as shown in Schedule [TBD], which comprises Maay-arti and Maxaa-tiri, and Arabic.

Article 6. National Symbols

- (1) The flag of the Somali Republic, as shown in Schedule [TBD], is a light blue rectangle in the centre of which is a white star with five equal points.
- (2) The emblem of the Somali Republic, as shown in Schedule [TBD], is a blue shield with a gold frame, in the centre of which is a silver-coated, five-pointed star. The shield is surmounted by a decorated embattlement with five golden heads with two lateral ones halved. The shield is borne from the sides by two leopards facing each other under the lower point of the shield, along with two palm leaves, which are interlaced with a white ribbon.
- (3) Parliament shall pass a law regulating the national anthem.
- (4) Parliament shall pass a law regulating the medals of honor.
- (5) By law, Parliament shall regulate the method of giving due respect to the flag, the national anthem, and medals of honor of the Federal Republic of Somalia.

Article 7. Territory

- (1) The sovereignty of the Somali Republic extends over all the territory of the Republic, which includes the land, the islands, territorial sea, the subsoil, the air space and the continental shelf.
- (2) The territory of the Somali Republic is inviolable and indivisible.
- (3) Any change to the territory of the Somali Republic must be approved by a national referendum.

Article 8. Capital City

Mogadishu, which is also known as Hamar, is the capital city of the Somali Republic. The status of Mogadishu within the federal structure of the Republic is provided for in Chapter 7.

Chapter 2 - Citizenship

Article 9. Entitlements of citizens

- Every citizen is equally entitled to:
 - (a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and

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- (b) a Somali passport, and any other naturalization or identification document issued by the state to citizens.
- A passport or other document contemplated in clause (1)(b) may be denied, suspended or confiscated only in accordance with a law that satisfies the criteria set out in Article 43.

Article 10. Acquisition and retention of citizenship

- (1) Somali citizenship may be acquired by birth or naturalization.
- (2) A person who is a citizen by birth cannot be deprived of their citizenship, even if they become a citizen of another country.
- (3) A citizen by birth or by naturalization may voluntarily renounce Somali citizenship.
- (4) Citizenship is not lost through marriage or the dissolution of marriage.

Article 11. Citizenship by birth

- (1) A person born inside the Federal Somali Republic is a Somali citizen by birth.
- (2) A person born outside Somalia is a Somali citizen by birth if either the mother or father of the person was born in Somalia or if they are of Somali origin.
- (3) This Article applies equally to persons born before, on or after the effective date of this Constitution.
- (4) A child found in Somalia who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

Article 12. Citizenship by naturalization

- (1) A person who has been married to a citizen for a period of at least five years is entitled to apply for citizenship by naturalization.
- (2) A child who is not a citizen, but is adopted by a citizen, is entitled to be naturalized as a citizen. The adopting parent may apply on behalf of the child, or the child, after attaining age 18, may apply personally for naturalization as a citizen.
- (3) A person who has been a lawful resident in Somalia for a continuous period of at least five years, and who satisfies the conditions prescribed by Parliament, is entitled to apply for citizenship by naturalization.
- (4) The requirement of five years marriage or residency that must be satisfied before a person is entitled to naturalize as a citizen shall be equally regarded as having been satisfied irrespective

of whether the period of the marriage or residency began before, on or after the effective date of this constitution.

Article 13. Revocation of citizenship

- (1) If a person acquired citizenship by naturalization, the citizenship may be revoked if a court of competent jurisdiction finds:
- (a) the person acquired the citizenship by fraud, false representation or concealment of any material fact;
 - (b) the person has, during any war in which Somalia was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;
 - (c) at any time after naturalization, has been convicted of treason, or of another offence or which a penalty of at least seven years imprisonment may be imposed.
- (2) The citizenship of a person who was presumed be a citizen by birth, as contemplated in Article 11(4) , may be revoked if a court of competent jurisdiction finds:
- (a) the citizenship was acquired by fraud, false representation or concealment of any material fact by any person;
 - (b) the nationality or parentage of the person becomes known, and reveals that the person was a citizen of another country; or
 - (c) the age of the person becomes known, and reveals that the person was older than eight years when found in Somalia.

Article 14. Legislation on citizenship

Parliament may enact legislation:

- (1) governing the entry into and residence of non-citizens in Somalia;
- (2) providing for the status of permanent residents;
- (3) prescribing procedures by which a person may become a citizen;
- (4) providing for voluntary renunciation of citizenship;
- (5) prescribing procedures for revocation of citizenship acquired by naturalization; and
- (6) generally giving effect to the provisions of this Chapter.

Chapter 3 – Fundamental Rights

Article 15. Application

- (1) The fundamental rights and freedoms recognized in this Chapter shall always be respected in the making and application of the law. They must be respected by all individuals and institutions, as well as by every state body and official as they carry out any of their official functions.
- (2) It is the responsibility of the state not only to respect rights, but to take reasonable steps to protect the rights of the people from abuse by others.
- (3) The rights recognized in this Chapter may be limited only by a law as provided in Article 43.

Article 16. Human Dignity

- (1) Human rights are a manifestation of human dignity. Human dignity is a God-given right of every human being and it is the manifestation of human dignity, and therefore it is inviolable and must be protected and respected by all.
- (2) State power must not be exercised in a manner that disregards human dignity.

Article 17. Equality

- (1) Everyone is equal before the law.
- (2) The state may not discriminate against a person on any grounds, including but not limited to: race, color, clan, ethnic or social origin, culture, dialect or language, sex, birth, disability, religion, political or other opinion, occupation and property.
- (3) Discrimination occurs if the effect is to impair or restrict a person's rights, even if the actor has no intention to do so.
- (4) The State may not treat as discriminatory, measures designed to achieve full equality for individuals or groups who have suffered discrimination or disadvantage.

Article 18. Life

Everyone has the right to life.

Article 19. Slavery, servitude and forced labor

A person may not, for any purpose subject another person to slavery, servitude, trafficking for any purpose, or forced labor.

Article 20. Liberty and security of the person

- (1) A person has the right to personal liberty.
- (2) A person has the right to personal security. Personal security includes freedom from unlawful arrest, all forms of violence from public or private sources, freedom from any form of torture, and freedom from any form of cruel, inhuman or degrading treatment or punishment.
- (3) The physical integrity of every person is inviolable. No one may be subjected to medical or scientific experiments without the consent of the person or, if a person lacks the legal capacity to consent, the consent of a near relative and the support of expert medical opinion.
- (4) Female genital mutilation is contrary to Shari'ah and is prohibited.
- (5) Abortion is contrary to Shari'ah and is prohibited except in cases of necessity, especially to save the life of the mother.

Article 21. Freedom of Association

A person has the right to associate with other individuals and groups. This includes the right to form and belong to organizations, including trades unions. It also includes the freedom not to associate with others.

Article 22. Freedom of religion and belief

- (1) A person is free to practice his or her religion.
- (2) No Muslim can renounce Islam.
- (3) No religion other than Islam can be propagated in Somalia.

Article 23. Freedom of expression

- (1) A person has the right to express their opinions and to impart information and ideas in any way.
- (2) A person has the right to seek and to receive ideas.
- (3) A person has the right to express their artistic creativity, and to academic freedom and freedom of scientific research.

Article 24. Inviolability of home and privacy

- (1) A person has the right to the inviolability of that person's home and that person's privacy.
- (2) This right protects every person's home from unlawful search, and protects their property from interference, invasion, unlawful search or seizure.

- (3) This right protects every person, that person's conversations and other communications from interference or invasion.

Article 25. Freedom of Assembly, demonstration, protest and petition

- (1) A person has the right to gather together peacefully with others, and to demonstrate and to protest peacefully, without the necessity to seek prior authorization.
- (2) A person has the right to present petitions to the authorities.

Article 26. Freedom of movement and residence

- (1) A person lawfully within the territory of the State has the right to freedom of movement, freedom to choose their residence and freedom to leave the country.
- (2) Every citizen has the right to enter and to remain in the country, and has the right to a passport.

Article 27. Political participation

Every citizen has the right to take part in public affairs. This right includes the right to form political parties and to take part in the activities of political parties. In the case of an adult citizen, the right includes the right to vote in free and fair elections.

Article 28. Freedom of trade, occupation and profession

Every person has the right to choose their trade, occupation or profession freely.

Article 29. Labor relations

- (1) A person has the right to fair labor practices.
- (2) A worker has the right to form and join a trade union and to participate in the activities of a trade union.
- (3) A worker has the right to strike.
- (4) A trade union or employers' organization or employer has the right to engage in collective bargaining.

Article 30. Environment

- (1) A person has the right to an environment that is not harmful to their health or well-being.
- (2) A person has the right to have the environment protected from pollution and other damage.
- (3) Everyone has the right to have the natural resources of the nation protected from unsustainable exploitation.

Article 31. Property

- (1) A person has the right to own, use and dispose of property.
- (2) The state may only in the public interest compulsorily acquire property, and only if the parties have agreed or a court has decided on just compensation.
- (3) The state shall promptly compensate a person whose property has been acquired in the public interest pursuant to sub article (2) of this provision.
- (4) This Article does not apply to the restoration of property contemplated in Article 49.

Article 32. Economic and social rights

- (1) A person has the right to an adequate standard of living, including adequate food, water and housing.
- (2) A person has the right to health.
- (3) A person has the right to social security, including social assistance.
- (4) The rights recognized in this Article include the right of every person to protect and pursue the fulfillment of the right, without interference from the state or any other person.
- (5) The rights recognized in this Article imply that the duty of the state shall be:
 - (a) to protect the rights from interference by others; and
 - (b) to adopt and to implement policies for the progressive fulfillment of the rights specified in this constitution, as far as its resources permit.

Article 33. Protection of the Family

- (1) The State shall protect the family based on marriage, as the fundamental element of society.
- (2) The State must protect motherhood and childhood.
- (3) Every child has the right to care, including education and instruction, from their parents, or to care from others if not in a family environment. This right applies also to street children and children of unknown parents, whose rights the state has a special duty to fulfill and protect.
- (4) Adults have a duty to support their parents, if the parents are unable to care for themselves.

Article 34. Children

- (1) Every child has the right to a name and a nationality from birth.
- (2) Every child has the right to be protected from mistreatment, neglect, abuse or degradation.

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- (3) No child may perform work or provide services that are not suitable for the child's age or create a risk to the child's health or development in any way.
- (4) A child may be detained only as a last resort, and then only for as short time as possible and separately from adults, except the child's immediate family, and in appropriate conditions. The child's immediate family must be informed of the child's detention as soon as practicable.
- (5) In any legal proceedings affecting a child, the child must have access to legal assistance, which shall be at the state's expense if substantial injustice might otherwise result to the child.
- (6) Every child has the right to be protected from armed conflict, and may not be used in armed conflict.
- (7) A child's best interests are of paramount importance in every matter concerning the child.
- (8) In this Article a "child" means any person under 18 years of age.

Article 35. Education

- (1) A person has the right to education.
- (2) The right to education includes the right to pursue education without interference from the state or any other person.
- (3) The right to education implies the duty of the state to protect the right from interference by others.
- (4) The state shall ensure the fulfillment of the right of a child to free and compulsory primary education, and of everyone to basic education. Primary education, in the case of state schools, include both Islamic and general education.
- (5) As far as its resources permit the state shall develop and implement developmental programs for the progressive fulfillment of the right to education.
- (6) Everyone has the right to establish and maintain, independent educational institutions, at their own expense, provided these institution must satisfy reasonable standards prescribed by the state.

Article 36. Language and culture

- (1) A person, including a member of a cultural or linguistic minority, has the right to use the language and to participate in the cultural life of that person's choice.
- (2) A person shall exercise the rights under this Article in a manner consistent with the fundamental rights recognized in this Constitution.

Article 37. Access to information

- (1) A person has the right of access to information held by the state.
- (2) A person has the right of access to any information that is held by another person which is required for the exercise or protection of any rights.
- (3) Parliament shall enact a law to give effect to this right, but even in the absence of any such law state authorities shall be as open as possible in providing information.

Article 38. Just administrative action

Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

Article 39. Access to courts

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial court or other tribunal to determine:

- (1) any question of civil rights and obligations; or
- (2) any criminal charge.

Article 40. Arrested, detained and accused persons

- (1) A person may not be compelled to incriminate themselves.
- (2) Everyone who is arrested has the right to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest.
- (3) Everyone who is arrested or detained has the right to be informed promptly of the reason for the arrest or detention in a language which the person understands.
- (4) Everyone who is arrested or detained has the right to choose, and to consult with, a legal practitioner.
- (5) Everyone who is tried for an alleged criminal offence is entitled to a fair trial.
- (6) A fair trial includes:

- (a) the right to be presumed innocent until proven guilty;
- (b) the right not to be convicted on the basis of a forced confession;
- (c) the right to be represented by a lawyer chosen by the accused person;
- (d) the right to be present at their trial;
- (e) the right to challenge the evidence presented; and

- (f) the right to an interpreter if the accused person does not understand the language being used in the court;
- (g) criminal liability is a personal matter and no person may be convicted of a criminal offence for an act committed solely by another person;
- (h) a person may not be convicted of a crime for committing an act that was not an offence at the time it was committed, unless it is a crime against humanity under international law.

Article 41. Extradition of accused and criminals

- (1) Extradition may be granted only in the cases and in the manner prescribed by law, subject, in all cases, to prior international treaty or convention.
- (2) Parliament shall enact legislation to ensure that extradition is carried out only in compliance with international law and practice governing extradition.

Article 42. Refugees and asylum

- (1) A person who has sought refuge in Somalia has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country.
- (2) Parliament shall enact legislation in compliance with international law and practice, governing persons who seek refuge or asylum in Somalia.

Article 43. Limitation of rights

- (1) The rights set out in this Chapter may be limited by law, provided that the law is not targeted at particular individuals or groups.
- (2) Rights may be limited by law, or by specific exceptions in this Chapter, only if that limitation is demonstrably reasonable and justified according to the values underlying this constitution.
- (3) In deciding whether a limitation is reasonable and justifiable, all relevant factors must be taken into account.
- (4) The relevant factors include the nature and importance of the right limited, the importance of the purpose to be achieved by the limitation, whether the limitation is suitable for achieving the purpose, and whether the same purpose could be achieved while being less restrictive of rights.
- (5) Possible restriction of fundamental rights during a state of emergency is dealt with in Chapter 15.

Article 44. Remedies for violations of rights

- (1) The law shall provide for adequate procedures for redress for violations of human rights.
- (2) Redress for violations must be available in courts that are readily accessible to the people.
- (3) Any person or organization may go to court to protect the rights of others who are unable to do so for themselves.

Article 45. Interpretation of the Fundamental Rights

- (1) When interpreting the rights set out in this Chapter, a court shall take an approach that seeks to achieve the purposes of the rights and the values that underlie them. The court may consider the Shari'ah and international law and the decisions of courts in other countries, though it is not bound to follow those decisions.
- (2) When interpreting and applying the law generally, every court or other forum shall consider the relevance of the provisions of this Chapter, and as far as possible make its decisions compatible with these provisions.
- (3) The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or conferred by Shari'ah, or by customary law or legislation to the extent that they are consistent with the Shari'ah and the Constitution.

Article 46. Human Rights Commission

- (1) The State shall establish a Human Rights Commission that is independent of government control, and has adequate resources to carry out its functions effectively.
- (2) The functions of the Human Rights Commission must include promoting knowledge of human rights and specifically of Shari'ah, setting standards for the fulfillment of human rights obligations; monitoring human rights within the Republic, and investigating allegations of human rights violations.

Chapter 4 – Duties to the Republic

Article 47. Duties of Citizens

- (1) In Islam, justice requires a balance of rights and duties.
- (2) The exercise of equality and other rights and freedoms is inseparable from duties. Accordingly, it is the duty of each citizen:

- (a) to be patriotic and loyal to Somalia and to promote its well-being;
- (b) to engage in useful work for the good of the citizen, the family and the common good and to contribute to national development and to the well-being of the community where the citizen lives;
- (c) to promote responsible parenthood;
- (d) to foster national unity in harmony with others;
- (e) to promote accountability and the rule of law;
- (f) to become acquainted with the provisions of the Constitution and to uphold and defend the Constitution and the law;
- (g) to contribute to the public expenditure according to the citizen's capacity to pay;
- (h) to defend the territory of the Republic.

Chapter 5 – Land, Property and Environment

Article 48. Land

- (1) Land is Somalia's primary resource and the basis of livelihood for the people.
- (2) Land shall be held, used and managed in an equitable, efficient, productive and sustainable manner.
- (3) The federal government shall develop, in consultation with the regional states and all other relevant groups, a national land policy and framework for the control and use of land in the Republic. That policy shall be implemented in accordance with the allocation of powers under Schedule 2 and must ensure the registration, use, ownership, access, occupation, management rights, security, interests and title of the land.
- (4) The government may not permanently alienate any portion of land, sea or air within the Somali territory.
- (5) Parliament shall enact a law regulating leases and other dispositions of public land, sea or air to ensure that any such transactions are only in the public interest. The law shall provide that any disposition of public land, sea, and air:
 - (a) by the federal government must be specifically approved by Parliament; or
 - (b) by a regional state government must be approved by the legislature of that state.

Article 49. Restoration of Property

- (1) The federal government, in cooperation with the regional state governments, shall endeavor to repossess and restore to the state all public properties, whether land or other property, held illegally by others.
- (2) The federal government shall take necessary and reasonable steps to restore to the rightful owners any private property held illegally by others.

Article 50. Natural Resources and Environment

- (1) The natural resources of the country, such as minerals, water, flora, fauna and pasture are public property. Parliament shall enact a law that defines the manner of exploitation of any such resources for the common good.
- (2) The Federal Government shall give priority to the protection, conservation, and preservation of the environment against anything that may cause harm to the natural biodiversity and ecosystem.
- (3) All people in the Republic have a duty to safeguard and enhance the environment and participate in the development, execution, management, conservation and protection of the natural resources and environment.
- (4) The federal government and regional state governments of affected areas shall:
 - (a) adopt urgent measures to clean up hazardous waste dumped on the land and in the waters of the Republic;
 - (b) take necessary legislative and other measures to prevent future dumping of waste in breach of international law and the sovereignty of the Republic;
 - (c) take necessary measures to obtain compensation from those responsible for any dumping of waste, whether they are in the Republic or elsewhere; and
 - (d) take necessary measures to reverse desertification, deforestation and environmental degradation, and to prevent activities that damage the natural resources and the environment of the nation.

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Chapter 6 – Representation of the People

Article 51. General principles of representation

- (1) The electoral system shall comply with the following principles:
- (a) freedom of citizens to exercise their political rights under Article 27;
 - (b) simplicity of process, and easily understandable rules, forms and procedures;
 - (c) universal adult suffrage;
 - (d) achievement of fair representation of all sectors of Somali society; and
 - (e) equality of the value of the votes of all voters, as far as is reasonably possible;
 - (f) avoidance of confrontation and the stimulation of conflict; and
 - (g) free and fair elections, which are:
 - i. by secret ballot;
 - ii. free from violence, intimidation, improper influence or corruption;
 - iii. transparent, and administered in an impartial, neutral, efficient, accurate and accountable manner.
- (2) Parliament shall enact a law regulating the conduct of national and state elections. As far as reasonably possible, the law shall ensure that:
- (a) in any election, voters receive adequate information about the election system, the procedures, and the choices available to them;
 - (b) every citizen who is entitled to vote is able to register and to cast their votes without discrimination or hindrance;
 - (c) every person voting is able to do so freely according to their conscience, and without pressure from any other person;
 - (d) all candidates and political parties contesting an election have a fair and equal opportunity to campaign;
 - (e) the influence of money on elections and the on the outcome of elections is limited;

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- (f) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;
- (g) appropriate structures and mechanisms are put in place to ensure the safekeeping of election materials, and to eliminate electoral malpractice; and
- (h) appropriate mechanisms are provided for timely settling of electoral disputes.

Article 52. Political Parties

- (1) A political party may not offer candidates for election unless it is registered.
- (2) Parliament shall enact a law providing for the registration, and de-registration, of political parties. Any political party must be permitted to register if it satisfies the requirements of this Constitution and other reasonable criteria established by the law.
- (3) A political party may not be registered if it is founded on clan identity, or formed for a military purpose.
- (4) Rule and Procedures for the de-registration of a political party for breach of the constitution, the law, or a code of practice, shall ensure that the party punishment is proportionate to the offending behavior, and that the procedure is fair and independent of government, other political party or other irrelevant influences.
- (5) Legislation on political parties shall require parties to have internally democratic and non-discriminatory constitutions and procedures, and to have their accounts regularly audited.
- (6) Legislation on political parties shall require political parties to declare financial contributions received from certain sources or over a certain amount.

Article 53. General Codes of Practice for political parties

The Electoral Commission, in consultation with relevant individuals and bodies, shall prepare Codes of Practice for political parties generally.

Article 54. Codes of Practice for election periods

The Electoral Commission, in consultation with relevant individuals and bodies, shall prepare Codes of Practice for political parties and candidates and for the media to regulate conduct during election campaigns, during polling and thereafter.

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Chapter 7 – Federal Structure of the Republic

Article 55. Structure of Somalia

- (1) Somalia is a federal republic in which the people democratically exercise their sovereignty at different levels of government through institutions and processes that are appropriate to their needs and their culture. There are three levels of government:
 - a. The local level where the institutions of local groups and communities may form the basis of, or be involved in, government, and where formal local government councils shall be established;
 - b. The regional state level where a system of representative and accountable government must be established, according to this constitution and the constitutions of the individual regional states, made according to this constitution;
 - c. The national federal level.
- (2) Institutions and procedures of government at the federal level and national institutions are prescribed by this constitution.

Article 56. The principles of federalism of the Republic

- (1) The various levels of government in their dealings with each other, and in the exercise of their law making and other powers must observe the principles of federalism, which are:
 - (a) every level of government should enjoy the support of the people;
 - (b) power is given to the level of government where it is likely to be most effectively exercised;
 - (c) a relationship of mutual cooperation and support between the various governments and levels of government in the spirit of national unity;;
 - (d) every part of the Republic should be able to enjoy similar levels of services and similar competence of government;
 - (e) equitable distribution of resources;
 - (f) raising of revenue at the most efficient level; and
 - (g) disputes should be solved through dialogue and reconciliation.

Article 57. Relationships between levels of government

- (1) Each government shall strive for a cooperative relationship with other governments at the same and other levels. Each government must respect the limits of its own powers and the powers of other governments. It must positively encourage friendly relations between the governments and people of the various areas. Each government must ensure that other governments are informed of policies and activities within the boundaries of its own area that may have an impact elsewhere, and where appropriate should engage in joint projects with other governments.
- (2) In order to achieve cooperative relations, a law shall establish an annual conference of executive heads of regional state governments with the federal government to discuss and coordinate the plans of the regional states, and questions of federal support.
- (3) Meetings of those responsible at the regional state level for issues that affect more than one regional state, including water resources, agriculture, health and education, must be held.
- (4) Regional states may enter into written agreements with the federal government or with each other. Such agreements do not have legal force but provide a framework for cooperation.

Article 58. International negotiations

- (1) In the spirit of cooperation, the federal government shall consult the regional states on negotiations in connection with foreign aid, trade, treaties or other major issues of international agreement.
- (2) Where negotiations particularly affect regional state interests, the federal government shall if feasible try to include a representative of that regional state in its delegation to the negotiations.
- (3) In conducting negotiations the federal government shall regard itself as a guardian of the interests of the regional states.

Article 59. Local government and administration

- (1) The federal government shall pass laws setting a framework and guiding principles for local government.
- (2) Each regional state government shall create a system of local government that complies with the federal legislative guidelines.
- (3) The governments of the regional states shall confer responsibilities for the administration of law and programs on local government bodies to comply with Principle (b) in the principles of federalism (Article 56(1)). Functions may be transferred gradually as the capacity of local

government bodies develops. A federal law may propose a framework that may be adopted by any regional state government for transfer of responsibilities to local government bodies.

- (4) The federal government and the governments of the regional states may confer responsibilities for the administration of law and programs on institutions of local groups and communities.
- (5) Institutions of local groups and communities should be encouraged, supported and assisted in meeting the requirements of the constitution in relation to democracy and human rights.

Article 60. Allocation of Powers

- (1) Within the limits of the constitution, the federal government may make and administer laws for the good governance of the Republic of Somalia as a whole.
- (2) Within the limits of the constitution, each regional state government has the power to make laws for the good governance of the regional state.
- (3) Powers are allocated by Schedule 2, which comprises lists of powers allocated to the federal government, to regional state governments or to both federal and regional state government.
- (4) Powers in the Exclusive Federal List may be exercised only by the federal government, unless delegated under another Article of this Chapter.
- (5) Powers in the Exclusive Regional State List may be exercised only by the regional state governments, unless delegated under another Article of this Chapter.
- (6) Powers in the Federal Concurrent List may be exercised by both the federal government and the regional state government. In the case of any conflict between a law of the federal government and a law of any regional state on any of the matters in this List, the federal law prevails.
- (7) Powers in the Regional State Concurrent List that may be exercised by both the federal government and the regional state government. In the case of any conflict between law of the federal government and law of any regional state on any of the matters in this List, the regional state law prevails.
- (8) The federal government may make law on any topic that is not mentioned in Schedule 2.

Article 61. Exercise of concurrent legislative power by regional state governments

- (1) In the spirit of cooperation, a regional state that wishes to enact law on any topic under either the Federal Concurrent List or the Regional State Concurrent List of powers shall consult with the federal government.
- (2) A federal law shall be passed to establish a procedure by which a regional state may assume responsibility to make law on any topic under the Regional State Concurrent List. Such a process

shall involve an assessment of the capacity of the regional state to take responsibility for the enactment and administration of law on the topic.

Article 62. Delegation of powers

- (1) Any government may confer administrative powers and responsibilities on a government, or governments at another level, following a process of consultation with that government or those governments.
- (2) The federal government may confer on one or more of the regional state governments the power to make law on a topic within the legislative power of the federal government, either for a specific purpose or generally.
- (3) Where the federal government confers a power to make law or to administer law on any or all regional state governments under this Article, it shall ensure that those regional state governments will be granted or will be able to raise the necessary financial resources.
- (4) The federal government may withdraw any delegation of powers under this Article, where necessary giving due notice to the regional state government or governments concerned.
- (5) One or more regional state governments may request the federal government to take responsibility for enacting laws on a particular matter within the competence of the regional state governments.

Article 63. Financial matters

- (1) The powers of the various levels of government to raise revenues are as set out in Schedule 2.
- (2) The federal government may spend money for any lawful purpose, whether within its legislative power or not.
- (3) The principles and mechanisms for the allocation of financial resources between the various levels of government are laid down in Chapter 14.

Article 64. Courts

- (1) There is one unified judicial system for the Republic, as provided in Chapter 10.
- (2) Despite clause (1) local traditional dispute resolution mechanisms may continue to apply law that is not inconsistent with the Shari'ah and the constitution.

Article 65. Civil service

- (1) The federal governments and the regional state governments may employ their own staff.
- (2) The Federal Public Service Commission may prescribe standards for employment, terms and conditions of staff and other matters that apply to employment in public service at all levels of government.
- (3) The national and regional state governments may cooperate in the deployment of staff between levels, especially to ensure that expertise and experience are available where needed, national unity enhanced.

Article 66. Federal government powers in support of the federal system

- (1) If a regional state government cannot perform its functions or appears to be involved in financial mismanagement, the first responsibility of the federal government is to assist the regional state government to deal with offenders, and to do whatever is necessary to enable the regional state to operate effectively.
- (2) If a regional state fails persistently or in major respects to comply with obligations imposed by this Constitution or another federal Law, the federal government must take the necessary measures to enforce compliance. The measures include the power of the government to give directions to the regional state government, with which the regional state government must comply with. No such directions may be given unless the House of the Regional States has by resolution passed by at least half of the regional state delegations (excluding the delegation of the state that is in breach of its constitutional obligations) the taking of measures required to re establish constitutional compliance on the part of the regional state in question.

Article 67. The national capital

Note: There are three possible options for the status of Mogadishu (Hamar), the capital city of the Republic. A final decision will be made in the light of the views submitted in the Consultation.

Option 1 (The Capital is located within a regional state)

- (1) The federal capital city of Mogadishu shall remain a city in the regional state within which it is located.
- (2) The government of the regional state, in consultation with the federal government, must pass a special law governing the status of the federal capital city.

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- (3) The governing body of the federal capital city and the federal government must observe the principles of cooperative relationships laid down in the constitution. In particular they must agree on the taxation and other regulation of federal government land and buildings owned or occupied by the federal government within the city.

Option 2 (Mogadishu as a Federal Capital District)

- (1) The federal capital district of Mogadishu (Hamar) is established.
- (2) The federal capital district may not form part of any regional state.
- (3) The federal government must pass a special law regulating the democratic governance of the federal capital city and district.
- (4) The federal law relating to elections must ensure that citizens resident within the capital district are able to vote in elections for the House of the People and are not disadvantaged in terms of representation in that house by being residents of the federal capital district.
- (5) The federal capital district will not send representatives to the House of the Regional States.
- (6) The federal government use make and administer laws on all topics within the legislative lists for the federal capital district, but may delegate powers to the governing structure of the federal capital in the same way as it may delegate powers to a regional state under Article 62.
- (7) The governing body of the federal capital city and the federal government must observe the principles of cooperative relationships laid down in the constitution.

Option 3 (Federal Capital as itself a Regional State)

- (1) The federal capital city established as a regional state.
- (2) The federal capital city may not combine with any other region or part of the country to form an enlarged regional state.
- (3) The governing body of the federal capital city and the federal government must observe the principles of cooperative relationships laid down in the constitution. In particular they must agree on the taxation and other regulation of federal government land and buildings owned or occupied by the federal government within the city.

Article 68. Resolution of disputes

- (1) Principally, governments shall resolve disputes between themselves on the basis of mediation and negotiation and the spirit of cooperation.
- (2) By agreement the federal and regional state governments may establish special committees or boards to try to resolve disputes between governments.

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- (3) If the states concerned cannot resolve a dispute by mediation or negotiation, the Constitutional Court shall decide the dispute.

Article 69. State Boundaries

- (1) A State Boundaries Demarcation Commission shall resolve all existing and future boundary disputes as shall be regulated by law.
- (2) The Independent Federal Constitution Commission or its successor, in consultation with other national commissions, shall assist the federal government in determining the minimum and maximum number of regional states.
- (3) States boundaries shall be based on the boundaries of the administrative regions as they existed mainly before the 1990 civil war.
- (4) Two or more regions may federate based on their free will.

Article 70. Creation of new states

- (1) A minimum of two existing regions are necessary in order to form a new state.
- (2) A new state may be created if a significant number of one or more existing states wish to form a state and the establishment of the state is the only way to promote their common interests.
- (3) A new state will be established only if there is majority support for it:
 - a. in the group of regions seeking the new state; and
 - b. in the regions affected by the creation of the new state; and
 - c. it is not against the national interest; and
 - d. shall not jeopardize the national federal unity of the Somali Republic.
- (4) No new state shall be authorized unless it will have the capacity to discharge the functions and responsibilities of a state within the Federation, including the protection of the rights of all citizens within the state, economic self-sufficiency and the delivery of basic social services. Parliament must enact a law to regulate the formation of new states.
- (5) When two or more neighbouring states agree to the alteration of their shared boundaries, the Federal Parliament must endorse the alteration if two thirds of the District Councils of these states consent to the alteration.

Article 71. Admission of new members to the Republic

- (1) The process of federalizing shall be accomplished by negotiation and cooperation.
- (2) The Federal Republic of Somalia welcomes other entities to join the Federation, and will promote additions to the Federation by peaceful means.

Chapter 8 - The Federal Parliament

Article 72. Composition of Parliament

The Federal Parliament of Somalia consists of two houses: the House of the People and the House of the Regional States.

Article 73. Role of the House of the People

The role of the House of the People is to represent the people of Somalia, to participate in passing legislation and to approve the national budget and all federal government expenditures, to supervise the work of the government, and to carry out other functions according to the constitution.

Article 74. Role of the House of the Regional States

The House of the Regional States has a special role in representing the regional states of Somalia, and to protect the federal system. It does so by participating in passing legislation and approving the national budget. It also participates in supervising the work of the government, and has other functions according to the constitution.

Article 75. Membership of the House of the People

- (1) The House of the People comprises between 200 and 300 members elected by the people under the laws passed according to Article 52 (2).
- (2) The date for the elections to the House of the People shall be fixed by the Electoral Commission after consulting the President of the Republic and the Speaker of the House of the People, and take place during the last sixty days of the legislature in existence.

Article 76. Membership of the House of the Regional States

The House of the Regional States consists of a delegation of 10 members from each regional state. One member of each delegation is the head of government of the State or a person representing the head of government. The other 9 members are nominated by the Regional State legislature from among non-members of the legislature.

Article 77. Qualifications and disqualifications of members

- (1) A person may not be a member of either house of Parliament unless the person is registered as a voter in Somalia, and is over the age of 25.

- (2) A person may not be a member of either house of Parliament if the person:
- (a) has been legally declared to be of unsound mind;
 - (b) is bankrupt;
 - (c) has been convicted within the last 10 years of an offence relating to elections;
 - (d) has been at any time after the constitution comes into effect convicted of an offence involving corruption or abuse of office and carrying a prison sentence of over 5 years; or
 - (e) is in prison.

Article 78. Tenure of office of members of Parliament

- (1) Subject to sub-article (2), a member of the House of the People may remain in office until the swearing in of the new Parliament after the next general election.
- (2) Notwithstanding sub-article (1), a member of the House of the People ceases to be a member if the member
- (a) Resigns;
 - (b) become disqualified under the preceding Article; or
 - (c) is elected or appointed to any incompatible office.
- (3) A member of the House of the Regional States ceases to hold office when the member:
- (a) ceases to be qualified in terms of Article 77;
 - (b) is removed from office in accordance with the constitution of the regional state; or
 - (c) resigns.

Article 79. Role of members

- (1) Every member of each house of Parliament shall be guided by the best interests of the nation as a whole.
- (2) Every member of the House of the People representing a constituency has a special responsibility to represent the people of that constituency, without regard to their political affiliation.
- (3) Every member of the House of the Regional States has a special responsibility to represent the interests of the regional state that the member represents, and to protect the federal system, but shall act in the spirit of cooperative federalism.

Article 80. Speaker and Deputy Speaker of each house

- (1) At the first meeting of each house after a general election, the house shall elect a Speaker and a Deputy Speaker from among its members. The oldest available member of the house shall preside over this election.
- (2) If on any occasion neither the Speaker nor the Deputy Speaker is able to be present, the house shall elect one of its members to preside temporarily.
- (3) The Speaker shall not hold, or shall relinquish, any office in a political party, and shall be strictly neutral in the performance of his or her functions.
- (4) By vote, two thirds of the members of a house may remove the Speaker and Deputy Speaker.

Article 81. Term

- (1) The term of the House of the People is 5 years from the date of the first sitting of the House of the People after a general election, unless the House is dissolved under Article 83.
- (2) The House of the Regional States is a permanent body [Terms to be determined].

Article 82. Sittings

- (1) A newly elected House of the People must hold its first sitting within 30 days after the declaration of the result of the general election on a date fixed by the Electoral Commission.
- (2) Parliament must sit in two sessions each year, beginning in April and October and must sit for at least [number of days to be fixed] days in each session.
- (3) By resolution, each house shall fix the dated and time of sittings of each house.
- (4) When Parliament is adjourned, a special session may be called by the President [in Parliamentary system acting at the request of the Council of Ministers] or the Speaker. A special session must be called if requested in writing by 20% of the members of the House of the People or by the delegation of at least half the regional states to the House of Regional States.

Article 83. Dissolution of the House of the People

The House of the People cannot be dissolved before the end of its five year term [except in a parliamentary system] when the House has been unable to approve the Council of Ministers and the program of the government under Article 106(3).

Article 84. Rules of procedure

- (1) Each house shall adopt its own rules of procedure, which shall provide for full participation of members, and for the participation of the people.

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- (2) Both houses and their committees shall sit in public unless, for good reason, bearing in mind the general principle of openness in government, the Speaker rules otherwise.

Article 85. Quorum

- (1) The opening session of Parliament requires the attendance of two-thirds of the members of both Houses.
- (2) The House of the People may conduct its business only if at least one-third of the members are present.
- (3) The House of the Regional States may conduct its business only if at least one person from each of one-third of the regional states is present and at least one third of the individual members are present.
- (4) The House of the People may vote on legislation only if at least one half of the members are present.
- (5) The House of the Regional States may vote on legislation only if at least one person from each of half of the regional states is present and at least half of the individual members are present.

Article 86. Decision making

- (1) Except when the constitution otherwise requires, the House of the People shall make decisions by a majority of those present and voting.
- (2) Except when the constitution otherwise requires, the House of the Regional States shall make a decision by a majority of those present and voting, in a vote in which the members from each regional state cast only one vote for that state.

Article 87. Legislative procedures in Parliament

- (1) A draft law affecting all or some of the regional states, as such, or the system of federal government, may be introduced in either house of Parliament.
- (2) Any other draft law shall be introduced in the House of the People.
- (3) The Government, any 10 members of the House of the People, or at least 10,000 voters, may present a draft Law for to the House of the People.
- (4) The Government or any regional state delegation may present any draft Law to the House of the Regional States.
- (5) Any draft law requiring public expenditure or affecting taxation may be introduced only by the Government.
- (6) Any draft law shall be presented to both houses of Parliament.

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- (7) A draft Law affecting all or some of the regional states, as such, or the system of federal government, shall be passed by both houses in order to become law. After it has been passed in the house in which it was introduced, it shall be sent to the other house.
- (8) The rules of procedure of the two houses shall provide for the establishment of a mediation committee to try to achieve consensus on legislation on which the houses are in disagreement.
- (9) After a draft law that does not affect all or some of the regional states, as such, or the system of federal government has been passed by the House of the People it shall be sent to the House of the Regional States. If that house does not pass it or passes it only with amendments, and the two houses are unable to reach agreement, the House of the People shall decide whether to present the draft law in the form passed by the House to the President for assent, or to set it aside for future consideration or to abandon the draft law.

Article 88. Assent to legislation and the possibility of reference back to Parliament or to the Constitutional Court

- (1) Draft laws become law by being signed by the President after they have been passed by Parliament and published in the Official Bulletin.
- (2) The President may refer back to Parliament any draft law on the grounds of lack of procedural propriety, [in a parliamentary system acting on the request of the Government]. If the Parliament either returns the draft law without further procedure or passes it for a second time the President shall assent to it.
- (3) The President [in a parliamentary system acting on the request of the Prime Minister] may require Parliament to reconsider a draft law that it has passed on the ground that it is unwise in terms of its substance. If the Parliament passes the draft law for a second time, by a two-thirds majority of each house, and returns it to the President for signature the President shall sign it.
- (4) The President, any 10 members of the House of the People, any one or more delegations of the members of the House of the Regional States, or the Council of Ministers may refer a draft law that has been passed by Parliament to the Constitutional Court for ruling on the constitutionality of the substance of the draft law or of the procedure used to adopt it.
- (5) If after a draft law is passed by Parliament the President fails or refuses to sign it, in circumstances in which he or she has no other course of action under the constitution, the draft law automatically becomes law on the 15th day from the date it was submitted to the President.

Article 89. Committees

- (1) The House of the People shall establish committees to consider legislation, to keep under review the work of the government, and to scrutinize the budget and the accounts of the government and other bodies the accounts of which are audited by the Auditor General.

- (2) The committees established shall include standing sectoral committees to scrutinize the work of the government in various areas of responsibility, as reflected in the allocation of responsibility to Ministers. Each of those committees shall take responsibility for scrutiny of one or more of such areas.
- (3) The House of the Regional States shall establish committees to facilitate its work.
- (4) The two houses of Parliament may establish joint committees.
- (5) Parliament may pass a law providing for chairs of committees to be paid a reasonable remuneration for their work.

Article 90. Presence of Ministers

- (1) Ministers may attend Parliament and may speak but may not vote. The rules of the House of the People may provide for regular sessions in which Ministers respond to written or oral questions from members, and Ministers should in a spirit of cooperation endeavor to attend such sessions.
- (2) Ministers may be summoned by either House or a committee under article 91.

Article 91. Powers to compel attendance

Parliament and its committees have the same powers as a court of law to compel the attendance of witnesses and the production of documents to assist in its investigation of any matter.

Article 92. Freedom of speech and immunity of members of Parliament

The members of Parliament may not be sued or prosecuted for anything said or done within the premises of Parliament. No warrant of arrest or search may be executed against a member of Parliament within the premises of Parliament. No member of Parliament may be arrested or charged for any criminal offence without the personal approval of the Attorney General.

Note: in the case of a parliamentary system it would be appropriate to include the following Article:

Article 93. Leader of the Opposition

- (1) The President shall designate a person, chosen by the members of the House of the People, who is not members of a party in Government nor allied with government as the Leader of the Opposition.
- (2) The Office of the Leader of the Opposition shall be provided with enough resources, including staff, to enable the Opposition to carry out its functions.

Note: The Commission has decided to prepare possible provisions for a parliamentary system of government and for a presidential system. Alternative provisions for the Executive in each system follow. The executive in a parliamentary system follows immediately, and then the executive in a presidential system. A final decision will be made in the light of the views submitted during the Consultation period.



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Chapter 9 - Federal Executive

Option 1: The Parliamentary System

The President

Article 94. The nature of the Presidency

- (1) The President of the Federal Republic of Somalia serves as a symbol of the nation, whose wisdom and experience may be looked to by the government. The functions of the office include promoting the founding principles of the constitution by speech and action. Most presidential powers are formal or are exercised acting on the request of the Prime Minister, the Council of Ministers or some other official or body.
- (2) In order to strengthen the unity of the nation, the two houses of Parliament shall endeavor to ensure that the office of President is rotated between different groups in society.

Article 95. Qualifications to be President

The President shall be a Somali citizen of more than forty years of age, have the highest integrity and command the respect of the entire nation.

Article 96. Selection of the President and Deputy-President

- (1) Sitting together, the two houses of Parliament shall elect the President. The two houses shall develop rules of procedure for this purpose, which shall use the procedure set out in Schedule 3 [Election of the President in a Parliamentary System].
- (2) The Deputy-President must be elected by a similar process.

Article 97. Suspension or Removal of the President

- (1) The House of the People may impeach the President for gross violation of the Constitution or high treason.
- (2) The motion for impeachment may be introduced by at least one-third of the members of the House of the People, and if the motion for impeachment is with the support of at least two third of the members, the President will be suspended from office, and the Deputy President will take over.
- (3) The trial of the President will proceed before the Constitutional Court.

Article 98. Term of office of the President

The President may hold office for a single term of six years.

Article 99. Powers of the President

The powers of the President are to:

- (1) serve as Commander in Chief of the Armed Forces, a ceremonial office that carries no power of command;
- (2) assent to legislation passed by Parliament or to refer it back to Parliament or to the Constitutional Court under Article 87(9);
- (3) appoint ambassadors and other diplomatic representatives acting on the request of the Council of Ministers;
- (4) declare war acting on the request of the Council of Ministers which must have the approval of Parliament and to declare peace;
- (5) to declare a state of emergency under Article 169;
- (6) confer honors [in accordance with a law];
- (7) pardon offenders and commute sentences in accordance with the advice of an independent committee;
- (8) make appointments and carry out other formal functions acting at the request of the Council of Ministers.

Article 100. Resignation of the President

The President resigns to the House of the People through its Speaker.

Article 101. Acting President

If the President is absent from the country, or unable to act because of illness or any other reason, the Deputy-President shall act as President until the President resumes the office.

Article 102. Vacancy in the office of President

If the office of President is vacant the Deputy President shall act as President until a new President is elected within 60 days to serve the remainder of the term of the President.

Article 103. Oath of the President

On assuming office and before exercising any functions the President shall take an oath in the terms prescribed. The Oath is administered by the Chief Justice of the Constitutional Court.

The Prime Minister and The Council of Ministers

Article 104. Relationship with the President

The Prime Minister shall keep the President informed about the work of the government.

Article 105. Appointment of the Prime Minister

The President shall appoint as Prime Minister, the person who heads the largest party in the House of the People. If no party has an overall majority, the President shall appoint the person who has the support of the parties whose membership constitutes the majority of the members of the House

Article 106. Vote of confidence in the government and program

- (1) Within 30 days of appointment the Prime Minister shall seek a vote of confidence from the House of the People for the proposed Council of Ministers and the program of the government.
- (2) If the House of the People does not pass the vote of confidence in proposed Council of Ministers and program, the Prime Minister may submit a list that is different in whole or in part on two subsequent occasions, with no more than 30 days between each occasion.
- (3) If on the third occasion the Prime Minister again fails to obtain a vote of confidence, and the House of the People does not propose an alternative Prime Minister within [one week] the President must dissolve Parliament and a fresh general election must be held for the House of the People.

Article 107. Dismissal of Prime Minister

The President shall dismiss the Prime Minister immediately after any vote of no confidence (under Article 110) is passed and may not do so in any other circumstances.

Article 108. Appointment of Ministers

- (1) Acting on the request/nomination of the Prime Minister, the President shall appoint the Council of Ministers of a maximum size of 23 including the Prime Minister and from among persons who are not members of either house of Parliament, or if they are members they shall resign their seats.
- (2) In forming the Council of Ministers the Prime Minister shall take into account the various elements of Somali society and the need for technical competence.

Article 109. Dismissal of Ministers

Ministers may be dismissed by the Prime Minister but not in any other way or by any other authority.

Article 110. Vote of no confidence

- (1) A vote of no confidence in the Prime Minister may be moved by no fewer than 20 members of the House of the People.
- (2) A vote of no confidence may not be moved for within one year from the swearing in of the Prime Minister or within one year before the date of a general election.
- (3) A vote of no confidence shall nominate a member of the House of the People to replace the incumbent as Prime Minister if the vote is carried.
- (4) A vote of no confidence is not carried if fewer than 70% of the members of the House of the People are present and voting. A vote of no confidence is carried if supported by more than half of all the members of the House of the People.
- (5) If a vote of no confidence is passed, the Prime Minister and all the Ministers shall resign immediately, and the President shall swear in the person nominated to replace the Prime Minister in the event that the vote of no confidence is successful (as per sub article (3)).
- (6) If the Prime Minister does not resign the President must dismiss the Prime Minister.

Article 111. Caretaker Governments

Between the date of a general election and when a new Prime Minister is sworn in, the existing Prime Minister and Council of Ministers continues to serve in a caretaker capacity to carry out routine duties.

Article 112. Oath

After obtaining a vote of confidence under article 106 Prime Minister and the Ministers shall take the oath in a special session of the Parliament. The Oath is administered by the Chief Justice of the Constitutional Court.

Chapter 9 - Federal Executive

Option 2: The Presidential System

Article 94. The President of the Republic

The President of the Federal Republic of Somalia is the Head of State, a symbol of national unity, and the head of government.

Article 95. Qualifications to be President

The President shall be a Somali citizen of more than 40 years of age, with an appropriate level of education and relevant experience, have the highest integrity and command the respect of the entire nation.

Article 96. Election of the President and Vice President

- (1) The President and the Vice-President will be elected by the people by direct election.
- (2) The person with the highest number votes is elected President provided that that person either obtains more than 50% of the votes cast, or obtains more than 40% of the votes cast and achieves at least 25% of the votes in each of at least two thirds the regional states. If no person satisfies one of these criteria a run-off election shall be held between the two candidates with the highest number of votes.
- (3) The election for the President and the Vice President shall be held on the same day as the election for the House of the People, unless a special election is necessary under Article 103(4) [election if the Speaker of the House has to take over as President in case of a vacancy].

Article 97. Nomination of candidate

- (1) A candidate for the President and Vice President may be proposed by a political party or be an independent candidate.
- (2) In order to stand as an independent candidate a person must not have held any office in a political party during the previous five years.
- (3) The nomination of an independent candidate shall be supported by at least 500 registered voters from each of at least half the regional states. If the candidate is proposed by a party the nomination shall be supported by at last one branch of that party in every regional state.

Article 98. Removal of the President

- (1) The President may be removed only for serious breach of the constitution, serious abuse of office, or on the grounds of having committed serious criminal offences.
- (2) A motion for the impeachment of the President may be moved by at least one third of the members of the House of the People. If after debate the motion is approved by at least two thirds of that house, the motion shall be referred to the House of the Regional States.
- (3) If the motion is passed by a majority of at least two-thirds of the members of the House of Regional States voting as individuals not in regional blocks, the impeachment shall proceed.
- (4) The voting in each house shall be by secret ballot.
- (5) The trial of the President shall proceed before the Constitutional Court.
- (6) If the Constitutional Court finds the President guilty of the constitutional violations or offences charged, the President shall resign forthwith.

- (7) If the motion for the impeachment of the President is passed by the necessary majority of both houses, the President is automatically suspended until the conclusion of the trial before the Constitutional Court. The Vice President shall take office as President until the trial is completed.
- (8) A law shall be passed, with the approval of two-thirds of each house of Parliament providing for a fair procedure for removal from office of a President who is unable through physical or mental infirmity to carry out the functions of the office.
- (9) The Vice-President may be impeached on the same grounds and by the same procedure as the President.

Article 99. Vice President

Candidates for President shall nominate a running mate who will be Vice President if the Presidential candidate is elected as President.

Article 100. Term of office of the President and Vice President

The President and Vice-President may hold office for a maximum of two terms of five years.

Article 101. Powers of the President

The powers of the President are to:

- (1) appoint and dismiss Ministers of the federal government;
- (2) be Commander in Chief of the Armed Forces of the Republic;
- (3) assent to legislation passed by Parliament or to refer it back to Parliament or to the Constitutional Court under Article 88;
- (4) appoint ambassadors and other diplomatic representatives;
- (5) declare war with the approval of both houses of Parliament and to declare peace;
- (6) declare a state of emergency in accordance with Article 169;
- (7) confer honors in accordance with a law;
- (8) pardon offenders and commute sentences in accordance with the advice of an independent committee;
- (9) to carry out any other functions conferred by the Constitution or a law that complies with this Constitution and its underlying values.

Article 102. Functions of the Vice President

- (1) The Vice President assists the President, acts for the President when the President is out of the country or for another reason unable to act, and becomes President under Article 103 if the President dies in office, resigns, is suspended or is removed.
- (2) Any person who is acting as President may not exercise the powers to appoint or dismiss Ministers, or to appoint judges or to refer a Bill back to parliament, unless the President has authorized him or her to do so in writing, or unless the President remains unable to resume office for longer than three months.

Article 103. Vacancy in the office of President

- (1) If the President dies in office, resigns, or is removed from office the Vice President shall take over. If there is no Vice President or the Vice President is unable to take office, the Speaker of the House of the People shall take over.
- (2) Vice President will serve the remainder of the term of the President.
- (3) If the period from the swearing in of the former Vice President as President until the date the term of the President would have expired is more than two and a half years, the term served by the Vice President as President shall be treated as a complete term. Otherwise the period shall be treated as not being a "term" for the purposes of Article 100 [term of office of President].
- (4) If the President dies in office, resigns, or is removed from office and the Speaker of the House of the People takes over as per sub article (1) and Article 105, an election shall be held within 90 days for the remainder of the term of the President.
- (5) If no more than 18 months remains until the end of the term of office of the President, there shall be no election held and the Speaker of the House of the People will serve the remainder of the Presidential term.

Article 104. Resignation of the President

The President resigns to the House of the People through its Speaker.

Article 105. Vacancy in the office of the Vice President

If the Vice President dies, resigns or is removed from office, the Speaker of the House of the People shall take over.

Article 106. Oath of the President

On assuming office and before exercising any functions the President shall take the oath of office in the terms prescribed, administered by the Chief Justice of the Constitutional Court in a public ceremony.

Article 107. Council of Ministers

- (1) The President appoints the Cabinet of a maximum size of 23 including the President and Vice President from among persons who are not members of either house of Parliament. A Minister who is a member of either house of Parliament, or who holds any other public office or private employment shall resign from that office or employment their seats within 90 days after taking the oath of office.
- (2) In forming the Council of Ministers the President shall take into account the various elements of Somali society.
- (3) The House of the People shall approve Ministers as a group, or individually if appointed at a later stage.
- (4) Only the President may remove Ministers from office.

Article 108. Oath of Ministers

After having been approved by the House of the People each member of the Council of Ministers shall take an oath in the terms prescribed and administered by the Chief Justice of the Constitutional Court before the House of the People.

Note: the article numbers begin below with the number that would follow the highest number used so far – in other words follows the numbering of the parliamentary alternative, which has required more articles. If the presidential alternative were adopted the numbers of the following articles would be changed.

Chapter 10 – The Judiciary

Article 113. The Judicial authority of the Republic

Judicial authority is vested in the courts.

Article 114. Judicial Independence

- (1) The Judiciary shall exercise its judicial functions independently of the legislative and executive branches of government. Judges are subject only to the law.
- (2) No civil or criminal proceedings shall be instituted against a judge in respect of any act performed in the course of judicial functions.
- (3) The home or person of a judge may not be searched without the authorization of the Judicial Service Council.

Article 115. Judicial Procedure

- (1) Judicial proceedings shall be open to the public, but the court may decide, in the interests of national security, protection of witnesses, and in cases involving juveniles or concerning rape, that the proceedings be held in private.
- (2) No judicial decision shall be made unless all parties have had the opportunity of presenting their case.
- (3) Reasons shall be given for all judicial decisions.

Article 116. National Court System

There shall be one national court system consisting of:

- (1) The Constitutional Court;
- (2) The Supreme Court;
- (3) The Appeal Court; and
- (4) A unified system of First Instance Courts.

Article 117. Establishment of the Constitutional Court

- (1) There shall be a Constitutional Court comprising at least five judges including the Chief Justice, who is the head of the judiciary, and the Deputy Chief Justice.
- (2) The Chief Justice of the Constitutional Court shall be elected by the members from amongst their number.
- (3) Members of the Constitutional Court shall have appropriate qualifications in law and Shari'ah and particular competence in constitutional law.
- (4) The constitutional court shall have the following powers:
 - (a) to scrutinize draft legislation upon request to determine compatibility with the constitution;
 - (b) to make the final decision as to whether legislation, or decisions of the executive are to be struck down for incompatibility with the constitution;
 - (c) in the case of legislation held to be unconstitutional, the Court shall have discretion to determine whether the legislation is void retrospectively, from the moment of judgment or a date specified in the future to enable appropriate action pending invalidity. In the

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case of criminal legislation, if the effect of declaring the law invalid would be to benefit a person who has been convicted, the invalidity must be from the time of enactment;

- (d) the exclusive power to decide disputes between regional and central government and between regional governments; this power shall be exercised only after attempts pursued with reasonable diligence to resolve the dispute by mediation have been unsuccessful;
 - (e) the exclusive power to ratify the result of national elections or referenda.
- (5) The decisions of the constitutional court in matters relating to the constitution shall be final.

Article 118. Standing

- (1) The following have standing to bring a case before the Constitutional Court
- (a) the President;
 - (b) [in the parliamentary system] the Prime Minister;
 - (c) the Attorney General;
 - (d) any 25 members of either house of parliament;
 - (e) the government of any regional state;
 - (f) any Independent Commission; and
 - (g) any individual affected by a law or action allegedly in contravention of the constitution.
- (2) The above parties except for individuals may institute litigation seeking the advisory opinion of the Constitutional Court on a constitutional matter.

Article 119. Referral by other courts

Any court other than the Constitutional Court may refer matters which have come before them to the Constitutional Court for an opinion on a constitutional matter. A court shall do so if a party to a case before it requests, and the court is satisfied that resolution of the constitutional issues is central to the case.

Article 120. The Supreme Court

- (1) There shall be a Supreme Court comprising nine judges including a Chief Judge
- (2) The Chief Judge of the Supreme Court shall be elected by the members from amongst their number;
- (3) Judges of the Supreme Court shall have appropriate qualifications in Shari'ah and law;

- (4) The Supreme Court shall have jurisdictions over all issues except matters which are within the exclusive jurisdiction of the Constitutional Court.

Article 121. Special courts

- (1) No court shall be established without conformity to principles of justice as stipulated by the constitution.
- (2) Legislation may establish military courts which shall have jurisdiction only over military offences committed by members of the armed forces during war and peace time.

Article 122. Court of Appeal and First Instance Courts

The functions and organization of the Court of Appeal and First Instance Courts shall be defined by a Judicial Organization Law.

Article 123. Customary dispute resolution mechanisms

The courts may recognize the decisions of customary dispute resolution mechanisms, subject to limitations set out by legislation as to the scope of this recognition.

Article 124. General provisions on the appointment of Judges

- (1) In order to be appointed as a Judge, a person shall be of the highest integrity, as well as possessing the qualifications and experience appropriate to the particular judicial post.
- (2) The Judicial Service Council shall propose names of Judges of the Constitutional Court and the Supreme Court to the House of the Regional States. If the House of the Regional States approves the name of a person to be appointed as Judge, the President shall appoint that person.
- (3) Judges other than those of the Constitutional Court and the Supreme Court shall be nominated by the Judicial Service Council and the President shall appoint the person or persons nominated.

Article 125. Tenure of office of judges

- (1) The retirement age of a judge is 70 years.
- (2) No judge may be removed from office except for proven grave misconduct, and physical or mental incapacity. The law on judiciary shall have provisions on procedures related to removal of judges.
- (3) Complaints against a judge for misconduct, may be made to the Judicial Service Council which shall take appropriate action if it is satisfied that there are reasonable grounds for proceeding further. Appropriate action includes reference to the inspectorate of the judiciary, or in more serious cases, the appointment of an independent commission.

- (4) If the Judicial Service Council believes that there are reasonable grounds to believe that a judge is guilty of grave misconduct, it shall appoint an independent commission composed of three judges or former judges to investigate the conduct of the judge. The judge shall be dismissed if the commission concludes that grave misconduct has been established against the judge.
- (5) If the Judicial Service Council believes that there is reason to believe that a judge is incapable of performing the functions of the office because of physical or mental capacity, it shall appoint a commission to inquire into the health of the judge. The commission shall comprise relevant medical experts as well as at least one former judge. If the commission finds that the judge is unfit to continue in office, the Judicial Service Commission shall retire the judge with pension benefits.
- (6) The inspectorate of judiciary shall be established by law.

Article 126. Independent Judicial Service Council

- (1) There shall be a Judicial Service Council which shall be responsible for the administration, appointment, discipline, transfers, conduct, remuneration and pensions of the Judiciary as prescribed by law. Conditions of service of the judiciary shall be set by the Judicial Services Council.
- (2) The Judicial Service Council shall be independent of the executive and the legislature.
- (3) The Judicial Service Council shall submit its budget to the Ministry of Finance. It shall administer its budget in accordance with appropriate financial regulations.

Article 127. Composition of the Judicial Service Council

- (1) The Judicial Service Council shall comprise:
 - (a) The Chief Judge of the Federal Supreme Court;
 - (b) The Chief Judge of the Constitutional Court;
 - (c) The Attorney General;
 - (d) Two people nominated by the Law Society for a four year term;
 - (e) The Chair of the Human Rights Commission;
 - (f) One person nominated by the legislature of each regional state; and
 - (g) A person nominated by the President for a 4 year term.
- (2) The Chairman shall be elected by the members of the Judicial Service Council from among the members of the Council. The chairman shall hold this post for 5 years, renewable for only one

further term. The Chairman of the council shall be relieved all other duties outside the duties of the council as soon he is sworn for this role. A person elected as chair may serve the full term even if the person's remaining term of appointment to the Council is less than 5 years.

Article 128. The Office of the Attorney General

- (1) The office of the Attorney General shall be a division of the judiciary.
- (2) The Judicial Service Council shall propose names of suitably qualified persons as Attorney General to the House of the Regional States. If the House of the Regional States approves the name of the person, the President shall appoint that person.
- (3) The Attorney General may be dismissed only on the same grounds and by the same procedure as a Judge.
- (4) The functions of the Attorney General include safeguarding the implementation of the laws in the whole Republic and upholding the rule of law.
- (5) The Attorney General shall be responsible for Public Prosecutions.

Chapter 11 - National Commissions, Independent Offices and Institutions

Article 129. General Principles

- (1) An independent Commission is a body that is independent of government or political control, and able to make use of expertise relevant to the particular areas of its work.
- (2) In its mandate and operations an Independent Commission shall embody and reflect the spirit of human rights, democracy and transparency.
- (3) An Independent Commission must not be subject to the direction or control of any person or authority.
- (4) The funding for each Independent Commission shall be a separate vote in the national budget.

Article 130. Composition of Independent Commissions

- (1) Unless the constitution provides otherwise, an Independent Commission shall have no fewer than three and no more than nine commissioners, who shall be full time.
- (2) At least one of the commissioners shall be a women if a commission comprises three or four commissioners, and at least two commissioners shall be women if a commission comprises of five or more commissioners.

Article 131. Appointment of Commissioners

Unless the constitution provides otherwise, the relevant Minister shall propose the names of commissioners, to the Council of Ministers. If the Council of Ministers approves, the names shall be submitted to the House of the People. If the House of the People approves the names, they shall be sent to the President who shall formally appoint them.

Article 132. Qualifications of Commissioners

In order to be appointed as a Commissioner a person shall satisfy the following qualifications:

- (1) basic education;
- (2) being of good moral character and reputation;
- (3) having demonstrated competence at high levels of public service for or in Somalia; or
- (4) and any other qualifications required by the constitution or the law establishing the commission.

Article 133. Tenure

- (1) The term of office of a Commissioner is 5 years, renewable once only.
- (2) A Commissioner may resign in writing to the President.

Article 134. Removal from office

- (1) A Commissioner may be removed from office in accordance with this Article, and not otherwise.
- (2) Removal may be for mental or physical incapacity, breach of confidentiality or other serious misconduct, absence from 3 consecutive sessions of the commission, or commission of a serious crime.
- (3) The Chief Justice of the Constitutional Court shall convene a special tribunal to investigate allegations against a commissioner, if satisfied that there are reasonable grounds to do so. In the case of reason to believe that a commissioner is mentally or physically incapable, the special tribunal shall include at least one medical practitioner with relevant expertise.
- (4) If the special tribunal reports to the Chief Justice of the Constitutional Court that the commissioner is incapable, or has been guilty of conduct sufficiently serious to merit removal, the Chief Justice shall recommend to the President that the commissioner be removed, and the President shall remove the commissioner from office.

Article 135. Reporting Obligations of Commissions and Independent Offices

Each Independent Commissions shall present an annual report to parliament, and make their reports both available and understandable to the public.

Article 136. Application of this Chapter

- (1) This Chapter applies, so far as not inconsistent with other provisions of the Constitution, to the following independent commissions established, or required to be established, by the Constitution -
- (a) Electoral Commission;
 - (b) Human Rights Commission;
 - (c) Civil Service Commission;
 - (d) Judicial Service Council.
- (3) Legislation shall establish the following commissions, and the provisions of this chapter shall apply to them:
- (a) Boundaries and Census Commission; and
 - (b) Land and Property Disputes Commission.
- (4) Legislation may establish other independent commission for reasons that satisfy the guidelines in this Chapter, and this Chapter shall apply to them.

Article 137. Independent Offices

- (1) This Chapter applies, to the extent it is not inconsistent with other provision of the Constitution, to the following independent offices established or required to be established by the Constitution –
- (a) Attorney General; and
 - (b) Auditor General
- (2) This Chapter applies to any other offices established by legislation and declared to be independent offices.

Chapter 12 - Civil Service at all levels

Article 138. Civil Service values

The Civil Service at all levels of government shall be based on the values of the constitutions, compassion, transparency, community service and a respect for the chain of command, ethics, efficiency, effectiveness, professionalism, fairness, equality and on best practices.

Article 139. Protection of civil servants

Civil servants may not be victimized for performing their work. Civil servants may not be dismissed, removed from office or demoted in rank without good reason and after a fair process that shall be provided for by law.

Chapter 13 – Regional States

Article 140. Regional state institutions

The establishment of the legislative and executive bodies of government of the regional states is a matter for the constitutions of the regional states adopted in accordance with this Chapter.

Article 141. Principles for regional state constitutions

- (1) The constitutions of regional states shall be compatible with this constitution, including with the Founding Principles.
- (2) Regional state constitutions shall follow the broad principles and structures of the federal constitution.
- (3) Regional state constitutions shall ensure the protection of minorities.

Article 142. Making regional state constitutions

- (1) Regional states shall consult with the federal government in planning the structure and process for making their constitution.
- (2) Regional states shall make their constitutions in a democratic way with full public participation.
- (3) A regional state constitution shall be referred to the Constitutional Court after it has been adopted for a review of its compatibility with the federal constitution, including the principles in the preceding article. If the Constitutional Court finds that it is not so compatible, it must give reasons and may indicate how it might be made compatible. The regional state constitution is not valid unless the Court has certified that it is compatible.

Article 143. Amendments to regional state constitutions

Amendments to the regional state constitution shall be made democratically and give the people of the regional state ample opportunity to participate in the process. If a regional state intends to amend its constitution, it shall inform the federal government and submit any amendments that are passed for review to the Constitutional Court. Any amendment may not come into effect unless the Court has certified that it is compatible.

Chapter 14 -Public Finance

Article 144. Principles of public finance

The basic principles of public finance are transparency and accountability, the equitable use of revenue in the interests of national unity and national development, and the avoidance of waste.

Article 145. Revenue raising powers

- (1) The federal government may raise revenue from the sources allocated to it in Schedule 2.
- (2) The regional state governments may raise revenue from the sources allocated to them in Schedule 2.
- (3) By law the federal government may authorize the regional state governments, or the local governments to collect taxes or other revenue under national law, provided that the federal government compensates those governments for the expense of collecting the revenue.
- (4) Federal government revenue collected by a regional state or local government should be allocated, in whole or in part, as far as reasonably possible, to that government in such a way as to offer an incentive to that government to collect the revenue efficiently.
- (5) National and regional state governments shall provide by law for local governments to collect and retain for their use appropriate taxes such as market license fees, taxes on buildings etc.

Article 146. Imposition of tax

No taxes may be raised without the authority of the relevant federal or regional state legislature. Tax legislation shall apply equally to all, and no state officers may be exempt. Any waivers of the obligation to pay tax must be authorized by law and must be reported to the Auditor General.

Article 147. Types of distribution from the federal government to other governments

- (1) Revenue raised by the federal government from national sources will be either retained by the federal government to carry out its own responsibilities or distributed to the regional states or to local governments, or retained as reserves.
- (2) The federal government may distribute revenue the regional states as
 - (a) revenue earmarked by this constitution or law for those governments;
 - (b) revenue distributed on the basis of the recommendations of the finance commission; or
 - (c) grants from the federal government, including equalization grants intended to enable regional states with less revenue raising capacity in relation to their service

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responsibilities to offer to their citizens approximately the same level of service as other states; and

- (d) Revenue may be distributed to local governments for the performance of their functions by the federal government through the regional state governments, or by the regional governments themselves.

Article 148. Guiding principles for allocation of money

- (1) A federal law shall be enacted to provide for the equitable allocation of revenue raised nationally between the various levels of government that shall take into account the following factors among others:
 - (a) the national interest;
 - (b) national obligations;
 - (c) the responsibilities of the various levels of government, under the constitution, under the constitutions of the regional states, and under federal and regional state laws and under their own programs;
 - (d) the need to ensure the satisfaction of basic needs of the people;
 - (e) the long term development and planning needs of the country;
 - (f) disparities within and among the regional states in terms of their ability to raise revenues;
 - (g) the need for governments to have predictable levels of income in order to plan their programs;
 - (h) the need to encourage governments to collect revenues efficiently; and
 - (i) the need to be able to respond to emergency and short term contingencies.

Article 149. Borrowing

Regional States may borrow money only with a guarantee from the Federal Government.

Article 150. Public funds

All revenues raised by the Federal Government or a regional state government must be paid into a fund or funds established and regulated by law, and maintained by the relevant government and only used for purposes approved by law.

Article 151. Division and Allocation of Revenue

The allocation of federal revenue to the regional states, provided for in Article 147, shall be done by an annual Allocation of Federal Revenue Act passed by the federal parliament.

Article 152. Annual federal budget

The annual budget for the federal government shall be submitted to the federal parliament at least two months before the end of the preceding financial year. It shall be passed into law by the federal parliament.

Article 153. Expenditure before parliamentary approval of annual budget

If the budget is not passed by the beginning of the financial year, money may be spent on the basis of the previous year's budget. No more than the equivalent of one quarter of the previous year's budget may be spent in this basis, and for no more than 4 months of the new financial year.

Article 154. Unexpected expenditure

If it becomes necessary to meet unexpected and necessary demands on the federal budget, the federal government may spend the money even though there is no provision in the approved budget. The maximum that may be spent in this way is the equivalent of 10% of the approved budget. Within one month the approval of parliament shall be sought, and within three months the expenditure shall be approved by a law passed for that purpose.

Article 155. Accounts and audit of public entities

All the accounts of government bodies, at any level of government, shall be audited by the Independent Auditor General.

Article 156. Contracts for goods and services

All procurements of goods and services for governmental institutions and authorities shall be transparent and public.

Article 157. Finance Commission

- (1) A law shall establish a finance commission comprising nominees from the national and the regional state governments. The composition of the Finance Commission must be approved by a resolution of the House of the Regional States passed by at least half of the delegations to the House.
- (2) The finance commission shall have the capacity and resources to carry out research and to evaluate the submissions of the regional state governments.
- (3) The functions of the finance commission shall be recommend to the federal government:

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- (a) what proportion of taxes raised at the national level should be distributed to the regional state governments; and
 - (b) how the regional state governments should share these funds.
- (4) The Finance Commission shall keep the working of the revenue distribution system under review and make proposals to the federal government for distribution for a period of 5 years at a time, as well as carrying out other functions given by law.
 - (5) The Finance Commission shall take into account the principles laid down in Article 129.

Article 158. The Independent Federal Audit Commission/Auditor-General

- (1) The Auditor General shall be appointed by a process prescribed by law that ensures independence of the office.
- (2) The Auditor General shall be qualified and experienced in the field of auditing.
- (3) The Auditor General may only be dismissed after a thorough and fair process of investigation.
- (4) The functions of the Independent Federal Audit Commission/Auditor General are to perform an annual audit of the accounts of all government bodies, at any level of government.
- (5) The Auditor General shall report annually to parliament.

Article 159. Central Bank

A Central Bank of the Federal Republic of Somalia shall be established by a federal law. It shall have the functions usually exercised by a national Central Bank.

Article 160. Resources

The following principles apply to the control of resources and allocation of revenues from resources, whether natural or other:

- (1) local people have the incentive to conserve and manage natural resources responsibly;
- (2) governments at every level have the means and the incentives to develop and implement policies for responsible management, especially of non-renewable resources, and to make the best use of non-renewable resources; and
- (3) the environmental and other burden of conserving, managing and exploiting natural resources should fall on those sections of society that benefit from those resources.

Article 161. Federal legislation

Federal legislation shall provide for the framework for responsible financial management including:

- (1) the way in which the budgets of regional states are to be presented, and the timetable for the budgetary process in the regional states;
- (2) the giving of guarantees by the federal government for loans raised by regional states;
- (3) procedures for public procurement;
- (4) the auditing of accounts of non-governmental bodies that receive government funding; and
- (5) generally measures necessary to put this Chapter into effect.

Chapter 15 - Peace and Security

Article 162. The security services of the Republic

- (1) The federal government shall guarantee the peace, sovereignty and national security of the Republic and the safety of its people, through its security services, comprising the armed forces, any intelligence services, and the federal police service.
- (2) The armed forces of the federation have the mission to guarantee the sovereignty and independence of the country and to defend its territorial integrity.
- (3) The federal police service has the mandate to protect the lives of the citizens and residents of the Republic, the property of the Republic and of citizens and residents and their peace and security.
- (4) The police services established by the laws of the regional states have the mandate to protect lives and property and preserve peace and security locally, alone or in cooperation with the federal police service.

Article 163. Control of armed force

- (1) It is a fundamental principle of national security that all armed force shall be subject to non-military control.
- (2) The national armed forces are the only lawful military force in the Republic. Armed private militias are prohibited.

- (3) Other than the armed forces and police services established in terms of the Constitution, armed organizations, including commercial security companies, may be established only by national legislation.

Article 164. Principles for the armed forces

- (1) The following principles must be respected by the armed forces:
- (a) professionalism, discipline and patriotism;
 - (b) respect for the rule of law, democratic institutions and fundamental rights;
 - (c) a commitment to uphold the constitution;
 - (d) transparency and accountability; and
 - (e) political neutrality.
- (2) Every Somali citizen is entitled to be considered for positions in the national armed forces at all levels, without discrimination.

Article 165. Abuse of powers

Human Rights abuses alleged to have been committed by members of the armed forces against civilians must be tried by civilian courts.

Article 166. Manifestly illegal orders

No member of the armed forces or security services may obey a manifestly unlawful order.

Article 167. Non-Military control of the armed forces and intelligence service

- (1) The President [in the case of a parliamentary system - acting on the request of the Prime Minister] appoints the heads of the armed forces and intelligence service.
- (2) Any use of armed forces in the defense of the Republic, in fulfillment of an international obligation, or in cooperation with the police shall be authorized by the President [in the case of a parliamentary system acting on the request of the Prime Minister] and approved by the House of the People.
- (3) A member of the Council of Ministers shall have the responsibility for defense.
- (4) The activities of the armed forces shall be subject to non-military oversight, including by a special parliamentary committee.

Article 168. Police

- (1) The police services of the Republic comprise the federal police service and any police services that may be set up by the regional states.
- (2) The federal police service shall operate nationally, and throughout the country, in close cooperation with the authorities of the regional states.
- (3) All police services must respect the constitution, the laws of the country, and their internal code of conduct. This internal code will be regulated by law.

Article 169. States of Emergency

- (1) A state of emergency may be declared only if it is necessary to deal with a serious situation arising from war, invasion, insurrection, disorder, a natural disaster or some other grave public emergency.
- (2) A state of emergency may be declared affecting the whole or part of the country, but shall not be more extensive than necessary to deal with the situation.
- (3) The President [acting on the request of the Council of Ministers in a parliamentary system] may declare a necessary state of emergency, which shall then be debated, and may be approved, by the House of the People within [21 days] after that declaration. The debate in the House of the People shall take place in public unless that is not feasible to do so in the circumstances.
- (4) The House of the People may approve or extend a state of emergency for no more than three months at a time. If Parliament does not approve or extend a state of emergency, the state of emergency ceases to be in effect.
- (5) The declaration of a state of emergency may give the executive special powers that are necessary to deal with the situation.
- (6) The powers granted under a state of emergency shall not include powers to violate the rights under this constitution, unless that violation is absolutely necessary for the purposes of dealing with the emergency situation.
- (7) The validity of a declaration of a state of emergency, and the procedures involved in making the declaration, may be challenged in court.

Article 170. Legislation

- (1) Federal legislation shall be enacted to ensure the implementation of this Chapter, and the respect for the principles of the constitution, and must in particular:
 - (a) reflect national policies on anti-terrorism, anti-piracy, human trafficking and other organized crime and establish specialized bodies to deal with particular threats;

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- (b) regulate the structure and functions etc of the federal police;
 - (c) regulate the relationships between the federal police service and the police services of the regional states in order to ensure cooperation and coordination;
 - (d) clarify the issue of obedience to illegal orders;
 - (e) regulate the establishment and operation of the special parliamentary committee for the armed forces;
 - (f) ensure the involvement of civilians in the oversight of the federal police service;
 - (g) provide for accessible and effective complaints mechanisms for members of the public who are affected by abuse of office by members of the security forces;
 - (h) prohibit private militias; and
 - (i) regulate private security companies and in particular the issue of whether and subject to what conditions private security companies may employ weapons.
- (2) Legislation of the regional states shall ensure the regulation of regional state police to a standard equivalent to that employed in the regulation of the federal police service, and ensure their compliance with the principles of this Chapter, including non-military oversight.
 - (3) Federal legislation shall provide for states of emergency and the special powers that may be needed.
 - (4) Federal legislation shall provide for reasonable conditions, fair treatment, and remedies for wrongful treatment for anyone who is detained under a state of emergency.
 - (5) Federal legislation may not excuse, on the grounds of the existence of a state of emergency, any person who is guilty of any unjustified violation of any right, or limit their civil or criminal liability.

Chapter 16 - General Provisions

Article 171. Amendment of the Constitution

- (1) The following provisions of the Constitution may not be amended:
 - (a) the Founding Principles contained in Chapter 1;
 - (b) the fundamental rights and freedoms contained in Chapter 3.

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- (2) Amendment to the amendable provisions of the Constitution may take place only according to the procedure set forth in the following clauses of this Article [other than provisions for amendment of boundaries of regional states that is dealt with in Chapter 7].
- (3) The process of amendment may be initiated by the federal or a state government, a member of the federal legislature or a petition signed by at least 20,000 citizens.
- (4) A motion for the amendment of the Constitution may be introduced into either house of the federal parliament.
- (5) When any motion to amend the Constitution is introduced and accepted on first reading by a majority of all members of the House into which it is introduced, a joint committee of the Federal House of the People and the House of the Regional States shall be appointed.
- (6) The joint committee shall review proposals for amendment. They shall inform the people of the proposal and ensure that there is adequate opportunity for public debate. The members of the public shall be consulted and have the opportunity to present their comments and suggestions to the joint committee.
- (7) The joint committee shall submit its report to the legislature within two months of its appointment.
- (8) No amendment to the constitution is adopted unless it has been approved on the final vote in the House of the People by at least two thirds of the existing members, and on the final vote in the House of the Regional States by at least two thirds of all the regional state delegations.
- (9) Where the proposed amendment has a significant effect on the powers or functions of regional states, as certified by the Speaker of the House of the Regional States, all regional state legislatures shall be invited to submit their views to the federal legislature.
- (10) The final vote in neither house of Parliament may be taken until at least three months has elapsed since the introduction of the motion for amendment.

Article 172. Restriction on amendment

No amendment may be proposed within the first seven years after the constitution comes into force, other than any amendments necessary to facilitate the participation of either or both Puntland or Somaliland.

Article 173. Review of the Constitution

At the end of six and half years of the coming into force of the constitution, the federal legislature shall establish a commission to review the implementation and operation of the

constitution and to consult the people on possible changes. It shall submit its report to the federal legislature and to the people within six months. After collection and consideration of public views, the commission shall revise its report and submit its proposals, if any, to Parliament for amendment under the procedure prescribed in Article 171.

Article 174. Coming into effect of the constitution

This constitution shall come into effect on the 90th day after it is approved [currently by referendum], except so far as the effect of any provision is postponed by Schedule 1 [TBD].

Article 175. Implementation

Schedule 1 [TBD] has effect to postpone the coming into effect of certain provisions, to provide for a timetable for enactment of new laws and the creation of new institutions, and generally to ensure the implementation of the constitution.

Article 176. Continuation of Laws

Laws in effect on the date that the constitution comes into force remain in effect unless Schedule 1 [TBD] provides otherwise.

Article 177. International obligations

Treaty obligations in effect on the date that the constitution comes into force remain in effect.

Article 178. Referendums

- (1) If a referendum is to be held, whether required by the Constitution or any law, or for any other reason, all eligible voters shall have the right to express their views in a free, direct and secret manner and in accordance with a special law establishing the procedures for referendums.
- (2) The law on the referendum shall ensure that the question or questions to be asked are clear, that they are designed to elicit the genuine view of the voters and do not obscure the nature of the choice that the voters face.
- (3) Neither the questions nor the design of the ballot paper nor the procedure shall suggest any particular answer to the question or questions.

Article 179. Repeal of the Transitional Federal Charter

The Transitional Federal Charter ceases to be in force with effect from the moment that the Constitution comes into effect under Article 174. Schedule 1[TBD] preserves certain aspects of the Transitional Federal Charter for limited periods. The Annex [TBD] to the Constitution includes, for convenience, certain provisions of the Transition Federal Charter that remain in effect for limited periods.

Schedules

Schedule 1- Implementation [TBD]

Schedule 2 – Legislative and revenue raising powers of Regional States and Federal Government

Note: this is not a listing of all the possible powers, but an indication of the sorts of powers that the Commission envisages would be exercised at different levels in the federal system. In the spirit of the “building from the bottom” approach of the Chapter of the federal structure, the regional state powers precede those of the federal government

(1) Exclusive Regional State Powers.

Regional states in the Somali Federation should have jurisdiction over

- a. matters of a local or regional state nature;
- b. matters directly affecting the delivery of social services to the citizens;
- c. matters affecting municipalities and municipal services;
- d. matters affecting the local and regional economy and regional state economic development;
- e. matters affecting public finance (taxation and public expenditures) in the regional state;
- f. matters affecting cultural and recreational life in the regional state; or
- g. infrastructure with a local or regional purpose.

(2) Concurrent Powers of the Federal and Regional State Governments.

Regional State Concurrent Powers – to include matters on which regional state law will prevail; this should include matters on which it is desirable to have local law because of local conditions, cultural differences, having government close to the people, but where building capacity at the regional state level may take time.

Federal Concurrent Powers – to include matters on which federal law will prevail in case of conflict.

(3) Exclusive Federal Powers

The federal government should have jurisdiction over the following matters

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- (a) those directly affecting the country's national unity;
- (b) those affecting its national security and international relations (e.g. armed forces, anti-terrorism, anti-piracy);
- (c) those affecting the development, maintenance and management of the country's economy;
- (d) those affecting the system of public finance and the adequate and equitable financial support of the members of the federation;
- (e) citizenship and matters affecting the equal status and equitable treatment of citizens;
- (f) those that require high levels of technical expertise and equipment (e.g. nuclear power, major power generation generally, fighting major crime);
- (g) national institutions of education, health etc.;
- (h) in general, matters which directly affect more than one regional state, or all of them, or the country as a whole, should fall in either the federal or a concurrent list.

(4) Taxation powers

Regional states should have the power to raise taxes that are most effectively raised at that level, and where having a uniform rate across the country is not an important matter

The Federal Government should be able to raise taxes on national resources and activities – such as import duties - taxes that are more effectively raised at the national level, or where it is important that a uniform rate applies across the country. Other factors would be taken into account including whether permitting the regional states to raise a particular tax would create serious problems of inequality between the regional states.

Schedule 3 – Procedure for Election of the President [only in a parliamentary system]

Any candidate for the office of President must be nominated in writing by at least 10 members of the House of the People and must show the support of at least one regional state delegation to the House of Regional States

Voting must be held in one or more joint sessions of the two houses of Parliament, chaired by the Chief Justice of the Constitutional Court. No voting may take place unless at least 70% of the members of each house are present.

Members of the House of Regional States must cast votes as individuals not as delegations.

Voting must be by secret ballot and be conducted by the Election Commission.

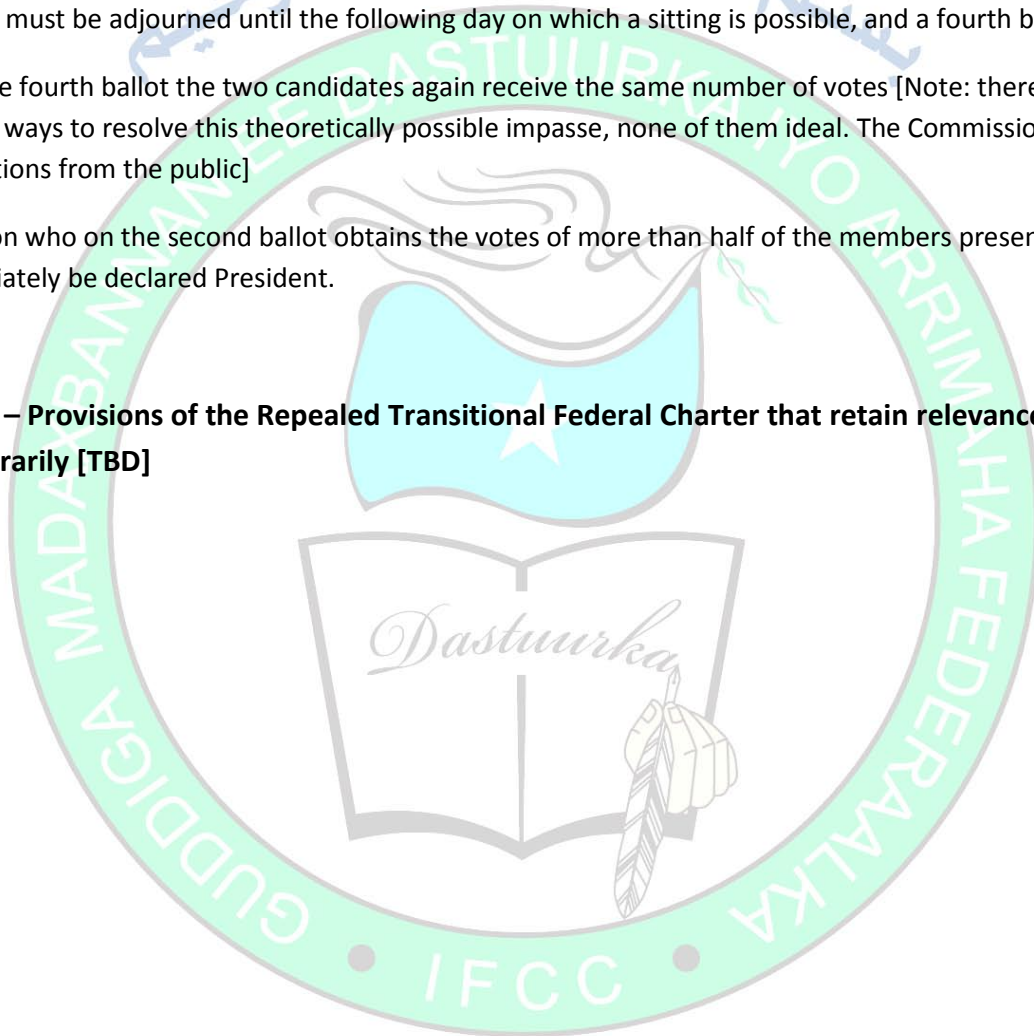
If on the first ballot no person obtains the votes of more than half of the members present a second ballot must be held between the two persons who obtained the highest number of votes.

If both candidates in this second ballot receive the same number of votes, a second ballot must be held immediately. If on the third ballot the two candidates again receive the same number of votes, the session must be adjourned until the following day on which a sitting is possible, and a fourth ballot held.

If on the fourth ballot the two candidates again receive the same number of votes [Note: there are several ways to resolve this theoretically possible impasse, none of them ideal. The Commission invites suggestions from the public]

A person who on the second ballot obtains the votes of more than half of the members present must immediately be declared President.

Annex – Provisions of the Repealed Transitional Federal Charter that retain relevance temporarily [TBD]



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