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EE DIB-U-EEGISTA IYO HIRGALINTA DASTUURKA

اللجنة المستقلة لمراجعة وتنفيذ الدستور

Independent Constitutional Review
and Implementation Commission



RELIGIOUS SCHOLARS CONSULTATION REPORT: Amendments to Chapters 5-9 of the Provisional Constitution

17/08/2024

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CONSULTATIVE MEETING REPORT FOR RELIGIOUS SCHOLARS ON THE REVIEW OF CHAPTERS 5-9 OF THE PROVISIONAL CONSTITUTION

Introduction



The Independent Constitutional Review and Implementation Commission, the Constitutional Oversight Committee of the Parliament, and the Ministry of Justice and Constitutional Affairs jointly organised a consultative meeting with religious scholars in Mogadishu on 17 August 20224 regarding the proposed amendment to the Chapters 5-9 of the Provisional Constitution.



The purpose of the meeting was to involve the Somali religious scholars in the constitutional review process, allowing them to express their views and perspectives. This meeting was attended by 100 Somali religious scholars (male: 81 and female: 19) representing various segments of society.

Opening Remarks



The Chairperson of the Independent Commission for the Review and Implementation of the Constitution, Avv. Buhan Adan Omar, in his opening remarks, noted that the previous four chapters had been reviewed in consultation with the scholars. He emphasized that certain issues had been identified as requiring religious guidance, and the opinions and direction of the scholars were sought to ensure compliance with Sharia. As the review of the new five chapters begins, the preliminary views of the scholars are being sought to align the chapters with Islamic principles, Qur'an, Sunnah, and the objectives of Sharia. He highlighted the importance of consulting the experts in religious matters to guide the review process and address any misconceptions among the public regarding the fundamental principles of governance, rights, and responsibilities as enshrined in the Constitution.



In his opening remarks, the Chairman of the Oversight Committee, Hon. Hussein Qasim Yusuf Idow, underscored the critical role of the constitutional review process in shaping the future of Somalia. He emphasized the importance of inclusive consultation, particularly with key stakeholders such as religious scholars, whose insights and perspectives are invaluable in ensuring that the Constitution reflects the core values and principles of Somali society. The Chairman highlighted that the involvement of scholars in the review of Chapters 5-9 is not only a procedural necessity but also a vital step in aligning the Constitution with Islamic teachings and ensuring that it serves as a robust foundation for governance and justice in the country. He called upon the participants to engage deeply and provide their expert guidance, which would be instrumental in achieving a Constitution that is both reflective of Somali traditions and responsive to the needs of its people.



The Deputy Minister of Justice and Constitutional Affairs, Mr. Ahmed, also addressed the gathering, emphasizing the vital importance of finalizing the Constitution, which serves as the cornerstone of Somalia's legal and governance framework. He underscored that the process of constitutional review,

particularly the amendment of Chapters 5-9, requires the active engagement and input of all segments of Somali society. By ensuring broad participation, the Deputy Minister highlighted, the resulting Constitution will not only reflect the diverse perspectives and needs of the population but will also gain the legitimacy and support necessary for its effective implementation. Mr. Ahmed called on the participants to contribute thoughtfully and diligently to the discussions, reminding them that their involvement is critical to the success of this national endeavour and the future stability and prosperity of the nation. The Deputy Minister then officially opened the meeting.

Presentation of the Issues Pertaining to Chapters 5 to 9



Mr. Osman Haji, a member of the Independent Constitutional Review and Implementation, took the audience through the process of preparing and drafting five critical chapters of the Constitution. He emphasised how these chapters were carefully reviewed to reflect the key agreements reached by the National

Consultative Council. The chapters in question, each addressing a fundamental aspect of governance, included:

- The distribution of governmental power within the Federal Republic of Somalia (Chapter 5).
- The structure and functions of the Federal Parliament (Chapter 6).
- The role and duties of the President of the Federal Republic of Somalia (Chapter 7).
- The organization and responsibilities of the Executive Branch (Chapter 8).

- The framework and jurisdiction of the Judiciary (Chapter 9).

Mr. Osman Haji explained that the Independent Commission began the process of amending these chapters after they were formally transferred from the Parliamentary Oversight Committee. He made it clear that the constitutionalising of the agreements, which were the outcome of the National Consultative Council's deliberations, was carried out in accordance with the procedures mandated by Articles 63 of the Constitution. These articles stipulate that any amendments to the Constitution must adhere to the detailed process outlined in Chapter 15. Among the crucial agreements that influenced the revisions of Chapters 5-9 were those concerning the distribution of governmental powers and the federalisation of the judiciary, both of which were finalized in December 2022. Through his presentation, Mr. Osman Haji underscored the importance of these amendments in reinforcing the legal and structural foundation of Somalia's governance.

Presentation of Questions



The bodies responsible for the constitutional review prepared 33 multiple-choice questions related to Chapters 5-9. These questions were presented to the participants, who were asked to select the options that best aligned with their views. Additionally, the participants were given the opportunity to submit

written feedback on any issues where they had differing views. They were also encouraged to discuss the questions verbally.

Topics Discussed and Views of Participants



Regarding the allocation of powers, the discussion centered around the structure of federal member states. The majority agreed that a federal member state should consist of two or more regions. The scholars also debated the appropriate title for the members of state legislatures, suggesting that "state representative" might be a more suitable title than "member of parliament"



With respect to the federal parliament, discussions included the conditions under which members of parliament could lose their seats, with the majority suggesting that missing two consecutive sessions should result in the loss of a seat. The minimum age for the Speaker of each house was also debated, with the majority agreeing on 35 years. The issue of dual citizenship was also extensively discussed.

Concerning the president of the Federal Republic of Somalia, the discussion on the presidency included dual citizenship, the President's term of office, and the eligibility of individuals with foreign spouses to hold the office.



The participants also touched on the executive branch of the government, the debate focused on whether the Prime Minister should hold dual citizenship or have a foreign spouse. The majority opposed both. The structure of the Federal Government, including the inclusion of Deputy Prime

Ministers, was also discussed. Finally, the discussion on the judiciary was passionate and focused on the structure of the judiciary, the eligibility of the Chief Justice and the President of the Constitutional Court, and the necessity of a Constitutional Court.



Participants provided various insights, emphasising the importance of aligning the Constitution with Islamic principles. They noted that the Constitution should ensure the well-being of citizens, protect their rights, and be consistent with Sharia law. The scholars also stressed the need for a clear

and consistent approach to federalism and governance, suggesting that legal terminology should differentiate between federal and state authorities to avoid confusion.

Conclusion



The meeting successfully engaged Somali religious scholars in the constitutional review process, providing them with a platform to express their views and perspectives on the chapters addressing the distribution of governmental powers, the Federal Parliament, the President, the Executive branch,

and the Judiciary. The scholars' insights were crucial in ensuring that the proposed amendments align with Islamic principles, Qur'an, Sunnah, and the objectives of Sharia. Their participation underscored the importance of inclusive consultation in shaping Somalia's legal and governance framework.

The meeting concluded with a commitment to continue the review process, taking into account the valuable input from the religious scholars. The Independent Commission for the Review and Implementation of the Constitution, the Constitutional Oversight Committee of the Parliament, and the Ministry of Justice and Constitutional Affairs will work together to draft amendments that reflect the consensus reached and ensure the Constitution serves as a just and equitable foundation for Somalia's future.

Appendix

1. <https://www.facebook.com/share/v/PC5HHAaUqdKZt5PK/?mibextid=WC7FNe>.
2. <https://www.facebook.com/share/r/kqx6BRdSTuburVLd/?mibextid=UalRPS>
3. <https://icric.gov.so/shirka-latashiga-culumaaudiinka-ee-wax-kabeddelka-cutubyada-5aad-9aad-ee-dastuurka/>

Annex

- 1) List of participants;
- 2) Consultation questions; and
- 3) Consultation answers.

Endorsement of the Report

(The report should be officially certified by the supervisor/focal person)

This Report is Endorsed by:

Name: Abdulkadir Mohamed Hassan

Title: Secretary General of Independent Constitutional Review and Implementation Commission

Date: August 17, 2024

Signature: _____



