

THE CONSTITUTION OF THE REPUBLIC OF SOMALILAND

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THE CONSTITUTION OF THE REPUBLIC OF SOMALILAND

IN THE NAME OF ALLAH, THE COMPASSIONATE AND THE MERCIFUL

PREAMBLE

IN PURSUANCE of the resolutions of the Conference of the Somaliland Communities held in Burao on 27th April to 5th May 1991, which reaffirmed (our) independence with effect from 18th May 1991;

NOTING that the Conference of the Elders of the Somaliland Communities held in Borama from 24th January to 25th May 1993 adopted a National Charter^[1] which:

- laid down that a national constitution which will replace the national charter be prepared and consulted upon within a year; (*and*)
- set out clearly the constitutional principles and the governmental structures, confident in their communities' inalienable right to decide their destiny;

HAVING experienced the dire consequences of the application of a constitution not grounded on the nation's beliefs, culture and aspirations, as was the case for a period of thirty years[2];

HAVING experienced the devastation wrought by a regime based on dictatorship and a policy of divide and rule to which the country was subjected for over twenty years, and ever vigilant of the return of such a regime;

REMEMBERING the series of struggles waged by the people, such as that of the "Darawiish"[3], religious leaders and political parties;

MINDFUL of the vigorous campaign led by the patriotic organization, the SNM[4], which culminated in the reassertion of (our) independence which was achieved through sacrifice of life and property so that the nation can enjoy a governmental system which meets its needs;

DESIROUS of a state which fulfils the aspirations of the nation, and is thereby appreciated by all, and which is founded on equality and justice;

RECOGNIZING that lasting stability and peace can be achieved through a synergy between the economic system and the aspirations of the nation;

CONFIDENT that the Somaliland nation is a family that has everything in common, such as religion, culture, customs and language; and whose members are no different from each other and are ready to build together a state in which everyone has equal status;

AWARE that the preparation of the Constitution has gone through various stages and committees, such as the Constitution Working Party which was enjoined by the third Grand Conference on 26th November 1996[5] to sift through the two draft versions of the Constitution; and more recently, the corrections and amendments made by the two Houses of Parliament on 30th April 2000; and that the Constitution was based on the following issues:

- a. The Islamic Sharia.
- b. Conclusions from the various consultations.
- c. The separation of the powers of the state as between the legislative, the executive and the judiciary.
- d. The decentralization of the administration of the government.
- e. Guarantees of private property rights and the protection of the free market.
- f. Sanctity of human life through the entrenchment of fundamental rights and individual freedoms.
- g. Peaceful and proper co-existence with the states in the region and world wide;

HAVING thoroughly considered the spirit and words of the preamble and the rest of the Constitution;

The people of Somaliland hereby approve and proclaim to the whole world on this 31st May, 2001[6], that this constitution has been adopted as the nation's Constitution.

CHAPTER ONE

Description of the State, General Principles & Fundamental Rights

Part One

General Description

Article 1: The State of the Republic of Somaliland

1. The country which gained its independence from the United Kingdom of Great Britain and Northern Ireland on 26th June 1960 [7] and was known as the Somaliland Protectorate and which joined Somalia on 1st July 1960 so as to form the Somali Republic and then regained its independence by the Declaration of the Conference of the Somaliland communities held in Burao between 27th April 1991 and 15th May 1991 shall hereby and in accordance with this Constitution become a sovereign and independent country known as “**The Republic of Somaliland**”.

2. Sovereignty resides in the people who shall exercise it in accordance with the Constitution and other laws.

Article 2: The Territory of the Republic of Somaliland

1. The territory of the Republic of Somaliland covers the same area as that of the former Somaliland Protectorate[8] and is located between Latitude 8’ to 11’ 30’ north of the equator and Longitude 42’ 45 to 49’ East; and consists of the land, islands, and territorial waters[9], above and below the surface, the airspace and the continental shelf.

2. The Republic of Somaliland is bordered by the Gulf of Aden to the north; Somalia to the east; the Federal Republic of Ethiopia to the south and the west; and the Republic of Djibouti to the north west.

3. The territory of the nation is inviolable, and shall not be trespassed upon.

Article 3: The Capital

The capital of the Republic of Somaliland is Hargeisa.

Article 4: Citizenship

1. Any person who is a patrial[10] of Somaliland being a descendant of a person residing in Somaliland on 26th June 1960 or earlier shall be recognized as a citizen of Somaliland.

2. The law[11] shall determine the acquisition or loss of the citizenship of Somaliland.

Article 5: Religion

1. Islam is the religion of the Somaliland state[12], and the promotion[13] of any religion in the territory of Somaliland, other than Islam, is prohibited.

2. The laws of the nation shall be grounded[14] on and shall not be contrary to Islamic Sharia.

3. The state shall promote religious tenets (religious affairs) and shall fulfill Sharia principles and discourage immoral acts and reprehensible behavior[15].

4. The calendar shall be the Islamic Calendar based on the hijra[16], and the Gregorian Calendar.

Article 6: Language

1. The official language of the Republic of Somaliland is Somali and the second language is Arabic.

2. Other languages shall be used, when necessary.

Article 7: The Flag, the Emblem and the National Anthem

1. The flag of the Republic of Somaliland shall consist of three horizontal, parallel and equal sections, the top section of which is colored green and has inscribed in its midst in white in Arabic language (*the phrase*) *La Ilaaho Ila-Allah Muhammad Rasulah-Allah* (*There is no God, but Allah and Mohammad was his Prophet*); the middle section is white and has inscribed in its midst an equally sided five pointed black star; and the bottom section is colored clear red.[17]

2. The emblem[18] of the nation shall consist of a coffee colored falcon with (the words), in Arabic language, “ALLAHU AKBAR” (*God is great*) inscribed on its breast. Below the eagle are two hands shaking, and a set of scales hang above it and come down on both of its sides. The falcon and the scales and hands are in turn surrounded on both sides and below by two strands of green leaves intertwined at the base, and with the Arabic words *Bismillahi Rahmani Rahim*[19] inscribed at the top gap between the two leaves.

3. The National Anthem shall be determined by law and shall reflect the principles of the Constitution, the national aspirations, and co-operative social order; and shall have its own unique music which shall be different from that of other countries.

4. Any partial or total changes to the flag, the emblem and the national anthem shall be approved by a resolution of the House of Representatives.

Part Two

General Principles[20]

Article 8: Equality of Citizens

1. All citizens of Somaliland shall enjoy equal rights[21] and obligations before the law, and shall not be accorded precedence[22] on grounds of color, clan, birth, language, gender, property, status, opinion etc.[23]
2. Precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited; and at the same time programs aimed at eradicating long lasting bad practices shall be a national obligation.[24]
3. Save for the political rights reserved for citizens, foreigners lawfully resident in Somaliland shall enjoy rights and obligations before the law equal to those enjoyed by citizens.

Article 9: Political System

1. The political system of the Republic of Somaliland shall be based on peace, co-operation, democracy and plurality of political parties.
2. The number[25] of political parties in the Republic of Somaliland shall not exceed three (3).
3. A special law[26] shall determine the procedures for the formation of a political party, but it is unlawful for any political party to be based on regionalism or clanism .

Article 10: Foreign Relations

1. The Republic of Somaliland shall observe all treaties[27] and agreements entered into by the former state of Somalia with foreign countries or corporations provided that these do not conflict with the interests and concerns of the Republic of Somaliland.
2. The Republic of Somaliland recognizes and shall act in conformity with the United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights[28].
3. The Republic of Somaliland accepts the principles of the self-determination of the nations of the world.
4. It accepts that political disputes which arise shall be settled through dialogue and peaceful means, and shall respect the territorial integrity of other countries.
5. It shall endeavor to replace the long-standing hostility between the countries in the Horn of Africa with better understanding and closer relations.

6. The state of the Republic of Somaliland is an independent republic which has its place among the Arab nations, and the peoples of Africa and the **Islamic World**, and shall accordingly endeavor to join the United Nations, the Organization of African Unity, the Arab League and **Organization of Islamic States**.

7. The state of the Republic of Somaliland shall oppose terrorism (*and similar acts*), regardless of the motives for such acts.

Article 11: The National Economy

1. The state shall lay down the national economic policy based on the principles of free enterprise and the joint working of private property, public property, the national wealth and foreign investment so as to realize the growth of productivity, the raising of the standard of living, the creation of jobs, and, in general, the advancement of the economy of the nation.

2. In order to ensure that the economic system does not lead to the exclusive enrichment of a group or a small section of the public, and to avoid (*both*) the creation of economic classes consisting of those who are prosperous and those who are not, and the widening of the economic gulf between the urban and rural communities, the state shall ensure that social benefits and economic opportunities are provided in a just and equitable manner.

3. The state shall ensure the security^[29] of foreign investment in the country. Such investment shall be regulated by law^[30].

Article 12: Public Assets, Natural Resources and Indigenous Production

1. The land^[31] is a public property commonly owned by the nation, and the state is responsible for it.

2. The care and safeguarding of property, endowments and public assets is the responsibility of the state and all citizens; and shall be determined by law.

3. The Government shall have the power to own and possess movable and immovable property; and to purchase, sell, rent, lease, exchange on equivalent value, or otherwise expend that property in any way which is in accordance with the law

4. The central state is responsible for the natural resources of the country, and shall take all possible steps to explore and exploit all these resources which are available in the nation's land or sea. The protection and the best means of the exploitation of these natural resources shall be determined by law^[32].

5. Where it is necessary to transfer the ownership or the benefits of a public asset, the transfer shall be effected in accordance with the law^[33].

6. The state shall encourage indigenous economic production such as agriculture, livestock, fisheries, minerals, production of frankincense and myrrh and gum etc., and manufacture based on indigenous products.

7. The payment of Zakat[34] is a cornerstone of Islam, and its administration shall be determined by law.

Article 13: Banks

The state shall establish a Central Bank which shall direct the monetary system and the currency of the nation. The opening of commercial and development banks shall be made possible and private banks shall be accorded preferential status.

Article 14: Taxes and Duties

1. The imposition of taxes and other duties shall be based on the interests and well being of the society. Therefore, no taxes or duties which have not been determined by law shall be collected.

2. The levying, waiver and changes in taxes and other duties shall be determined by law.

3. Usury and commercial practices[35] which are against the interests of the society and unlawful enrichment are prohibited.

Article 15: Education, Youth and Sports

1. The state shall pay particular attention to the advancement, extension and dissemination of knowledge and education as it recognizes that education is the most appropriate investment that can play a major role in political, economic and social development.

2. Education is in the public interest, and is rooted in the experience and the special environment of the Somaliland society.

3. The learning of and training in the Islamic religion is a fundamental path and shall be compulsory at all levels of education. At the same time, the promotion of Koranic schools is the responsibility of the state.

4. Citizens and resident foreigners may open schools and educational or training projects of all levels in accordance with the Education Law[36].

5. The state shall accord a first priority to primary education, and shall endeavor to spread primary education to the regions and the districts.

6. The eradication of illiteracy and the (*provision*) of adult education is a national obligation, and the efforts of the public and the state shall be combined to fulfill this obligation.

7. The national policy is that primary education shall be free[37].

8. In order to ensure a healthy physical and mental growth of the young, and to improve their well being and maturity, the state shall give special attention to the promotion and encouragement of physical education and sports which will be recognized as one of the basic subjects in the educational curriculum of both state and other schools.

Article 16: Promotion of Knowledge, Literature, Arts and Culture

1. The state shall promote knowledge and literature, and shall encourage creativity and research.

2. The law shall determine the rights to authoring, creating and inventing[38].

3. The state shall promote the Arts and the modest culture of the society whilst at the same time benefiting from the knowledge of other world societies. Literature, the arts, and indigenous sports shall be specially encouraged whilst Islamic behavior is observed.

4. The state shall promote the Arts and the modest culture of the society,[39] and shall eradicate customs which damage religion, development, culture and the health of the society. The production of alcohol and the cultivation or the sale or use of intoxicants (*drugs*) in the territory of Somaliland are prohibited[40].

Article 17: Health

1. In order to fulfill a policy of promoting public health, the state shall have the duty to meet the country's needs for equipment to combat communicable diseases, the provision of free medicine, and the care of the public welfare.

2. The state shall be responsible for the promotion and the extension of healthcare and private health centers.

Article 18: The Environment and the Relief of Disaster

1. The state shall give a special priority to the protection and safeguarding of the environment, which is essential for the well being of the society, and to the care of the natural resources. Therefore, the care of and (*the combating of*) the damage to the environment shall be determined by law[41].

2. The state shall undertake relief in disasters such as famine, storms, epidemics, earthquakes, and war.

Article 19: The Care of the Vulnerable of the Society

The state shall be responsible for the health, care, development and education of the mother, the child, the disabled who have no one to care for them, and the mentally handicapped persons who are not able and have no one to care for them

Article 20: Work, Trade, and the Welfare of Employees

1. All able citizens have a right and a duty to work. The state shall, therefore, be responsible for the creation of work and the facilitating of the skills training of employees.
2. The conditions of work of the young and women, night working and working establishments shall be regulated by the Labor Law.
3. All employees have a right to payment appropriate to the work they undertake, and are free to enter into agreements with their employers on an individual or collective basis. Forced labor is prohibited.
4. The state shall endeavor to create understanding and clear rights between employees and employers and shall accordingly introduce a law^[42] (*in this respect*).
5. State employees and members of the armed forces shall be entitled remuneration for their duties and to payments for sickness, injury, or disability in accordance with the law.
6. The state shall promote the support systems, insurance and safety of employees and shall strengthen the relevant responsible bodies.

Part Three

The Rights of the Individual, Fundamental Freedoms and the Duties of the Citizen

Article 21: Implementation and Interpretation

1. The legislative, executive and judicial branches of the state and the local government of the regions and the districts of the Republic of Somaliland, of all levels, shall be bound by the provisions of this Part.
2. The articles which relate to fundamental rights and freedoms^[43] shall be interpreted in a manner consistent with the international conventions on human rights^[44] and also with the international laws referred^[45] to in this Constitution.

Article 22: Political, Economic, Social and Electoral Rights

1. Every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution[46].
2. Every citizen who fulfils the requirements of the law[47] shall have the right to be elected[48] (*to a public office*) and to vote.

Article 23: Freedom of Movement and Association

1. Every person who is a citizen or lawfully resident in the country shall be free to move to or settle at any place of his choice, or leave or return to the country at will.
2. The matters (*rights*) set out in Clause 1 of this Article are subject to any law[49] which forbids the movement to or settlement at specific places or during specific times.
3. All citizens shall have the right to form, in accordance with the law, political[50], educational, cultural, social, and occupational or employees' associations[51].
4. Associations with objectives which are contrary to the national interest or are secret or are military in nature or armed or are otherwise against the law, whatever their outward appearance might be, are prohibited.

Article 24: The Right to Life, Security of the Person, Respect for Reputation and Crimes against Human Rights.

1. Human life is the gift of Allah and is beyond price. Every person has the right to life, and shall only be deprived of life if convicted in a court of an offence in which the sentence laid down by law is death.
2. Every person shall have the right to security of his person. Physical punishment[52] and any other injury to the person is prohibited.
3. Every person shall have the right to have his dignity, reputation and private life respected.
4. Crimes against human rights such as torture, extra-judicial killings, mutilation and other similar acts shall have no limitation periods.

Article 25: The Right to Liberty, Guarantees and the Conditions of Rights and Freedoms

1. No person shall be deprived of his liberty except in accordance with the law.
2. No person may be arrested, searched, or detained, except when caught *in flagrante delicto*,[53] or on the issue of a reasoned arrest warrant by a competent judge[54].
3. The state shall guarantee to all citizens their rights and freedoms and the punishment for any of their infringements shall be determined by law.

4. The freedoms of the person shall not override the laws protecting the public morals, the security of the country or the rights of other individuals.[55]

Article 26: Crime and Punishment

1. Crimes and (*their*) punishment shall be laid down by the law, and no punishment shall be administered in a manner which is contrary to the law.
2. The liability for the punishment of any crime shall be confined to the offender only.
3. An accused person is innocent until proven guilty in a court[56].

Article 27: The Rights of Persons Deprived of their Liberty

1. Any person who is deprived of his liberty has a right to meet as soon as possible his legal representative[57], relatives or any other persons he asks for.
2. Any person who is deprived of his liberty because of alleged criminal offences shall have the right to be brought before a court within 48 (forty eight) hours of his arrest[58].
3. No person shall be compelled to proffer a confession, a witness statement or testimony under oath. Any such matters (*evidence*) obtained under duress shall be void[59].
4. No person shall be detained in a place which is not determined by law.
5. The law shall lay down the maximum period[60] in which a person can be detained in custody pending investigations.
6. Any accused person who is convicted by a court shall have the right to appeal to a higher court.
7. When a person is detained in custody or his detention is extended, he shall have the right to have his status communicated to any person he so chooses.
8. Prisons are for reform and correction. The state is responsible for the rehabilitation and skills training of prisoners so that they can return to society with reformed characters.
9. The punishment for the infringement of Clauses 1 to 7 of this Article shall be determined by law[61].

Article 28: Right to Sue and Defend

1. Every person shall have the right to institute proceedings in a competent court in accordance with the law.

2. Every person shall have the right to defend himself in a court.
3. The state shall provide free legal defense in matters which are determined by the law, and court fees may be waived for the indigent.

Article 29: The Sanctity of the Home

The home and other dwellings shall be inviolable, and their surveillance, search and entry shall not be allowed without a reasoned order from a judge. Any such order must be read properly to the proprietor or occupier before entry is effected. It is prohibited for any person carrying out a search to contravene the order of the judge.

Article 30: Freedom of Communication

No person's private written communication, postal letters, or telecommunications shall be interfered with except in matters in which the law allows their investigation, tracing or listening in and a reasoned order from a judge has been obtained.

Article 31: The Right to Own Private Property

1. Every person shall have the right to own private property, provided that it is acquired lawfully.
2. Private property acquired lawfully shall not be expropriated except for reasons of public interest and provided that proper compensation is paid.
3. The law shall determine matters that are within the public interest, which may bring about the expropriation of private property.

Article 32: Freedom of Public Demonstration, Expression of Opinion, Press and other Media

1. Every citizen shall have the freedom, in accordance with the law, to express his opinions orally, visually, artistically or in writing or in any other way.
2. Every citizen shall have the freedom, in accordance with the law, to organize or participate in any peaceful assembly or demonstration.
3. The press and other media are part of the fundamental freedoms of expression and are independent. All acts to subjugate them are prohibited, and a law shall determine their regulation.

Article 33: Freedom of Belief

1. Every person shall have the right to freedom of belief, and shall not be compelled to adopt another belief. **Islamic Sharia does not accept that a Muslim person can renounce his beliefs.**

2. The **Mosque** is a blessed place and deserves veneration. It is the place for preaching religion and for providing the nation guidance in spiritual and temporal matters, and the preaching therein of matters which would divide the nation (*sedition*) is prohibited. The state shall be responsible for its general protection and any practicable support.

Article 34: The Duties of the Citizen

1. Every citizen shall have the duty, in accordance with the law, to strengthen the unity of the nation, the protection of the sovereignty of the state, and the **defense of** the country and the **religion**.
2. Every person has the duty to respect the Constitution and the laws of the country.
3. Every person has the duty to pay promptly his taxes and other duties as imposed under the law.
4. Every person shall have the duty to care for, protect and save the environment.
5. The law^[62] shall determine the punishment for failure to fulfill the duties imposed in Clauses 1 to 4 (*of this Article*).

Article 35: Extradition of Accused and Convicted Persons and Political Asylum

1. Any foreigner who enters the country lawfully or is lawfully resident in the country and who requests political asylum may be accorded asylum if he fulfils the conditions set out in the law governing asylum.
2. The extradition of a Somaliland citizen to another country is prohibited.
3. The Republic of Somaliland may extradite to their countries convicted or accused foreigners if there is a treaty between the Republic of Somaliland and the country requesting their extradition.

Article 36: The Rights of Women

1. The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in **Islamic Sharia**^[63].
2. The Government shall encourage, and shall legislate for^[64], the right of women to be free of practices which are **contrary to Sharia** and which are injurious to their person and dignity.
3. Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law.

4. In order to raise the level of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics and to have opened for them vocational, special skills and adult education schools.

CHAPTER 2

THE STRUCTURE OF THE STATE

Article 37: The Sovereignty and Powers of the State,

1. Allah who created the Somaliland nation in this land has endowed it with sovereign status and powers. The people of the Republic of Somaliland have vested their sovereign powers, as set out in this Constitution, in a state founded on, and which shall act in accordance with, the Constitution.

2. The structure of the state shall consist of three branches which are: the legislative, the executive and the judiciary. The separation of the powers of these branches shall be as set out in the Constitution. Each branch shall exercise independently the exclusive powers accorded to it under the Constitution.

Part One

The Legislative Branch

Article 38: The Parliament and Joint Sitings

1. The legislative powers of the Republic of Somaliland are vested exclusively in the Parliament which shall consist of two Houses - the House of Representatives and the House of the Elders. The power to legislate cannot be transferred to anyone outside the Parliament[65].

2. All bills passed by the Parliament shall come into force when the President publishes[66] them in accordance with the Constitution.

3. The Parliament shall fulfill its duties in accordance with the Constitution and its Rules[67].

4. The most important objectives and duties of the Parliament are as follows:

a) The protection of the peace and security of the Republic and Republic's sovereign rule over its land, sea and air.

b) The adoption by the Republic of Somaliland of all the laws necessary in a **Muslim state**.

c) The implementation of the laws of the Republic and the genuine achievement of justice which is the foundation of the Republic's general stability and the confidence that the members of the Somaliland public have in each other and their reliance on each other.

5. The two Houses of the Parliament may hold joint and separate sittings.

6. The two Houses of the Parliament shall sit jointly^[68] when considering matters such as the following:

a) the receipt of the Report of the President on the opening of the two Houses;

b) the debates on the Republic of Somaliland joining international or cross regional organizations, or the ratification of international or regional treaties;

c) the Resolution on and declaration of a state of war when the Republic of Somaliland is faced with war;

d) the debates on natural disasters;

e) the debates relating to emergency laws;

f) the confirmation of the appointment of the Chairman of the Supreme Court; *(and)*

g) any other matters considered by the two Houses as meriting joint sittings^[69].

The House of Representatives

Article 39: General Provisions of the House

The House of Representatives consists of members who represent the public, and forms the first part of the country's legislative, passing laws and approving and overseeing the general political situation and the direction of the country.

Article 40: Membership and Election of the House

The House of Representatives shall consist of 82 members who shall be directly elected^[70] by secret ballot in a free general election.

Article 41: Eligibility for Candidacy

Any person who is standing for election to the House of Representatives must fulfill the following conditions:

1. He **must be a Muslim^[71] and must behave in accordance with the Islamic religion.**
2. He must be a citizen who is not younger than 35 (thirty five) years.

3. He must be physically and mentally able to fulfill his duties.
4. He must be educated to, at least, secondary school level or equivalent.
5. He must not have been subject of a final sentence for a criminal offence by a court within the preceding five years.
6. He must be a responsible person with appropriate character and behavior.
7. No employee of the state shall be eligible for candidacy unless he has tendered his resignation from office prior to a period determined by law[72]. Such resignation shall be accepted.

Article 42: Period of Office and Election Term

1. The period of office of the House of Representatives is 5 (five) years beginning from the date when the Supreme Court declares the electoral results.
2. The President shall announce the election of the new House a month before the expiry of the period of office of the outgoing House.
3. If the election of the House of Representatives cannot be conducted because of dire circumstances, the outgoing House shall continue in office until the end of these circumstances and a new House is elected. Dire circumstances are: a wide war, internal instability, serious natural disasters, such as earthquakes, epidemic diseases, (*and*) serious famines; and shall be determined and resolved by the House of Elders[73] on the proposal of the Council of Government[74].

Article 43: The Seat of the House of Representatives

The seat of the House of Representatives is the Capital City[75].

Article 44: The Convening of the New House

1. The new House shall hold its inaugural meeting within 30 (thirty) days from the date when the electoral results are declared[76], and shall be convened by the President of the Republic.
2. If the President fails to convene the inaugural meeting, the House shall meet on its own initiative on the 45th (forty fifth) day beginning from the date when the electoral declaration is made.
3. The new House shall be opened by the Chairman of the Supreme Court who shall administer the oath of office[77] to the members. The meeting of the House shall then be chaired by the oldest member (*in age*), and the House shall then elect[78], from amongst its members, a Speaker and two Deputy Speakers.

Article 45: The Meetings of the House of Representatives

1. The meetings of the House shall be open, but can also be closed[\[79\]](#); and their procedures shall be set out in Rules[\[80\]](#).
2. The quorum of the meetings of the House is the presence of over half of its total membership, excluding the seats that have been declared vacant.
3. Except for constitutional issues or matters which the Rules of the House state otherwise, resolutions of the House shall be passed by a simple majority of the members present at a meeting.
4. The (*motion for*) postponement of a meeting shall be approved by a simple majority of those present, and the meeting may then be postponed for a maximum of period of seven (7) days.
5. Ministers and Deputy Ministers have a duty to attend the meetings of the House of Representatives if requested, in writing, to do so; and they shall have the right to participate in the debate, but can not vote. In the same way, the President may ask the Vice-President or any Minister to attend, on his behalf, the meetings of the House.

Article 46: Sessions and the Procedures of the House of Representatives

1. The House shall hold every year 3 (three) ordinary sessions which shall last 28 (twenty eight) weeks in total. The sessions shall be separated by a period of no less than 4 (four) weeks and no more than 8 (eight) weeks.
2. An extra-ordinary session of the House of Representatives may be held:
 - a) on request of the President;
 - b) on convening by the Speaker of the House of Representatives; (*or*)
 - c) on request, in writing, of 1/3 (one third) of the members of the House.
3. The House shall adopt its Rules[\[81\]](#) at its first session, and shall establish such committees[\[82\]](#), as it deems necessary.
4. The President shall deliver the State of the Nation speech at the start of the first session of each year. The speech shall cover the political situation, the Government's programme, the economy, and the financial and security situations.

Article 47: The Remuneration and Expenses of the House of Representatives

The members of the House of Representatives shall be entitled to remuneration and expenses as determined by law[\[83\]](#).

Article 48: Prohibition of Holding other Office and of Private Gain

A member of the House of Representatives shall not hold any other public office^[84] whilst serving as a Representative, and shall not use his office for private gain.

Article 49: The Privileges of the Members of the House of Representatives

1. No member of the House may be detained, and no action may be taken against him for any matter which he learnt or raised at the House or on which he expressed his opinion.
2. Clause 1 does not extend to insults or slander^[85] committed by a member.
3. No member of the House of Representatives shall be investigated, questioned, arrested, imprisoned or otherwise subjected to any other acts relating to punishment without the consent of the House of Representatives.
4. Action may be taken against the member if he is caught *in flagrante delicto*, in which case the House shall be informed promptly.
5. The House^[86] shall consider whether the action taken against the member is proper.
6. If the House is not in session, consent for the action taken against the member must be sought from the Standing Committee^[87] of the House of Representatives, and the House shall be informed at the following session.
7. Civil suits against a member of the House of Representatives may be instituted, and no consent is required^[88].

Article 50: Loss of Membership of the House of Representatives

The membership of the House of Representatives shall be lost on:

1. the death of the member or incapacity which makes it impossible for him to fulfill his duties;
2. the voluntary resignation by the member, which has been accepted by the House;
3. one of the pre-requisite conditions^[89] of his election being broken; or on the member's failure to fulfill his duties;
4. the passing of a final sentence for a crime which has been proven in a court;
5. the absence, without a valid excuse, from 20 (twenty) consecutive sittings^[90].

Article 51: Filling Vacant Seats in the House of Representatives

If a seat of the House of Representatives becomes vacant during any period prior to the final six months of the term of office of the House, it shall be filled as determined by law[91], and the new member shall serve for the remainder of the term of office.

Article 52: Staff of the House of Representatives

1. The House of Representatives shall have a Secretariat headed by a General Secretary[92] who is not a member of the House. He shall assist the Speaker of the House in administrative matters, and in all financial and management issues; and shall have a deputy.
2. The House of Representatives shall have Advisers[93], such as a Legal Adviser, and advisers on the economy, politics etc., who shall all, be chosen for their expertise and knowledge.
3. The other employees of the Secretariat shall be appointed by the Secretary General after he receives the approval to do so from the Speaker. The appointment, dismissal, remuneration and rights of the Secretary General, his deputy, the Advisers and other employees of the House shall be determined by the Rules[94] of the House.

Article 53: The Powers and Duties of the House of Representatives

1. All appointments of Ministers, Deputy Ministers or Heads of the organs of the state shall be subject to confirmation by the House of Representatives [95] in accordance with the Constitution.
2. The House of Representatives shall also have power to debate, comment on, refer back with reasons or approve the program of the Government.
3. The House of Representatives shall ratify governmental[96] (international) agreements (*treaties*) such as political, economic and security agreements or those agreements which impose new financial burdens which have not been covered in the Budget, or which will involve the promulgation or amendment of legislation.
4. The House of Representatives shall submit to the Council of Government (*the Cabinet*) advice and recommendations about the direction of the general political situation.
5. The Council of Government (*the Cabinet*) shall seek the approval of both Houses (the House of Representatives and the House of Elders) for the imposition of a state of emergency[97] in either the whole of the country or parts of it.
6. The House of Representatives shall have the power to summon the Government or its organs or agencies in order to question them about the fulfillment of their responsibilities.

7. The Committees of the House of Representatives shall have the power to question Ministers, Heads of the state organs or agencies or other senior national officers, whose duties are relevant to them, about the performance of their duties

Article 54: The Legislative Powers of the House of Representatives

The legislative powers of the House shall extend to the following financial matters:

1. The imposition of taxes, duties and other schemes for raising revenue.
2. The establishment of a Somaliland Income Fund or other Funds which are earmarked for specific issues. The management, collection and disbursement of these Funds shall be determined by law.
3. The printing of currency, and the issue of bonds, other certificates and securities.
4. The regulation of the economic and the financial systems.

Article 55: The Budget

1. The House of Representatives may debate and amend the Budget, and approve it by a resolution of the House.
2. If the new Budget is not approved before the start of the new financial year, the old Budget shall continue to be in force until such time the new one is approved.
3. The House of Representatives shall approve any expenditure which was not included in the Budget.
4. The procedures for the preparation of the general Budget and the financial year shall be determined by law.
5. The budgets and the annual accounts of the state organs, agencies, companies and other partly owned entities of the state and their presentation to the House of Representatives shall be determined by law.
6. The annual accounts shall be presented to the House of Representatives within six months of the end of the financial year to which they relate, and the House shall debate them and reach a resolution thereof.
7. The Auditor General^[98] shall have responsibility for the presentation of the annual accounts.

Article 56: Dissolution of the House of Representatives

The House of Representatives may be dissolved:

1. When the House does not sit for two consecutive ordinary sessions without the existence of any circumstances beyond its control.
2. When dissolution is proposed by a 1/3 (one third) of the members^[99] of the House; and is approved by 2/3s (two thirds) of the total members of the House.
3. The Constitutional Court^[100] shall issue a ruling in respect of the matters referred to in Clauses 1 and 2 of this Article, and shall submit the ruling relating to Clause 1 to the President and that relating to Clause 2 to the House of Representatives.
4. The House of Representatives may also be dissolved by the President after the public has agreed, in a national referendum^[101] organized by the Constitutional Court, to the reasons for the dissolution (advanced by the President).
5. When the President considers the ruling of the Constitutional Court issued in respect of the matters referred to in Clauses 1 or 2 of this Article, or the result of the national referendum under Clause 4 of this Article, he shall promulgate a Presidential Decree dissolving the House of Representatives and at the same time setting out the date of the election of the new House, which shall take place within 60 (sixty) days.
6. If the national referendum does not approve of the dissolution of the House of Representatives or the new elections cannot be held, the term of office of the House shall continue.
7. The House of Representatives shall not be dissolved during the first year of its term of office, or during the last year of the President's term of office.

Part Two

The House of Elders

Article 57: General Provisions of the House

The House of Elders^[102] of the Republic of Somaliland is the second part of the legislative, and shall review the legislation passed by the House of Representatives before it is forwarded to the President; and shall have special responsibility for passing laws relating to religion, traditions (*culture*) and security.

Article 58: The Election of the Members of the House and their Period of Office

1. The members of the House of Elders shall be elected in a manner to be determined by law^[103].
2. The period of office of the House of Elders is six (6) years^[104] beginning from the date of its first meeting.

Article 59: Eligibility for Candidacy

Without prejudice to the requisite age and level of knowledge as set out below, any person who is standing for election to the House of Elders must fulfill the same conditions^[105] which are needed for eligibility for election to the House of Representatives:

1. He must not be aged less than 45 (forty five years).
2. He **must be a person who has a good knowledge of the religion** or an elder who is versed in the traditions.

Article 60: The Membership of the House of Elders

1. The House of Elders shall have 82 (eighty two) members, and shall elect from amongst its members a Speaker, two deputy Speakers and such committees, as it deems necessary. The House shall have a Standing Committee^[106] of 25 (twenty five) members.
2. The following shall always become honorary members:
 - a) Five members to be selected by the President on the basis of their special significance to the nation, whose term of office shall coincide with that of the House.
 - b) Any person who has served as a Speaker of the House of Elders or the House of Representatives.
 - c) Any person who has served as a President or Vice-President^[107] of the Republic of Somaliland.
 - d) Honorary members do not have the right to vote in the House and can not serve in the Standing Committee.

Article 61: The Powers and Duties of the House of Elders

1. The passing of legislation^[108] relating to religion, traditions (*culture*) and security.
2. With the exception of financial legislation, the review^[109] of legislation approved by the House of Representatives. It may refer back^[110], with written reasons of its views, any such legislation to the House of Representatives only once within 30 (thirty) days beginning from the date when the relevant legislation was forwarded to the office of the Speaker of the House of Elders.
3. Advice on the shortcomings of the administration of the Government and the presentation of such advice to the House of Representatives.
4. Assistance to the Government in matters relating to religion, security, defense, traditions (*culture*), economy and society, whilst consulting the traditional heads of the communities.

5. The summoning of the members of the Government and putting questions to them about the fulfillment of their duties.

6. The House of Elders shall also have the power to put to the House of Representatives proposals for projects[111] so that the House of Representatives can debate and reach resolutions thereof.

Article 62: The Inaugural Meeting of the House of Elders

The inaugural meeting of the House of Elders shall take place within 30 (thirty) days of the date when their selection[112] is completed. The meeting shall be opened by the Chairman of the Supreme Court who shall administer the oath of office[113], and shall then be chaired by the oldest member of the House (*in age*) until the election of the official Speaker of the House and his two Deputies.

Article 63: The Secretary of the House and Advisers

The House of Elders shall have a secretary, who is not a member of the House. The House may also have advisers, including a legal adviser[114]. The structure of the Secretariat of the House shall be the same as that of the House of Representatives[115].

Article 64: The Rules of the House

At its first session, the House of Elders shall pass the Rules[116] of the House.

Article 65: The Remuneration and Expenses of the House of Elders

The members of the House of Elders shall be entitled to remuneration and expenses as determined by law[117].

Article 66: The Privileges of the Members of the House of Elders

The privileges of the members of the House of Elders shall be the same as those of the House of Representatives[118]. Such privileges may be removed by the House of Elders.

Article 67: Resignation of Members of the House of Elders

Any member of the House of Elders may forward his resignation to the House of Elders which shall accept it.

Article 68: Loss of the Membership of the House of Elders

A person may lose his membership of the House of Elders[119]:

1. if one of the conditions[120] under which he was selected is no longer valid, or he can not fulfill his duties in accordance with the Rules[121] of the House of Elders;

1. if a member received a final sentence for a crime which has been proved in a court;
2. if the House accepts his resignation.

Article 69: The Dissolution of the House

The House of Elders may be dissolved in the same manner[\[122\]](#) as the House of Representatives.

Article 70: Prohibition of Holding other Office and of Private Gain

A member of the House of Elders shall not hold any other public office whilst serving as a member of the House, and shall not use his office for private gain.

Article 71: Meetings and Sessions

The meetings[\[123\]](#) of the House of Elders shall be open, and may be closed as provided in the Constitution. The quorum for meetings, the majority by which resolutions can be passed and the convening of extra-ordinary sessions shall be the same as the procedures applicable to the House of Representatives[\[124\]](#).

Article 72: Vacant Seats in the House of Elders and Procedures for Filling them

1. A seat at the House of Elders may become vacant on the realization of one of the conditions set out in Article 50[\[125\]](#).
2. If a seat of the House of Elders becomes vacant during any period prior to the final six months of the term of office of the House, it shall be filled as determined by law[\[126\]](#), and the new member shall serve for the remainder of the term of office of the House.

Article 73: The Seat of the House of Elders

The seat of the House of Elders is the Capital City[\[127\]](#).

Article 74: Introduction of Draft Legislation

Bills[\[128\]](#) (*draft legislation*) may be introduced at the House of Representatives by:

1. The Council of Government (*the Cabinet*).
2. The requisite number[\[129\]](#) of members of the House of Representatives as laid down in Rules passed by the House.
3. Except for financial bills, at least 5000 (five thousand) citizens who are eligible to vote.

Article 75: The Promulgation, Publishing and Implementation of Legislation

All laws shall be promulgated and published in the Official Journal by the President within three weeks (21 days) beginning from the date when the two Houses have forwarded them[130], and shall come into force within thirty (30) days beginning from the date of their publication, but a longer or shorter period for coming into force may be set out in each law.

Article 76:

A bill shall become law on approval by the House of Representatives, and shall come into force after its signature by the President in accordance with Article 38[131].

Article 77: The Procedures for Legislation

1. Each House of Parliament shall forward any bills that it passes to the other House[132] for review and advice.
2. Each House may refer a bill back to the other only once[133].
3. The Rules of the Parliament shall lay down the procedures[134] for the progress of bills, and shall make clear the special status of bills relating to finance and those that the Government considers to be urgent, which shall (*both*) be given priority.
4. Any bill passed or approved by both Houses of Parliament on a 2/3s (two thirds) majority or more shall not be referred back (*to the Parliament*) by the President who shall thereby sign it. If the President considers that the bill is in conflict with an Article or Articles of the Constitution, he shall inform the Speakers and the Attorney General, who shall refer it to the Constitutional Court[135].
5. The President shall sign any bill forwarded to him by Parliament within three weeks (21 days) beginning from the date when the bill was received at the Office of the President, providing that he has not referred it back to Parliament.
6. If the President fails to sign a bill forwarded to him by Parliament within the requisite period[136], and has not referred it back to Parliament, then the bill shall henceforth become law, and shall be promulgated by the House which forwarded it (*to the President*).

Article 78:

1. All bills, other than those relating to finance, passed by the House of Representatives by a majority shall be forwarded to the House of Elders which shall:
 - a) Approve them or propose amendments[137].
 - b) If the House of Elders does not approve the bill, or its proposed amendments are not accepted by the House of Representatives, the latter has the right to return the bill to the House of Elders during its next session[138]. If the House of Elders (*still*) does not

approve the bill, nor submit a response within a month, the bill shall pass and shall accordingly be forwarded to the President.

2. All bills passed by the House of Elders by a majority shall be forwarded to the House of Representatives, which shall:

a) Approve it or propose amendments^[139].

b) If the House of Representatives does not approve the bill, it shall not be referred back^[140].

3. If the President accepts a bill passed by both Houses and forwarded to him, he shall issue it in the Official Journal within (21) days^[141]. If, however, the President does not accept the bill or proposes amendments, he shall inform the Speaker of the House of Representatives his reasons for such action within (21) days^[142].

4. If the House (*of Representatives*) is not satisfied with the reasons given by the President, and the bill is passed again on a 2/3s (two thirds) majority of the members of the House, the President shall accept the bill. If there is no such majority (*in the House*), the bill shall lapse.

5. Except for financial bills, if the House of Elders refuses to accept on a point of principle and by a 2/3s (two-thirds) majority of its membership any bill passed by the House of Representatives, and the House of Representatives is not satisfied with that rejection, but fails to pass the bill again by a majority of less than 2/3s (two-thirds) of its membership, then the bill shall lapse.

Article 79: Accusations against the Members of the Houses

1. The members of the Houses (Representative or Elders) may be indicted for a criminal offence if they are caught *in flagrant delicto* for an offence which carries a punishment no less than (3) three years imprisonment.

They can not, however, be brought before a court, nor imprisoned until they are stripped of their privileges^[143] for the responsibilities that they hold for the nation.

2. The criminal prosecution brought against the accused members of the Houses, shall be conducted by the Attorney General after the appropriate House to which the members belong has stripped them of their privileges on a majority vote of two thirds of the total membership of the House.

Such cases shall be heard by the High Court of Justice^[144].

CHAPTER THREE

THE EXECUTIVE

Part One

Article 80: The President and the Vice-President

The state shall have an executive branch, which is separate and independent of the legislative and the judicial branches.

Article 81: The Executive Branch

The Executive Branch (sometimes referred to as “the Government”), shall be headed by the President and shall consist of:

- The President;
- The Vice-President;
- The Council of Ministers^[145] appointed by the President.

Article 82: The Conditions for Eligibility for Election as President or Vice-President

To be elected as President or Vice-President, a person must fulfill the following conditions:

1. He must be a citizen of Somaliland by birth, and, notwithstanding residence as a refugee in another country, must not hold any other citizenship,
2. He **must be a Muslim**^[146], and **must behave in accordance with Islamic religion**.
3. He must not be aged less than 40 years.
4. He must be physically and mentally fit to fulfill his duties.
5. He must possess knowledge of and experience in management (public and otherwise).
6. He must not have been convicted by a court for an offence against the Somaliland nation.
7. His **spouse must be Muslim**.
8. He must be fully apprised of the realities of the country, having been resident in the country for a period of at least two years before the date when the election is scheduled to take place.
9. He must register his private property.

Article 83: Election Procedures

1. The President and the Vice-President shall be elected jointly through a direct general election[147] by means of a secret ballot.
2. The joint election of the President and the Vice-President shall be based on the list system and shall take place a month before the end of the term of office of the outgoing President.
3. The outgoing President and Vice-President shall continue in office until the new President and the Vice-President assume their offices within a month (*of the election*).
4. The two candidates in the list which obtains the highest number of votes cast in the Presidential and Vice-Presidential election shall be recognized as the successful candidates.
5. If on the expiry of the term of office of the President and the Vice-President, it is not possible, because of security considerations, to hold the election of the President and the Vice-President, the House of Elders shall extend their term of office[148] whilst taking into consideration the period in which the problems can be overcome and the election can be held.

Article 84: Oath of Office of the President and the Vice-President[149]

Before the President and the Vice-President can assume office, they shall be sworn at a ceremony attended by the Speakers of the House of Representatives and the House of Elders and the Chairman of the Supreme Court.

Article 85: Matters in which the President and the Vice-President are not Allowed

1. The President and the Vice-President and their spouses[150] shall not engage in any business[151] activities during their term of office.
2. The President shall not be absent from the country for a period exceeding 45 (*forty five*)[152] consecutive days unless the absence is for reasons of health.
3. All presents given, as a mark of respect for their office, to the President, the Vice-President, their spouses and the senior officers of the nation, who have a national standing, shall be the property of the nation.

Article 86: Vacancy of Office and the Procedure for the President and the Vice-President to Vacate their Office

The office of President or Vice president may become vacant[153] in the event of the one of the following:

1. Conviction of a criminal offence[154] which leads to loss of office.
2. Inability to fulfill the duties of the office because of ill health.

3. Death.

4. The President or the Vice-President may forward his written resignation from office to the Speaker of the House of Representatives and the Speaker of the House of Elders, and the two Houses may, in a joint sitting, accept it or reject it by a (*simple*) majority of their total membership.

5. If the two Houses reject the resignation referred to in Clause 4 of this Article, the President or the Vice-President shall have the right to submit again his resignation within three months of the initial resignation request, whereupon the two Houses shall be obliged to accept it.

Article 87: Salary and Emoluments

The salary, expenses and the public property to which the President and the Vice-President are entitled to shall be determined by law^[155].

Article 88: Term of Office

1. The term of office of the President and the Vice-President is 5 years beginning from the date that they are sworn into office.

2. No person may hold the office of President for more than twice.

Article 89: Procedure for Filling the Vacancy

1. In the event of the one of the circumstances set out in Article 86 happening to the President within the first three years of his five-year term of office, the Vice-President shall act as a temporary President, and the election of the President shall be held within six months.^[156]

2. In the event of one of the circumstances set out in Article 86 happening to the President within the last two years of his 5 year term of office, the Vice-President shall assume the office of President for *the remainder of the term*^[157], and shall then nominate a Vice-President from among the members of the House of Representatives subject to the approval of the two Houses^[158]. If the two Houses refuse to confirm the nomination, he shall nominate another member (*of the House of Representatives*) within 30 days beginning from the date of the refusal of confirmation^[159].

The person so appointed shall serve (*as Vice-President*) for the remainder of the constitutional term of office and shall, at the same time, relinquish his membership of the House of Representatives.

3. Similarly, in the event of the one of the circumstances set out in Article 86 happening to the Vice-President, the President shall nominate a member of the House of Representatives as Vice-President, subject to the approval of the two Houses. The honorable appointee shall hold office for the remainder of the term of office, and his seat

at the House of Representatives shall then become vacant. If the two Houses refuse to confirm the appointment, the President shall nominate another member within 30 days beginning from the date of refusal of confirmation by the two Houses.

4. In the event of the one of the circumstances set out in Article 86 happening to both the President and the Vice-President at the same time, the office of President shall be assumed temporarily by the Speaker of the House of Elders. The election of the President and the Vice-President shall then be held within 60 days beginning from the date of the occurrence of the circumstance.

Part Two

Article 90: The Powers of the President

The President is the Head of the nation and the state, and is the symbol of the unity of the citizens of the Republic of Somaliland. He is responsible for the care of the nation's resources, the protection of the peace, the advancement of the society and the proper conduct of the administration of the state. In order to fulfill these responsibilities, the President shall have the following powers:

1. The leadership of the general policy of the Government.
2. The appointment and removal from office of the members of the Council of Ministers^[160].
3. Having consulted the appropriate Ministers and in accordance with the Constitution and other relevant special laws, the appointment and removal from office of the senior officers of the state. Such senior officers of the state are:
 - a) the Auditor-General^[161];
 - b) the Chairman of the Central Bank;
 - c) the Chairman and the Committee members of the Civil Service Agency;
 - d) the Chief Accountant;
 - e) the Director Generals of the Ministries and the state organs and agencies;
 - f) the Commanders of the Armed Forces and their deputies;
 - g) Ambassadors;
 - h) the Attorney General; and
 - i) any other senior officers (*heads*) whose appointment or dismissal has been assigned to the President in accordance with any law passed by legislative bodies.

4. The leadership of the national Armed Forces as he is the Commander-in-Chief.
5. Without prejudice to the principles of just retaliation (Qisas[162]) and the limits[163] under Islamic Sharia, the exercise of pardon and amnesty[164], and the grant of political asylum after consultation with the appropriate bodies.
6. The signing of international agreements[165] (*and treaties*).
7. The participation in international conferences as representative of the Republic of Somaliland.
8. Holding audience for foreign diplomats and receiving their credentials.
9. The appointment of Ambassadors representing the Republic of Somaliland in foreign countries, international and regional organizations.
10. The granting of awards and honors, such as medals.
11. Leadership in conditions of war, and at the same time, the proclamation of state of emergency[166].
12. The execution (implementation) of laws[167], which does not fall within the jurisdiction of the judicial branch.
13. Any other powers set out in the Constitution or any other laws.
14. The President shall fulfill his duties in accordance with the Constitution and other laws of the land.

Article 91: Powers of the Vice-President

The Vice-President of the nation shall have the power:

1. To act as President in the absence or illness of the President.
2. To undertake such duties as delegated to him by the President.
3. To act[168] as President in the event of the office of President becoming vacant because of the following reasons:
 - a) The resignation of the President;
 - b) the conviction of the President for a crime which resulted in his loss of office;
 - c) inability of the President to undertake the duties to which he was elected because of ill health; and

d) death.

Article 92: Other Powers of the President Relating to Emergency Laws

1. In the event of the emergence of special circumstances which endanger the security of the country, jeopardize law and order, create upsets in the general stability or in the confidence in the economy, the President shall issue emergency laws which are aimed at combating such special circumstances as set out above.[\[169\]](#) If the two Houses are in session when the emergency laws are issued by the President, he shall present the laws to them within seven (7) days so that they can make their own resolutions. If, on other hand, the two Houses are not in session, the Speakers shall call an extra-ordinary meeting within 14 days.[\[170\]](#) The Government shall implement the emergency laws[\[171\]](#) until such time the two Houses have made their own resolutions.
2. Emergency laws shall have the same effect as legislation passed by the House of Representatives or the House of Elders, and shall come into force on their signature by the President.
3. Emergency laws shall be reviewed once every three (3) months[\[172\]](#) by the two Houses whose resolutions shall be passed by a simple majority vote.

Article 93: Protocol of Senior Leaders of the State

1. The President and the Vice-President shall hold first position in the protocol of the nation.
2. The Speaker of the House of Elders shall hold the next position.
3. The Speaker of the House of Representatives shall hold the third position in the protocol of the nation.

Part Three

Article 94: The Council of Ministers

1. The Council of Ministers shall assist the President in the fulfillment of his duties and shall resolve collectively the general policies, planning and programs of the state.
2. Ministers and Deputy Ministers shall be appointed or dismissed by the President. Their appointments shall be presented[\[173\]](#) to the House of Representatives whose quorum shall be half of their total membership plus one, and the House shall confirm or reject the appointment, on a show of hands, by a simple majority vote.
3. The Minister or Deputy Minister so appointed shall be sworn into office, within thirty (30) days of the appointment being confirmed by the House of Representatives, by the Chairman of the Supreme Court, in the presence of the President or, in the latter's absence from the country or illness, the Vice-President.

4. Ministers and Deputy Ministers shall not hold any occupation other than that accorded to them by the nation.
5. No person who can not fulfill the conditions necessary for eligibility for election to the House of Representatives^[174] shall be appointed as a Minister or a Deputy Minister.^[175]
6. A Minister may be responsible for one or more Ministries.
7. The President shall preside over the ordinary and extra-ordinary meetings of the Council of Ministers.
8. No Minister or Deputy Minister may be detained unless caught *in flagrante delicto* in respect of an offence punishable by imprisonment for three years or more, or the President has removed his privileges after having been satisfied by proposals put to him by the Attorney General.

Article 95: Continuation of Responsibilities

1. Any Minister or Deputy Minister who resigns or is dismissed shall remain in office until such time his successor takes over the responsibilities of the office.
2. A Minister or Deputy Minister who is awaiting the handing over of the responsibilities of office to his successor shall neither make any appointments nor enter into any agreements on behalf of his Ministry.

Article 96: Accusation against and Impeachment of the President, the Vice-President and the Ministers

1. If the President and the Vice-President are accused of following crimes:
 - a) high treason^[176], or
 - b) contravention of the Constitution,

the charges against the President or the Vice-President in respect of the crimes in this Clause shall be laid by at least one third of the members of the House of Representatives, who shall forward their charges to the Speaker of the House of Representatives. The House may approve of the charges on a majority vote of half of its total membership, plus one (absolute majority).

2. The House of Representatives shall empanel a committee of ten members who shall prosecute the charges against the President or the Vice-President in front of the House of Elders, and may also engage independent counsel who can assist the House in the prosecution.

3. The House of Elders shall consider the charges at a sitting chaired by the Chairman of the Supreme Court, and shall hear the prosecution brought by the committee on behalf of the House of Representatives. The President and the Vice-President shall have their own defense counsel. The House of Elders shall approve of the charges on a majority vote of two thirds of its total membership.[\[177\]](#)

4. If the Attorney General charges a Minister or a Deputy Minister with an offence set out in Clause 1 of this Article, he shall forward the details of the charges to the President. If the President is satisfied with the details provided by the Attorney General, he shall remove the privileges of the Minister or Deputy Minister. But, if he is not so satisfied, he shall order the Attorney General to drop the charges.[\[178\]](#)

5. The charges relating to the Ministers shall be tried by the High Court of Justice[\[179\]](#) which shall consist of the Chairman of the Supreme Court, four judges of the Supreme Court and four members elected, two each, by the two House of Parliament from amongst their members.

CHAPTER FOUR

Part One

The Judicial Branch

Article 97:

1. The state[\[180\]](#) shall have a judicial branch whose function is to adjudicate on proceedings between the Government and the public and between the various members of the public.

2. The Judicial Branch shall fulfill its duties in accordance with the Constitution, and shall be independent of the other branches of the state.

Article 98:

1. The Judiciary shall have the power to:

a) interpret, in accordance with the Constitution, the laws passed by the Constitutional bodies and emergency laws;

b) adjudicate on disputes between the governmental bodies and the public and between the members of the public;

c) adjudicate on all disputes which relate to compliance with the provisions of the Constitution

2. A judge shall not engage in any other occupation whilst in office[\[181\]](#).

3. The proper status of judges shall be determined by the law[182].

Article 99: The Structure of the Judiciary

1. The Judiciary consists of the courts and the Procuracy[183].

2. The judges and the members of the Procuracy are independent when exercising their judicial functions and shall be guided only by the law.

Article 100: The Courts

The courts of the Republic of Somaliland shall consist of:

1. the Supreme Court;
2. the Appeal Courts of the Regions;
3. the Regional Courts;
4. the District Courts; and
5. the Courts of the National Armed Forces.

Article 101: The Supreme Court

The Supreme Court is the highest organ of the Judiciary and is also at the same time the Constitutional Court[184]. In addition to the Chairman, the number of judges in the court shall not be less than four[185]. A special law shall govern the court[186].

Article 102: The Lower Courts

The appointment and the conduct of the work of the lower courts (the Appeal Courts of the regions, the Regional and the District Courts) shall be determined by a special law[187].

Article 103: The Procuracy

The Procuracy of the state shall consist of the Attorney General and his deputies[188].

Article 104: The Courts and Procuracy of the Armed Forces

1. The courts of the Armed Forces shall have special jurisdiction in hearing criminal charges[189] brought against the members of the armed forces in peace or war.
2. The courts and procuracy of the Armed Forces shall be determined by a special law.

Article 105: The Appointment of the Chairman and Judges of the Supreme Court

1. The President, in consultation with the Judicial Commission^[190] and having considered the level of education, professional experience and good character of the appointees, shall appoint the Chairman and judges of the Supreme Court. The appointment of the Chairman of the Supreme Court is subject to confirmation by the Houses of Parliament at a joint sitting which shall be held within three months of the date of the appointment.

The highest-ranking judge in seniority among the Supreme Court judges shall act as the Deputy Chairman of the Court.

2. No person who does not fulfill the following conditions shall be appointed as Chairman of the Supreme Court:

- a) He must be a citizen of the Republic of Somaliland.
- b) He must possess a university degree in a recognized law course.
- c) He must have professional experience of not less than ten years^[191] in total; and must have worked as a judge and/or a prosecutor, and/or lawyer, and/or law lecturer.

3. The President may relieve the Chairman of the Supreme Court of his duties but shall require the approval of the both the House of Representatives and the House of Elders^[192].

Article 106: The Relationship of the Judicial Bodies and the Ministry of Justice

1. The Ministry of Justice shall be responsible for fulfilling the administrative decisions^[193] of the Judicial Commission.

2. The working relationship of the Ministry of Justice and the judicial organs shall be set out in a law.

CHAPTER FIVE

MISCELLANEOUS PROVISIONS

Part One

Article 107: The Judicial Commission^[194]

1. The Judicial Commission is the body which directs the administration of the Judiciary^[195], and shall consist of the following:

- The Chairman of the Supreme Court Chairman
- The two Supreme Court judges who rank highest in seniority Member

- The Attorney General Member
- The Director General of the Ministry of Justice Member
- The Chairman of the Civil Service Agency Member
- Two members selected from the public once every two years by the House of Representatives, one of whom to be chosen from among the intellectuals and the other from the businessmen, and
- two members to be selected from the public once every two years by the House of Elders, one of whom to be chosen from among those who are well versed in the traditions and the other from the religious scholars.

2. The quorum for the meetings of the Commission is (7) members.

3. If the Chairman of the Supreme Court is unable to fulfill the duties of chairing the Commission because of reasons of health, holidays or on vacating his office, the member of the Commission who is the Supreme Court judge with the highest rank in seniority, shall act as the temporary chairman. The Secretary of the Judicial Commission shall be the Chief Registrar of the Supreme Court.

Article 108: the Functions of the Judicial Commission

1. The Judicial Commission shall be responsible for the appointment, removal of office, promotion, demotion, transfer and discipline of the judges of the lower courts (the Appeal, Regional and District Courts), and the Deputy Attorney Generals. The other personnel who work in the judiciary shall come under the provisions of the Civil Service Law.

2. No judge or Deputy Attorney General may be detained without the consent of the Judicial Commission, but such consent shall not be required if the judge or the Deputy Attorney General is caught *in flagrant delicto* in relation to an offence which carries a sentence of no less than three (3) years imprisonment.

3. The Attorney General shall submit^[196] to the Commission the charges for the removal of the privileges and the disciplining of judges and Deputies of the Attorney General.

Part Two

Article 109: The Structure of the Country

1. The territory of the Republic of Somaliland shall consist of regions, and each region shall be divided into districts.

2. The structure of the regions and the districts, their boundaries and hierarchy shall be determined by law^[197].

3. Changes in the number of regions and districts and their boundaries and the reasons for the changes shall be proposed by the Council of Government (*Cabinet*) and approved by the House of Representatives and the House of Elders.

Article 110: The Administration of the Regions and the Districts

1. The administration of the regions and the districts is part of the administration of the Government of the Republic of Somaliland.
2. The relationship of the central government and the regions and districts shall be set out in a special law[198].

Article 111: The Regional and District Councils

1. The regions[199] and the districts of the country shall have legislative councils, whose powers are limited to passing by-laws which do not conflict with the laws of the country, and executive councils.
2. The total membership of each regional or district council, the conditions of membership[200] and their election procedures[201] shall be determined by law.
3. The Chairman of the district, shall, in consultation with the prominent members of village communities, propose village administration committees[202] whose appointments shall be subject to the approval of the legislative council of the district.
4. The regional and district councils shall have power to plan their economic and social affairs.
5. The Chairman of the region shall be appointed by the Government and shall act as the representative of the central government in the region and the districts that come under it.
6. The Chairman of the region is the link between the central government and the districts of the region and shall come under the Ministry of Interior.
7. The term of office of the regional[203] and district councils shall be 5 (five) years.
8. a) A regional or district council may be dissolved before the end of its term of office.
b) The conditions which could lead to such dissolution and the procedures for dissolution shall be determined by law[204].
9. The secretary of the region or the district and the heads of the branches or sections of the Ministries shall continue to fulfill the council's responsibilities[205] in line with the existing laws (*and by-laws*) until the election of a new council.

10. The regional and district councils shall have their own proper regulations, and shall be assisted in this task by the Ministry of Interior.

Article 112: The De-centralization of Administrative Powers

1. The administration of community^[206] services, such health, education up to elementary/intermediate school level, livestock husbandry, internal security, water, electricity, communication etc. shall be the responsibility of the regions and districts in so far as they are able to do so.

2. The demarcation of the administrative and tax levying powers between the central government and the regions/districts shall be determined by the law setting out the relationship between the central government and the regions/districts.

3. The demarcation referred to in Clause 2 of this Article must be such as to make it possible for the regions and districts to become self-sufficient in their provision of community services.

Part Three

The Organs of State

Article 113: The Special Organs of the state

The national organs of state are:

1. The Procuracy.
2. The Central Bank
3. The Civil Service Agency
4. The Auditor General

Other organs may be created, if deemed necessary, in accordance with the law.

Article 114: The Appointment of and Removal from Office of Heads of the Organs of the State

1. The appointment of the Attorney General, the Governor of the Central Bank, the Chairman and the members of the Civil Service Agency and the Auditor General shall be proposed by the Chairman of the Council of Government (*Cabinet*)^[207] and shall be approved by the House of Representatives before the appointee is sworn into office.

2. The Heads listed in this Article may be removed from office by the President only.

3. The office holders of the state whose appointments are, according to the Constitution, subject to confirmation shall not hold office in a temporary capacity for more than three months (*whilst awaiting confirmation*).[\[208\]](#)

Article 115: The Ulema[\[209\]](#) Council and their Responsibilities

The Ulema Council is independent and shall have the responsibility of:

1. Formulating formal declarations on:

- a) **religious disagreements** that may arise; *and*
- b) any matters in which there is a conflict as to whether they are **contrary to the Sharia**[\[210\]](#), or appear to the Council as being contrary to the **Sharia**.

The Council shall forward their declarations to the offices which have requested the declarations or to the Constitutional Court, as they deem fit.

2. Undertaking research of all kinds from a religious perspective and, particularly, in a way which **advances** scientific and **religious knowledge**. (*Also, they shall*) review, and **validate translated religious Sharia works**, and specially those (prior to their acceptance legally) which the courts rely on in their rulings and those which are included in the educational syllabus and relate **to religious traditions and knowledge**.

Article 116: The Total Membership of the Council and Term of Office

The membership of the Ulema Council shall consist of 11 (eleven) members who shall serve for a 5 year term of office. Any suitable member may be re-appointed.

Article 117: The Conditions of Membership

Each member of the Ulema Council must fulfill the following conditions:

1. He shall be a citizen and is mentally and physically able to fulfill his duties.
2. He shall not be aged less than 40 (forty) years.
3. He shall be someone who is known for his piety (*allegiance to Allah*) and good manners.
4. He shall not have been convicted of a criminal offence that was proven in a court during the preceding five years.
5. He shall have been educated in religious matters to a university level or equivalent.
6. On the assumption of his duties, a member shall observe neutrality in political matters and in religious views.

Article 118: Matters in which Members are not Allowed

The members of the Ulema Council shall not be:

1. associated with a political party or a special religious group;
2. hold any other national office whilst still carrying the responsibilities of the Council.

Article 119: The Appointment of the Members of the Ulema Council

1. The members of the Ulema Council shall be nominated by a committee consisting of an equal number of persons chosen respectively by the Council of Government (*Cabinet*) and the House of Elders, and the nominations shall be confirmed by the House of Elders[\[211\]](#).
2. The Ulema Council shall elect from among its members a Chairman and a Deputy Chairman.

Article 120: Vacancies in the Membership of the Ulema Council

The membership of the Ulema Council may become vacant:

1. on resignation by a member or death;
2. on one of the conditions[\[212\]](#) of membership being no longer valid; *(and)*
3. on a member being subject to a final sentence for a criminal offence.

Article 121: Salaries and Remuneration

The salaries and remuneration of the members of the Ulema Council shall be determined by law.

Article 122: The Law of the Organs of State

Each special organ of state shall have a law setting out its structure, responsibilities and the status of its head.

Part Four

Article 123: The Principles of the National Armed Forces

1. The national Armed Forces shall be responsible for protecting and defending the independence of the country. In addition, they shall, when needed, undertake duties in periods of state of emergency, in accordance with the Constitution.

2. The national armed forces shall always obey and act in accordance with the Constitution and the laws of the country.
3. The structure (*and composition*) of the national armed forces shall reflect all the various Somaliland communities[213].
4. The person who is appointed as Minister of Defense shall be a civilian citizen.
5. The command structure of the national Armed Forces shall be determined by law.

Article 124: The Police and the Corrections Forces

1. The Police Force shall be responsible for protecting the peace and for enforcing the law, and its structure and duties shall be set out by law.
2. The Corrections Force shall be responsible for guarding and reforming prisoners and its structure and duties shall be set out by law.

Article 125: The Preparation of the Referendum Law and the Appointment of the Referendum Committee

Whilst taking note of the provisions of the Constitution, a referendum law[214] shall be issued so as to make possible the holding of the referendum. A Committee to organize the referendum shall be appointed in accordance with the Constitution.

Article 126: Amendments or Corrections of the Constitution

1. Proposals for the amendments and/or corrections of the Constitution shall be made by:
 - a) The President, after consulting the Council of Government (*Cabinet*).
 - b) 1/3 (one-third) of the total membership of the House of Representatives.
 - c) 1/3 (one-third) of the total membership of the House of Elders.
2. Any proposal to amend and/or correct the Constitution must be reasoned and signed.
3. Amendments and/or corrections of the Constitution shall be debated by the House of Representatives and the House of Elders two months after the House of Representatives resolves by a majority of their total number that the amendments and/or the corrections are necessary.
4. Any amendment and/or correction of an Article or Articles of the Constitution shall come into force after its approval by 2/3 (two-thirds) of the total membership of the

House of Representatives and by 2/3 (two-thirds) of the total membership of the House of Elders in separate votes.

5. If the House of Representatives does not resolve by a majority of its total membership that the amendment or the addition or both is necessary; or if one of the two Houses does not approve of the amendment and/or correction by a 2/3 (two-thirds) majority of its total membership, the proposal shall not be re-introduced during the following 12 (twelve) months.

Article 127: The Limits of Amendments or Corrections of the Constitution

No proposal to amend or correct the Constitution shall be made if it includes a provision which is in conflict with the:

- a) Principles of Islamic Sharia.
- b) Unity of the country(territorial integrity).
- c) Democratic principles and the multi-party system.
- d) Fundamental rights and individual freedoms.

Article 128: The Basis and the Supremacy of the Constitution

1. The Constitution shall be based on Islamic principles.
2. The Constitution shall be the supreme law of the land, and any law which does not conform to it shall be null and void.

Article 129: The Constitutional Oath

The Chairman of the Supreme Court, who is, at the same time, the Chairman of the Constitutional Court, shall administer this constitutional oath to any person who is obliged to take an oath under the Constitution before that person can assume his office. In the same way, he shall also take an oath to be administered by the President.

“I SWEAR BY ALLAH THAT I SHALL BE TRUE TO THE ISLAMIC RELIGION AND MY SOMALILAND COUNTRY, AND SHALL MANAGE MY PEOPLE IN EQUITY AND JUSTICE SO LONG AS I HOLD OFFICE.”

Article 130: The Implementation of the Constitution

1. This Constitution shall come into force when a referendum^[215] has been held and the outcome of the referendum is known. It shall, however, be implemented, in the interim, for a period of three years^[216] (3) beginning from the date when it is approved by the 3rd Conference of the Somaliland Communities.

2. If the referendum can not be held within the set period, the interim period in which the Constitution is implemented may be increased by the Parliament^[217] (the Representatives and the Elders).
3. In the event of one of the circumstances listed in Article 50^[218] happening to a member of the House of Elders or the House of Representatives, the community which he represented shall fill that vacancy until such time the system of elections through parties is adopted.
4. In the event of the circumstances listed in Article 86 happening to the President or the Vice-President or both until such time a party system with direct elections is adopted^[219], the two Houses (Representatives and Elders) shall elect jointly, within 45 days, the President or the Vice-President or both. The Speaker of the House of Elders shall fill the vacant office during the period preceding such election.
5. All the laws which were current and which did **not conflict with the Islamic Sharia**, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the Republic of Somaliland.^[220] At the same time, laws which conform to the Constitution shall be prepared, and each such law shall be presented within minimum time scales set by the House.
6. If the regions and districts fail to set up their councils within 3 (three) months, the Government, in consultation with the relevant members of the Houses of Representatives and Elders who represent these regions or districts and also with the elders in these communities, shall appoint, on a temporary basis, regional and district administrators.

The names of the Constitution Preparation Committee: This is the Committee which prepared the Constitution at the 1997 Hargeisa Conference

(Note: All the spellings of the names are in Somali Script)

1. Sh. Cabdilaahi Sh. Call Jawhar **Chairman**
2. Maxamed Axmed Cabdulle **Deputy Chairman**
3. Clqaadir X. Ismaaciil Jirde **Secretary**
4. Sh. Maxamuud Suufi Muxumed
5. Maxamed Siclid Maxamed (Gees)
6. Sh. Call Sh. Cabdi Guuleed
7. Faysal Xaajl Jaamac (Counsel)
8. Cismaan Xuseen Khayre (Judge)
9. Prof. Faarax Cabdllaahi Farlid
10. Prof. Maxamuud Nuur Caalin
11. Xasan Cabdi Xabad
12. Axmed Macaim Jaamac
13. Yuusuf Aadan Xuseen
14. CismaanCali Blue

15. Maxamed Jaamac Faarax

The Constitution Revision Committee

The House of Elders:

(Mud is short for Mudane “the honorable” – a title used by members of Parliament)

- 1) Mud. Sigid Jaamac Cali, Chairman
- 2) Mud. Axmed Nuur Aw Cali, Secretary
- 3) Mud. C/Laahi Sh. Xasan,
- 4) Mud. Sigid C/Laahi Yaasir
- 5) Mud. Cali X. Cabdi Ducaale
- 6) Mud. Claxmaan Axmed Areye
- 7) Mud. Maxamed Clise Faarax
- 8) Mud. Yuusuf C/Laahi Cawaale
- 9) Mud. Muxumed Aw Axmed
- 10) Mud. Maxamed Gaaxnuug Jaamac
- 11) Mud. Maxamed Cismaan Guuleed

The House of Representatives

- 1) Mud. Xasan Axmed Ducaale, Chairman
- 2) Mud. Cali Maxamed Cumar, Secretary
- 3) Mud. C/raxmaan Xuseen Cabdi
- 4) Mud. Maxamed Xuseen Dhamac
- 5) Mud. Cabdi Daahir Camuud
- 6) Mud. C/Laahi Ibraahim Kaarshe
- 7) Mud. Axmed C/Laahi Cali
- 8) Mud. Faysal X. Jaamac
- 9) Mud. Maxamed Aadan Gabaloos
- 10) Mud. Cumar NuurAare
- 11) Mud. Yaasiin Faarax Ismaaciil
- 12) Mud, Yaasiin Maxamuud Xiir
- 13) Mud. Cali Obsiye Diiriye

The Committee for Corrections, Authentication and Production of Copies of the Constitution who also appended their signatures:

- 1) **Mud. Axmed Maxamed Aadan, Speaker of the House of Representatives**
- 2) **Mud Axmed Nuur Aw Cali, Secretary of the House of Elders**
- 3) **Mud C/ILaahi Sh. Xasan, member of the House of Elders**
- 4) **Maxamed Xuseen Cismaan, Secretary of the House of Representative.**

SIGNED BY:

Sh. Ibraahim Sh. Yuusuf Sh. Madar, Speaker of the House of Representatives.

Axmed Maxamed Aadan, Speaker of the House of Representatives

The Secretariat of the Constitution Committee:

- 1) **Faisa Maxamed Axmed**
- 2) **C/risaaq Siciid Ayaanle**

[1] The [National Charter \(Axdiga Qarameed\)](#) was formally signed on 3rd May 1993 at the Borama Grand Conference of the Somaliland Communities which was attended by a constituent assembly of 150 voting delegates representing all the Somaliland communities. It consisted of a preamble and 31 Articles. It was indeed a Constitution, though not in name, and having reconfirmed the independence of Somaliland and its characteristics, such as area, flag, emblem etc, it set out the rights and freedoms of individuals (Part 3); the institutions of the State (a House of Elders, a House of Representatives, both consisting of 75 members each); a Government consisting of the President, Vice-President and Ministers; and an independent Judiciary (in Part 5). Article 5 of the Charter made it clear that the Charter shall be in force for only two years beginning from the date of its signature and shall be replaced by a Constitution, which will be endorsed through a referendum. As it was not possible to draft a constitution during the first two year period, the House of Elders extended in September 1995 the period of the Charter and the term of then President (who was elected at Borama Conference) for a year and half. The Charter remained in force until early 1997 when it was replaced by an interim Constitution which was adopted at the Hargeisa Grand Conference. This conference which took place between October 1996 and February 1997 was attended by a constituent assembly of 315 voting delegates representing all the Somaliland communities and also undertook the presidential elections, as well, in the same way as the 1993 Conference. This time the President was elected for a term of five years (from February 1997), the term set out in the new Interim Constitution. The Conference also selected the 164 members of the two Houses – this was the number set out in the Interim Constitution and was 14 more than the total members set in the National Charter (Article 10 & 11).

[2] This refers to the period of Siyad Barre’s military dictatorship which lasted from October 1969 to May 1991. Siyad Barre re-named the democratic Somali Republic by calling it the “Somali Democratic Republic”, no doubt, in line with the other “Democratic” Republics of East Germany, North Korea etc. In 1979 he introduced a 114 Article Constitution, which concentrated all the power in the hands of the President, Siyad Barre.

[3] Known in English as “Dervishes”, this phrase refers to the struggles waged by the followers of Sayid Mohammad Abdille Hassan against the British in Somaliland from 1900 - 1921. The reference to his followers in this Constitution signifies more the struggle against a colonial power rather than the Sayid’s murderous treatment of the majority of the Somaliland people.

[4] The Somali National Movement

[5] This refers to the Grand Conference of the Somaliland Communities at Hargeisa in 1996/97, which, as stated in the beginning of the Preamble was preceded by the Buraao and the Borama Conferences. The Conference was attended by 335 delegates and lasted for 132 days. Two drafts of the Interim Constitution were debated and considered, and a 15 member Committee chaired by Sheikh Abdillahi Sheikh Ali Jowhar was set up to consider all the proposed versions. The Conference, which was acting as a constituent assembly representing all the Somaliland communities adopted an interim Constitution consisting of 156 Articles, which replaced the National Charter adopted at the Borama 1993 Grand Conference. The Interim Constitution was revised in 2000 when the two Houses amended it by a resolution at a joint meeting on 30 April 2000 – see also the footnotes relating to Article 130.

[6] In a referendum held on that date, the Somaliland people endorsed this Constitution

[7] The [first Constitution of Somaliland](#) (then formally known as the independent State of Somaliland) came into force on that date. It consisted of 53 sections and included, among other things, provisions setting out the Executive (the Council of Ministers headed by a Prime Minister), The Legislative Assembly (a speaker and 33 members), The Judicature (headed by the Somaliland High Court), the public service, citizenship etc. The Constitution was annexed to the Somaliland Order in Council 1960 (S.I 1960/1060).

[8] The Somaliland international boundaries were set in a series of agreements between Great Britain and the neighboring countries, France (French Somaliland), Ethiopia and Italy (Italian Somalia).

[9] For the extent of the Somaliland territorial waters, see [Law on Territorial Sea and Ports \(Law No: 37 of 10/09/1972\)](#), so far as it is applicable to Somaliland. According to this Law, the territorial sea includes the portion of the sea to the extent of 200 nautical miles within the continental and insular coasts, delimited according to the provisions of articles 2 and 3 of this Law, but this has been superseded by the UNCLOS, which Somalia acceded to in 1989 and territorial sea is therefore likely to be seen as being 12 nautical miles.

[10] This is not the same as someone born in Somaliland, and patriality is defined in the rest of the clause.

[11] See the [Somaliland Citizenship Law](#) (Law No: 22 of 2002). The first Somaliland citizenship law, the Nationality and Citizenship Ordinance 1960 was enacted on 23 April 1960 and came into force, with the birth of the independent State of Somaliland, on 26 June 1960.,.

[12] The constitutions of almost all Arab states, with the exception of Lebanon and Syria) **establish Islam as the state religion**. In contrast Muslim countries, like Indonesia, Mali and Turkey do not include such provisions in their constitutions.

[13] This prohibition covers **proselytizing and any public advancement or possibly even public manifestation of another religion**, but does not prohibit the private practice (either alone or in a group) of another religion. Although Article 10(2) of the Constitution confirms the Republic's adherence to the Universal Declaration of Human Rights 1948, **this Article does not meet fully the requirements of Article 18 of the Declaration** to the effect that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." In 1963, an amendment (Law No; 16 of 29/06/1963) to the **1960 Somali Republic Constitution (Article 29) which prohibited anyone from spreading or "propagandize any religion other than ... Islam"** was much more explicit in confirming that "every person shall have a right to freedom of conscience and freely to profess his own religion and to worship it **subject to any limitations** which may prescribed by law for the purposes of safeguarding morals, public health, or order". This formula for defining the **limitation of freedom to manifest one's religion or belief is acceptable** and can be seen, for example in Article 9(2) of the European Convention on Human Rights or Article 1(3) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981. **It is a crime under Article 313 of the Penal Code to bring publicly the religion of the state (Islam) into contempt or to insult it publicly by bringing into contempt persons professing it or places or objects dedicated to worship.** Article 314 makes it an offence for anyone to **impede or disturb the exercise of functions, ceremonies, or religious practices of the Islamic faith**. To confirm equality under the law, Article 315 extends the same protection to any similar crimes committed against any other religion "permitted in the state".

[14] **This Clause confirms that Islamic Sharia will be a source of the law, but it does not rule out other sources**, so long as the laws themselves do not contradict the Sharia. It should be noted also that Article 128 confirms that the **Constitution shall be based on Islamic principles**, and that as it is the **supreme law of the land**, any law which does not conform to it shall be null and void. As for pre-1991 laws, the test of whether they are still in force depends on whether they **conflict with Islamic Sharia** or individual rights and fundamental freedoms under the Constitution (see Article 130(5)). Whilst under Article 115, the as yet unformed **Ulema Council may formulate declarations about any Sharia matter** in which there is a dispute so as to establish an *ijtima* (a learned opinion), the Council may only forward their opinions to the Constitutional Court or to which ever office that requested the opinion. In the end only the Constitutional Court (which is also the Supreme Court – see Article 101) has the exclusive jurisdiction to reach a decision about the interpretation or constitutionality of any law. This is set out clearly in Article 6(4) of the Organization of the Judiciary Law 2004.

[15] This Clause is similar to the directive principles in the following Part Two of this Chapter, and is therefore not justiciable, either – see the footnote relating to the "General Principles".

[16] The flight of Muhammad (Moxammad, in Somali script) for Mecca to Medina in 620 AD.

[17] The Flag of the Republic of Somaliland:

[18] The emblem of the Republic of Somaliland.

[19] In the name of Allah, the Compassionate and the Merciful.

[20] With the exception of Articles 8 and 9, this Part of the Constitution consists of general principles, which are normally known as "directive principles". These principles are not usually justiciable and Constitutions usually include an article which makes it clear that they are for guidance only. Indeed the 1997 Somaliland Constitution included Article 50 which stated clearly that "*General principles shall not enforced by the courts, but shall be of guidance to the Government in the fulfillment of responsibilities in relation to the implementation of the laws.*" On revision of the Constitution in 2000 and its reduction from 156 Articles to 130, this declaratory Article was left out and rather incongruously Article 8 relating to Equality which was in a in another part of the Constitution was brought in this Part. It is submitted, however, that the bulk of this Part titles "General Principles" still contains the directive principles and is likely to be interpreted as being of guidance only. An example of a similar provisions in an African

Constitution is that of Articles 110 - 111 of the 1996 Zambian Constitution which state that “110 (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the (a) development of national policies; (b) implementation of national policies; (c) making and enactment of laws; and (d) application of The Constitution and any other law. (2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet. 111. The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity”.

[21] This Article is denoting fundamental rights to equality and although it appears in a Part titled “General Principles” and is not in the nature of a “directive principle”. Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the African Charter on Human and People’s Rights both confirm that the rights and freedoms in both documents shall be enjoyed “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (ICCPR). The African Charter adds ethnic group and fortune to the characteristics which should not lead to denial of rights. As Article 8(1) ends with a the expression of “etc” (see footnote 19), it is submitted that the these other categories found in the ICCPR and the Charter which are not listed in this Clause of the Article would also be equally covered. But the main issue in this Article is the absence of “religion” as a protected ground. It is likely that this was deliberately left out as signified by the fact that conditions for candidacy to various offices in the Constitution set out that candidates must be Muslims – see also footnotes to Article 41 of the Constitution.

[22] I have chosen the word “precedence” rather than “preference” to indicate more aptly the meaning of the Somali phrase “kala saarayn” which refers literally to someone claiming a higher position than another.

[23] The abbreviation “etc” is used to reflect the Somali abbreviation “iwm” which is in the Somali text and is short for “iyo waxyaalaha la mid ah”, meaning, “and other similar matters”, which as mentioned in footnote 18 above could include the similar grounds listed in the ICCPR and the African Charter which do not appear in this Clause, but significantly religion has not been mentioned in this Article.

[24] This last part of the clause relating to bad practices is a new addition. It is submitted that this relates to traditional practices that lead to discrimination and or precedence on the prohibited grounds listed in the clause. This certainly covers the treatment of minority groups, such as Gabooye etc.

[25] The artificial limit on the number of political parties have been chosen to avoid the experience of the early 1960s Somali Republic when a considerable number of political parties based on clan affiliations contested elections and created chaos, specially during and after the 1969 general elections. This clause has to be read as restriction of the right of association enshrined as a fundamental right under Article 23(3) of the Constitution, as well as the international conventions which relate to such a right, such as Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 10(1) of the African Charter on Human and People’s Rights. [The Presidential and Local Elections Law](#) (Law No: 20 of 2001) limits candidacy for elections to those who appear in the closed lists of the three parties, and hence there is also a further restriction of the right of persons to stand for elections. The restriction on the number of political parties can only, therefore, be held valid in international law (under Article 22(2) of the ICCPR) if it can be said to be “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others.” For the relevance of international covenants and human rights treaties to this Constitution, see Articles 10(2) and 22(2) of the Constitution and the relevant footnotes.

[26] See [The Regulation of Political Associations and Parties Law](#) (as amended) Law No: 14 of 2000. The three parties accepted under the Constitution and this law are UDUB (the current government party) KULMIYE and UCID. These were the three parties that won the highest number of votes at the first nation-wide local elections in December 2002.

[27] Somaliland is clearly indicating its acceptance of “universal treaties” and of international human rights conventions, but succession to bilateral treaties and agreements have to be based on the complicated norms of international law and the terms of any agreements Somaliland may reach with Somalia similar to those entered into by the Eastern European states which emerged out of the dissolution of unions.

[28] See also Article 22(2) below for the application of international conventions and human rights norms to the fundamental rights and freedoms set out in Chapter One, Part Three of the Constitution.

[29] The Somali phrase describing the State's obligation in respect of foreign investment, "*dammaanad qaad*" literally means, "standing surety for". But, in the light of this article's emphasis on private enterprise, it is respectfully submitted that ensuring the security of such investment, which may include underwriting in certain circumstances, is more likely to be the accurate reflection of this obligation. See also the guarantees and protection given under the various Articles in the new 2004 law governing foreign investments.

[30] The first law was the Foreign Investments Law: Promotion, Protection and Guarantee of Investments 1995, but has now been replaced by a new [Law with the same title \(Law No: 29/2004\)](#).

[31] In view of the various guarantees of private property rights (see the preamble, for example), the phrase "land" here is likely to refer to "common" land, but in the light of the considerable difficulties that have arisen over ownership of land, this clause is seen by the Government as indicating, absent any lawful title to land held by a person, that land remains the property of the State. Whilst referring to this Constitutional Clause, Article 1(1) of the [Urban Land Management Law](#) (Law No: 17/2001) confirms that all land is, in general, the property of the state and is vested in the Government, which is responsible for its management and transfer and for proposing laws relating to it. This Law also gives power to the President to issue decrees to transfer compulsorily land needs for the public purposes, which are defined in Article 1(3) of the Law. The Law delineates the respective powers of central and local government in connection with the grant of land. Agricultural land is governed by [Ownership of Agricultural Land Law](#) (Law No: 08/99).

[32] As far as minerals are concerned, the Mining Code (Law No: 7 of 9/1/1984) and the Mining Regulations (Decree No: 22 of 9/1/1984), as amended to apply in Somaliland appear to be still in use.

[33] There is a Bill in Parliament titled the Establishment of the Somaliland Privatization Board which will pave the way for any such transfers.

[34] Zakat is the payment of alms by individual Muslims according to formulas based on their income.

[35] But see the Civil Code and the new draft Commercial Code (2004).

[36] Other than Ministerial Decrees and Circulars, it is not clear that any such law has been passed by the Somaliland Parliament.

[37] This clear commitment to free primary education is a new amendment, but it replaces a general provision in the 1997 Interim Constitution that it was the aim of the state that education should, as soon as practicable, be free.

[38] The Trade Marks Ordinance (Law No:9 of 6/8/1939) and the Patents Ordinance (Law No: 9 of 13/11/1924 applied to Somaliland until 1975 when Law No:33 of 18 January 1975 extended the Somalia 1955 Patents on Industrial Designs, Industrial Inventions and Trade Marks Ordinances (1 to 3, respectively) of 22/1/1955. No laws relating to intellectual property have been passed yet by the Somaliland Parliament.

[39] In this revised Constitution, the first line of this clause appears to be a repetition of the first line of the preceding clause.

[40] See also Article 342 (Trading in illegal drugs) and Article 343 (Abetting the use of illegal drugs) and Articles 411 to 417 (dealing with supply and sale and manufacture of alcoholic beverages) of the Somali Penal Code as amended by the Law No: 21 of 2000 (Law on Combating Drug Addiction). The latter law, which was introduced by the House of Elders, came into force on 12 March 2002 and, for the first time in independent Somaliland, introduces drastic corporal punishment for offences relating to drugs and alcohol. For example, Article 1 of the law lays down that anyone who uses drugs shall be sentenced to 40 lashes and imprisonment of 6 months to one year, and if he is seen to be influenced by drugs (or is *drunk*) in public, the punishment shall be increased with a fine or further imprisonment. There are also serious punishments for habitual users on top of the 40 lashes. The Law also deals with manufacture and supply of drugs and alcohol and repeals Articles 411, 412, 413, 414, 415, 416, 417, 342 and 343 of the Penal Code. So far, there have been no reported corporal sentences, but this Law is the first and only one that has been passed in Somaliland which introduced punishment for a "**huduud**" offence. If this Law is implemented, Human Rights advocates will argue that the corporal punishment it prescribes is contrary to Article 24(2) of the Constitution which unequivocally makes corporal punishment prohibited within the territory of Somaliland – see also the footnote to Article 24.

[41] See, for example, the Prevention of Range Erosion and Desertification Law (No: 94 of 1998).

[42] The old pre 1991 labor laws are being revised by the Somaliland Ministry of Health & Labor which has recently produced a [new Law applicable to non-public employees](#). The Bill consists of 79 Articles and

is a comprehensive replacement of the 1969 Labor Code (Decree Law No:5 of 10 August 1969), which, incidentally, was repealed by Siyad Barre's regime in 1972 (Labor Code: Law No:65 of 18 October 1972) and in various other decrees since that date.

[43] That is in effect Articles 22 to 36 of the Constitution, but, arguably, Article 8(1) relating to equality also relates to a fundamental right.

[44] This links the interpretation of these rights to the relevant international human rights conventions, and is not confined to the few Siyad Barre's Somali Democratic Republic acceded to, which were the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (CCPR) and its Optional Protocol (all acceded to in the last dying days of the dictatorship on 24 April 1990; The Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (CAT) acceded to on 23 February 1990, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) acceded to on 25 September 1975.

Somaliland considers itself bound through succession by these conventions and is prepared to go beyond that and has already indicated that it will comply with a number of other UN conventions, as signified by this constitutional provision. Also as Somaliland is an African, Arab and **Muslim nation** (see Article 10(6) of the Constitution), this constitutional commitment includes regional human rights conventions.

[45] These are the UN Charter and the Universal Declaration of Human Rights which are specifically mentioned in Article 10(2) of the Constitution.

[46] In line with Article 21(2) of the Constitution, this of course includes international conventions.

[47] The main election laws are [Law No: 20/2001](#) relating to Presidential and local council elections and [Law No 20-2/2005](#) relating to the election of the members of the House of Representatives.

[48] The right to stand for election to a political office is of course limited by the combination of the Constitutional limit on the number of political parties in Article 9(2) of the Constitution and the Elections Law which confirms that only candidates who have been proposed by the three political parties can stand for election. Elections laws often lay down conditions for candidacy for office, and the test for their legitimacy of these restrictions, for example under Article 25 of the ICCPR, is that of "reasonableness"

[49] This right of movement is protected internationally by, among other provisions, Article 12 of the International Covenant on Civil and Political Rights (CCPR), which states that these rights "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". Article 12 of the African Charter on Human and People's Rights 1981 which also deals with freedom of movement limits restriction of this right to those "provided for by the law for the protection of the national security, law and order, public health or morality". Any such law should therefore pass this test, which is similar to the one used for derogation from some of the other rights in the Covenant. " Some of these restrictions are echoed in Article 28(4) of the Constitution.

[50] This is severely limited by Article 9(2) of the Constitution which limits the number of political parties to three. Now that the three political parties have been identified through the Regulation of the Political Association & Parties Law (as amended) Law No: 14 of 2000, no one may form another political "party", but it is not clear how this restriction in Article 9(2) would limit "political" associations which are not seeking to become a party, but are addressing specific political issues. The test of the propriety of restrictions to freedom of association in the Article 22 of the ICPR is similar to that noted in the preceding footnote.

[51] The right to form trade unions is part of the right to freedom of association, but is specifically mentioned in Article 22(1) of the ICPR. This right is also covered by International Labor Organization Conventions, such as the freedom of association and Protection of the Right to Organize Convention 1948 and the Right to Organize and Collective Bargaining Convention 1949.

[52] This unequivocal provision clearly rules out any physical punishment and despite the general principle set out in Article 128(1) that the **Constitution shall be based on Islamic Principles** and the directive principles set out in Article 5 of the Constitution, any proposal to introduce corporal punishment for the limited number of **Huduud offences**, such as: robbery, fornication (*Zina*), false accusation (*Qazaf*), *drinking* of intoxicants and **apostasy** will require constitutional amendment. This issue is likely to come into prominence if the Guurti (House of Elders) initiated 2002 Prevention of Drug Abuse Law (Law No: 21 of 2002) which created a number of "drinking" or drug abuse offences punishable, for the first time in independent Somaliland, by 40 lashes as well as fines is ever implemented. Such punishment is contrary to international norms as it is likely to be seen as "cruel, inhuman or degrading treatment or punishment" (see, for example Article 5 of the Universal Declaration of Human Rights 1948 ; Article 7 of the

International Covenant on Civil and Political Rights 1966 and Article 5 of the African Charter on Human & Peoples' Rights 1981). An example of an African case is the Zimbabwe Supreme Court decision of *S v Ncube 1987 (2) ZLR 246 (SC); 1988 (2) SA 702 (ZS)* which held that the whipping of adults under a 1956 Prison Regulations was inhuman or degrading punishment and contravened s.15 (1) of the Zimbabwe Constitution which provided that no person shall be subject to inhuman or degrading punishment.

Article 1 of the Penal Code (1963) declares that "no one shall be punished for an act which is expressly made an offence by law, nor with a punishment which is not prescribed therein" and the range of principal and accessory punishments in the Code are set out in detail in Articles 90 to 142 and do not include corporal punishment.

[53] Articles 34 to 39 of the Criminal Procedure Code set out in details the circumstances when persons may be arrested without a warrant. Article 37 defines the expression "caught *in flagrante delicto*" as meaning a person "caught in the act of committing an offence; is pursued immediately after the commission of the offence by a police officer, or the injured party, or any other person; and is caught immediately after the commission of the offence, with objects or traces which clearly show that he committed the offence."

[54] See Articles 40 to 44 of the Criminal Procedure Code.

[55] The effect of this clause is limited by international human rights law (for example the International Covenant on Civil and Political Rights, the ICCPR) which does not allow for derogation in respect of some rights (such as the right to life; the right not to be subjected to torture or cruel or inhumane treatment or punishment; freedom of thought, conscience and religion etc) but allows some derogation in other rights, such as the right to assembly or to association or in freedom of expression. It is only to these latter rights that this Clause may apply. For example, Article 19 of the ICCPR states that freedom of expression may be restricted as is provided by law and is necessary for the respect of the rights and reputations of others or for the protection of national security or of public order of public health or morals. Also Articles 21 and 22 of the ICCPR relating to freedoms assembly and association may only be subject to restrictions laid "by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Some of these restrictions are echoed in Article 25(4) of the Constitution.

[56] This also reflected in Article 13(2) of the Criminal Procedure Code (1963): "the accused person is presumed innocent until the conviction has become final".

[57] Article 15(5) of the Criminal Procedure Code also confirms that "an accused who has been arrested shall have the right to confer freely with his defense counsel at all stages of the proceedings."

[58] Under Article 39(1) of the Criminal Procedure Code, any "person arrested without warrant shall be taken immediately, and in any case not later than 48 hours from the time of his arrest, before the competent court nearest to the place of arrest: provided that the time necessary for travel to the Court from the place of arrest shall not be included in the 48 hours". The latter part of this Article is no longer valid as the Constitutional clause does not make any such allowance. For persons arrested on a warrant issued by a judge, Article 45 of the Criminal Procedure Code states that such a person shall, without unnecessary delay, be taken to a competent judge or to a judge of the court nearest to the place of arrest, if the competent judge is situated more than 50 kilometers away. Again this must now be read as being subject to the 48 hour time limit.

[59] Under Article 150 of the Criminal Procedure Code, "a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by inducement, threat or promise." Also Article 151 lays down that no confession made by any person "shall be proved as against such person, unless the confession is made before a judge" and is recorded in writing by the judge, read over to the person by the judge, and signed by the person as well as the judge (see Article 68 of the Code).

[60] The maximum periods for anyone held in lawful custody before trial are set out in Article 47 of the Criminal Procedure Code and are 90 days for offences punishable by death or life imprisonment, 60 days for offences which fall within the Assize Section of the Regional Courts, 45 days for less serious offences which fall within the jurisdiction of the General Section of the Regional Courts and 15 days for offences which fall within the jurisdiction of the Criminal Section of the District Courts. The Court of Appeal may, on application by the Procuracy increase the period of custody by a period not more than the maximum set out for each offence in this Article 47 of the Code. Until the date of trial is fixed, an accused shall be brought before the court every seven days. Failure to do so shall lead to criminal proceedings against the person responsible if the delay amounts to an offence or to disciplinary action, if it does not – Article 32(2) of the Code.

[61] Articles 460 to 463 of the Penal Code lays down the punishment for crimes against personal liberty such as unlawful seizure/detention (up to 8 years imprisonment); illegal arrest (up to 3 years imprisonment); abuse of authority towards an arrested or detained person (up to 3 years) and arbitrary personal search (up to 1 year).

[62] Other than the matters already covered by the 1962 Somali Penal Code, which Somaliland still uses in accordance with Article 130(5) of this Constitution, now specific law to cover these duties has been passed yet.

[63] This wording is similar to that used in the reservations to the CEDAW- Convention on the Elimination of All Forms of Discrimination against Women (adopted by the General Assembly 34/180 of 18/12/1979, and which entered into force on 3/9/1981) made by the Muslim countries which ratified the Convention. The Somali Democratic Republic did not ratify this Convention by the time Somaliland re-asserted its sovereignty in 1991. Somaliland is likely to make a declaration and reservation **similar to other Muslim countries** when it does ratify this Convention.

[64] This commitment to issue a law on the rights of women is a new addition. As of yet, no such law has been passed by the Somaliland Parliament.

[65] This is an unequivocal statement and although difficult to sustain in all circumstances, means that all “legislation” of what ever nature must be approved by the Parliament, even if Parliament passes a law which allows the President or Ministers to issue regulations. There are various ways that parliaments exercise oversight of any “delegated” legislation, but neither the Constitution, nor the Rules of the House of Representatives laid down any differing routes for approval of various types of legislation. This is in contrast to the position in the pre-dictatorship Constitution of 1961 which followed the Italian system and divided legislative acts into four basic types: a) Laws (*Leggi*); b) Legislative Decrees (*Decreti-Legge*); c) Decree- Laws (*Decreti-Legge*); d) Decrees (*Decreti*); and e) Regulations (*Regolamenti*). Section II (Articles 60 – 63) of the 1961 Somali Constitution set out the procedure for consideration of draft Laws (*Leggi*) by the National Assembly and the promulgation of such laws by the President. The Assembly had also express powers under the 1961 Constitution (Article 62) to delegate to the Government the power to issue, on specified subjects or matters and for limited period, provisions having the force of law and these laws were then issued as presidential decrees (on proposal of the Council of Ministers). These were then “Legislative Decrees”. However in cases of urgent necessity, the Government was given power under Article 63 to issues temporary provisions having the force of law. Such provisions were issued by decree of the President (on proposal of the Council of Ministers) and must be presented to the National Assembly within five days from their publication so they can be converted into law. The Assembly, if in session, had a time limit of 30 days to undertake this task, and if they decide not to convert it, the law shall cease to have effect. These laws were termed “Decree-Laws”. Finally, Article 85 of the Constitution gave power to the President to issue by Decree, on the proposals of the Council of Ministers, regulations. This power was set out under the section relating to the activities of the Government and the public organs and was primarily for administrative and governmental issues. Also, the power to issue regulations on “specific matters may be given by law to the other organs of the State and to public bodies”. Whilst the dictatorship Constitution of 1979 included provisions which were similar to those of the 1961 Constitution in relation to the types of law, in reality all laws were issued by the decree of Siyad Barre, either in his capacity as Head of the Supreme Revolutionary Council or President from 1969 to 1990. It is indeed questionable how far this clause in the Somaliland Constitution permits any delegated legislation to the President and Ministers, and whilst administrative decrees and circulars cannot be construed as being “legislation”, a number of recent Laws have given powers to Ministers to issue regulations (such as the Somaliland Citizenship Law, the Regions and Districts Law) but although no corresponding duty to submit the regulations to the Parliament for approval was expressly added, it could well be any such regulations which have not passed by Parliament may well be challenged as having been issued contrary to this clause. It is time that Parliament sets up quickly a fast track procedure the scrutiny and approval of such type of “legislation”.

[66] See Articles 75 and 76.

[67] See [The Standing Rules of the House of Representatives](#) of 14 September 1998, which replaced the Rules passed on 16 June 1997. The Rules have also been revised in March 1999. when an Annexe (titled Rules of Parliament) relating to joint meetings of the two Houses was added. It is stated in the annexe that the respective Rules of the two Houses will be amalgamated. **NOTE: [New Standing Rules](#) were adopted by the House on 2 January 2006.**

[68] According to Rule 2(e) of the [Annexe \(Rules of Parliament\)](#), the proposal for such meetings and the agenda shall be put forward by either:

- a) the two Speakers and shall be approved by the two Houses, or
- b) on the motion of a majority of the total members of one House which shall be forwarded to the other House, which may approve or reject the motion by a majority of its total members.

The joint meetings shall be chaired by the Speaker of the House of Elders, and the Speaker of the House of Representatives shall act as a joint chairman (Rule 5). Unless otherwise stated in the Constitution.

Resolutions in joint meetings of the two House shall be carried on a simple majority (Rule 3).

[69] Rule 2 of the Annexe (Rules of Parliament) adds that the two Houses may hold joint meetings about:

- a) Political issues that face the nation;
- b) on request of the Government or when two Houses want to put questions to the Government or are seeking situation reports or evidence from the Government;
- c) when there is a need to settle some issues relating to any side (*presumably the Houses or the Government*), be it discussion of opinions or passing of laws etc;
- d) when there are proposals from the Government or one of the Houses to amend the Constitution, in which case, the two Houses may empanel joint committees.”

[70] The first such elections are scheduled for March 2005. Elections shall be carried out in line with the House of Representatives Elections Law. The current House consists of members who were selected by their communities on a power sharing formula agreed at the National Conference of the Somaliland Communities at Hargeisa in late 1996 and early 1997.

[71] This Clause and the conditions in this Article also apply to membership of the House of Elders (see Article 59) and to appointments as Ministers/Deputy Ministers (see Article 94(5). Also Clause 82(2) relating to the Presidential (Vice-Presidential) office also raises a similar condition. This condition is likely to be regarded as questionable under, for example, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the African Charter on Human and People’s Rights which confirm that the rights and freedoms in both documents shall be enjoyed “*without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. Article 8(1) of the Constitution which sets out equality of citizens covers all these aspects but leaves out religion.

[72] Article 7(3) of The House of Representatives Election Law sets this period as 4 months before the election date. Strangely enough the relevant period for resignation in respect of presidential and local elections is 180 days but an exception was made for the first nation-wide local elections where the period was reduced to 40 days (Article 7(1)).

[73] As the five-year term of the current House of Representatives was due to expire in May 2002, the House of Elders resolved on 27 April 2002 to extend its term under this Clause by one year. Another extension of two years was made by the House of Elders in February 2003 and a further extension of over six months to October 2005 was made by the Elders so as to coincide with the planned House of Representatives’ elections in September 2005. These extensions have been criticized severely as many argued that there were no dire circumstances which justified the extensions as the only reason why the extensions were needed was the failure on the part of the Government and the Parliament to pass the appropriate electoral legislation and to hold the election on time.

[74] This is the first reference to the “Council of Government”, or as I prefer, the Cabinet. There is no definition of the Council of Government in the Constitution, but Article 94 sets out the “Council of Ministers” whose meetings shall be chaired by the President (or the Vice-President). It is submitted that the reference to the “Council of Government” relates to this body.

[75] See also Article 3 for the Capital City.

[76] This refers to the electoral declaration, which is made by the Supreme Court under Article 41(1) of the Constitution, and not any provisional declarations made by Electoral Commission.

[77] See Article 129 for the Oath.

[78] According to Rule 8 of the House Standing Rules, the election shall be conducted by show of hand and on the basis of a simple majority. The Speaker or his deputies may be dismissed on a motion proposed by 27 members and supported by a qualified majority of 55 votes (out of the 82). On receipt of the motion supported by the 27 members, the Speaker must call a meeting during a period of not less than 24 hours and not more than three working days. If the motion is carries than the new Speaker or his deputies are elected in line with Article 44 of the Constitution. The offices of Speaker and his Deputies may also become vacant on the death of the member concerned or on his resignation.

[79] According to House Rule 24(1), the Speaker may hold a closed meeting when it is resolved by him that the following matters are being discussed:

- a) Issues relating to national security;

- b) controversies between House members or between the two Houses;
 - c) matters concerning conduct of the members which the Standing Committee reported to Speaker and the latter considers it appropriate for the House to resolve;
 - d) matters on which 11 member propose in writing ought to be considered in a closed meeting.
- All other meetings of the House shall be open (Rule 24(2)).

[80] This is set in Part 4 and 5 (Rules 25 to 44) of the House Standing Rules. **NOTE: [New Standing Rules](#) were adopted by the House on 2 January 2006.**

[81] The Standing Rules of the House of Representatives were originally passed on 16 June 1997, and have since been replaced (on 14 September 1998) by the current Rules which have been revised in March 1999. **NOTE: [New Standing Rules](#) were adopted by the House on 2 January 2006.**

[82] In addition to the Standing Committee, the House has Committees that deal with Economics; Social Affairs; Foreign Affairs & International Co-operation; Constitution, Justice & Laws; and Internal Affairs & Defense. Their terms of reference are set out in the House Standing Rules. Ad hoc Committees may also be formed. Members of the Committees are appointed by the Speaker and his Deputies, and each committee selects its own Chairman (Rule 12).

[83] See the Parliamentary Remuneration and Expenses Law (Law No: 13 of 2000).

[84] This is also the case with members of the House of Elders (see Article 70) and means the members of both Houses of Parliament appointed as ministers or deputy ministers cannot retain their parliamentary membership.

[85] The Somali Penal Code makes insult (Article 451) and defamation (Article 452) criminal offences.

[86] Any such meetings of the House which are considering the conduct of members shall be closed – Rule 24(1)(c) of the Standing Rules.

[87] The Standing Committee consists of 17 members, except when it meets the House of Elders Standing Committee when it will include the Chairmen of the other House Committees as well as the House Speaker and his Deputies – a total of 25 (see Rule 13 of the House Standing Rules).

[88] This is, presumably, subject to Clauses 1 and 2 of the same article.

[89] These are set out in Article 41 above.

[90] The Standing Rules of the House set out the procedures for attendance in Rule 21 and the House shall make a final decision about the non-attendance falling within this Clause on the proposal of the Speaker after he had consulted the Standing Committee of the House (Rule 22).

[91] This will be set out in the House of Representatives Elections Law, but the parallel provision relating to local councilors is likely to be followed and any vacancy will then be filled by the party to which the departing incumbent belonged, and the top candidate on the relevant party list will be chosen (see Article 37 of the Regions & Districts Law- Law No: 23 of 2002). Any vacancy that arises before the elections in March 2005 is filled in accordance with Article 130(3) of the Constitution by a person selected by the community which chose the departing incumbent at the 1997 Conference of the Somaliland Communities.

[92] Under Rule 10 of the House Standing Rules, the General Secretary and his Deputy, as well as Legal Adviser shall be appointed by the Speaker and his Deputies.

[93] This is a new addition as the previous Constitution mentioned a Legal Adviser only.

[94] The Secretary General is responsible for the appointment, promotion, transfer or dismissal of other parliamentary employees but he shall seek the advice of the Speaker. See also The Parliamentary Staff Law (Law No: 15 of 2000).

[95] Under Rule 44 of the Standing Rules, the House shall consider each such appointment separately after having confirmed the appointee's eligibility for the post. The House will hear the report of the appointee who will answer the questions put to him, and the vote will then be carried while the appointee is not present in the chamber.

[96] I have also added the word "treaties" in parenthesis because the Somali text uses the phrase "heshiisyada dawliga" which means literally "governmental agreements", but can also be translated as "international agreements". This Clause is aimed at bilateral or multilateral treaties of whatever nature and mirrors Article 67 of the 1960 Somalia Constitution headed "International Treaties" and which stated that the Assembly "shall authorize by law the ratification of political, military and commercial international treaties or treaties which involve a modification of the law or financial commitments not included in the budget." But see also Article 92(6) which sets out the President's power to sign "heshiisyada caalimiga ah" – literally international agreements – and which raises the question as to whether there is any discernible difference between the two phrases. Agreements between governments/states are clearly covered in both Articles, but what about agreements with international

organizations which may or may not consist of member states? In any case, this Article also sets out detailed examples of the kind of agreements which must be ratified by the House.

[97] See Article 90(11) and 92 for the declaration of state of emergency.

[98] This office is one of the special organs of state set up under Article 113 of the Constitution.

[99] This must refer to a third of the total membership of the House, as this part of the Clause does not refer to the members present and voting at a sitting, and the following part of the Clause refers expressly to the approval of the Dissolution by two thirds of the total membership.

[100] This Court is the Supreme Court – see Article 101 of the Constitution. The House Justice, Laws & Constitution Committee and the House Legal Adviser are empowered under Rule 49 of the House Standing Rules to deal with any legal cases relating to dissolution that may arise in connection with this Article.

[101] Such a referendum is likely to be carried out under procedures similar to that adopted for the referendum on the Constitution mentioned in Article 125 of the Constitution.

[102] This Article starts with the statement that the “Golaha Guurtida” (which I have translated as the House of Elders) is the House of “Odayaaasha”, which literally also means “elders”. The word “Guurti” is a term applied to traditional leaders, who were invariably elders, but are not necessarily chosen simply because of their age. As you can see in Article 59, members of this House must not only be aged 45 years or over, but must also have a good knowledge of religion or be well-versed in tradition. The Somaliland Guurti goes back to the 1980s during the liberation war and has been an enduring institution undertaking peace making and traditional conflict resolution.

[103] The Indirect Elections of the House of Elders Bill proposes that members of the House of Elders will be selected from each community on the basis of the current allocation to each community. Note also that Article 62 refers to the “selection” of the members of the House.

[104] The 6-year of the current House expired in early 2003, but their term of office was increased by one year.

[105] These conditions are set out in Article 41.

[106] Under the Rules, the functions of the Standing Committee is to undertake the functions of the House, as far as possible, during the periods of recess, to conciliate any disagreements between the members, to review the Rules of the House and to report back to the House on any activities undertaken during the recess (Rule 6). The House also has five Committees dealing with security & defense, political affairs, economics, social affairs and legislation & judiciary and may appoint ad hoc committees (Rule 7, as amended). **NOTE: New Standing Rules were adopted by the House on 2 January 2006.**

[107] For example, former Vice-President (1993 -1997) Abdirahman Aw Ali Farah, and former Vice-President Hassan Easa Jama (1991 – 1993).

[108] But note any such legislation must be passed on to the House of Representatives for review and approval - see Articles 77(1) and 78(2) of the Constitution.

[109] Each House reviews the Bills passed by the other – see Article 77(1) of the Constitution.

[110] See also Clauses 77(1), 77(2) and 78(1).

[111] The word “mashruuc” which means a project is used in this Clause, but the Government’s draft amendments to the Constitution on the identical Article referred to “Mashruuc- Sharci”(i.e Bill – draft legislation). As this word has survived the revision of the Constitution, it must be assumed that it relates to any project that the House wishes to propose, including draft legislation in their areas of specialty - *religion*, traditions (culture) and security (see Article 57 and Article 61(1)). Rule 29 of the House Rules state that draft legislation (or new motions, presumably, otherwise than in a debate) may be proposed by a minimum of 11 members of the House.

[112] Note that Article 58 states that “elections” to the House shall be laid down by law.

[113] See Article 129 for the oath.

[114] The Speaker and his Deputies are responsible for the appointment of the House Secretary, his deputy and the Legal Adviser – Rule 4(d) of the House Rules.

[115] See Article 52 of the Constitution.

[116] The Rules of the House were approved initially on 19 June 1997 and have since been amended on 30 December 2001. The Rules consist of 26 Rules and an Appendix setting out the composition and terms of reference of the House Committees.

[117] See the Parliamentary Remuneration and Expenses Law (Law No: 13 of 2000).

[118] See Article 49.

[119] I have re-arranged the beginning of this Article so that the first line is set out separately and applies to all the three Clauses, instead of being part of Clause 1 as it is in the original Constitution in Somali. One

should also note that other than the conditions set out in this article, Article 72(1) states that the conditions of loss of membership of the House of Representative set out in Article 50 also apply to the House of Elders.

[120] See Articles 59 and 41 for the conditions.

[121] In particular, Rule 26(f) sets out that if a member is absent without good reason from the sittings of the House for a period totaling 60 days within one year, he shall be deemed to be unable to fulfill his duties and the House shall reach a final resolution about the member. Note, however, that the combined effect of Article 72(1) and Article 50 means that under Article 50(5), absence, without valid excuse, from 20 consecutive sittings. Rule 26(f), therefore, relates to non-consecutive absences.

[122] See Article 56.

[123] The House shall hold three sessions a year taking 23 weeks and the sessions shall be separated by a recess lasting 4 to 6 weeks – Rule 13 of the House Rules.

[124] See Articles 45 and 46. These are also repeated in Rules 14 to 16 of the House Rules.

[125] Article 50 refers to loss of membership of the House of Representatives, but Article 68 relates to the loss of membership of the House of Elders. The former is wider than the latter, and any conditions additional to those set out in both Articles will equally apply to the House of Elders.

[126] The Indirect Elections of the House of Elders Bill (article 7) simply refers to this Article and Article 130(3) of the Constitution as the procedure for filling vacant posts and signifies that the current procedure will continue after the Bill becomes Law and the new House is “selected” or elected indirectly. The position under Article 130(3) now is that any vacancy is filled by a person selected by the community which chose the departing incumbent at the 1997 Conference of the Somaliland Communities.

[127] See Article 3.

[128] I have used the word “bill” for “Mashruuc-sharci”, which means more aptly draft legislation, as a generic term for all draft primary legislation. As this Article refers to the House of Representatives only and there are no comparable provisions relating to House of Elders, the presumption is that no draft legislation can be put initially to the House of Elders by the Government or the public, but in those areas where the House of Elders has special responsibility, the members of the Elders may themselves, subject to the minimum limit of 11 members (as set out in their Rules) propose draft legislation and forward it to the House of Representatives (see Article 61(1) and 61(6) of the Constitution and Rule 29 of the House Rules. This is, in effect, a fourth way in which draft legislation can go to the House of Representatives, albeit such legislation would have already been approved by the House of Elders and shall, therefore, be dealt with in accordance with the provisions of Article 78(2).

[129] Eleven members, according to Rule 6 of the House of Representatives Standing Rules. Note that the same minimum number applies to the House of Elders for bills introduced there (Rule 29 of the House of Elders Rules).

[130] Unless, of course, he has referred back the Bill to the House which forwarded it to him under Article 77(5) and 78(3) relating to situations where the President disagrees with the Bill or proposes amendments or 77(4) where he considers the Bill conflicts with the Constitution.

[131] See also Articles 77 and 78 for the procedures for legislation.

[132] The vast majority of Bills will be going from the House of Representatives to the House of Elders. But note the special provisions for financial bills which are set out in Article 78(1).

[133] This is presumably to stop bills being passed back and forth and is, in any case, subject to the more specific provisions set out in Article 78.

[134] The procedure is set out briefly in Rules 45 to 48 of the House Rules. Debates on bills shall be held on an assigned day, explanation of bills will be rendered by the proposers and any amendments shall be voted on separately. Special priority shall be given to bills relating to financial and security matters, whose implementation is required urgently. Any bill which has been rejected by the House may be re-introduced after 45 days.

[135] The decision of the Constitutional Court in this matter will be final. This has happened, for the first time, in February 2005 in connection with the House of Representatives Election Bill passed by the House of Representatives on 18 January 2005 (with 64 votes for, 7 against and Speaker not voting – 72 members out of 82 present), and was also endorsed by the House of Elders on 5 February 2005 (with 58 votes for, 4 against, 1 abstaining and the Speaker not voting – 64 members out of 82 present). The Law included provisions to the effect that the allocation of seats must be based on a census or a nationwide voter registration which must be carried out before the election, the date of which was already set by then as being 29 March 2005 (with the twice extended term of the House of Representatives coming to an end May 2005). The Law also set out that if the polling does not take place in every part of the country, it will

be tantamount to high treason. The political parties and the President objected to these clauses, which they felt would mean that the election could be held in the foreseeable future. In particular, many pointed out that, in the political situation in the country, no one could guarantee that polling would take place in every corner of the land. Under Article 77(4) and 77(6) of the Somaliland Constitution, any law passed by two thirds majority of both Houses cannot be referred back to the Houses, which shall promulgate it themselves if the President fails to sign it within 21 days of the law being forwarded to him. But, if the President considers that such a law is in conflict with the Constitution, he shall inform the speakers and ask the attorney General to refer the law to the Constitutional Court, which in Somaliland is the Supreme Court (Article 101 of the Constitution). The President did just that in respect of this Bill on 21 February 2005, after having received it from the House of Elders on 17 February 2005, and the Constitutional Court issued a unanimous ruling on 26 February 2005 in which it accepted partially the President's arguments. The Court declared null and void Articles 10, 13, 38 and 44 of the Law and added that any procedural deficiencies in the Law (arising out of the decision) can be remedied by importing the relevant provisions of the 2001 Presidential and Local Council Elections Law (Law No: 20 of 2001). This did not adequately cover the controversial issue of the allocation of the 82 parliamentary seats to constituencies or electoral units, which clearly the 2001 Law did not cover and was indeed the very reason why this Law has taken over 5 years to be finalized, and so the Law has to be reconsidered by the House of Representatives, which previously could not agree on any formula before and, in the end, chose to shelve the whole issue by insisting that it be decided after a national population census and a voter registration when they passed the Law in January 2005. This was of course was a sensible solution, but one that could only be implemented for years to come. Nonetheless, the sitting House itself was considering this matter since 1999 and its 5 year term which expired in 2002 has already been extended twice to give it an extra 3 years. In the light of the supreme Court decision, the President, following the joint advice of all the three parties and the Somaliland Electoral Commission then proposed to the House on 27 March 2005 the adoption of a sunset clause which would allow the first elections only to take place before a population census and voter registration can be conducted on the basis of allocation of seats to the six regions on a pro rata formula of the 1960 Somaliland election. The House of Representatives approved the President's proposed changes on the allocation of seats on a vote of 61 for, 2 against, with Speaker not voting (total of 63 members out of 82) on 2 April 2005. The House also agreed to set up committee to ensure that the final wording of the Law is in accord with the Court's decision and the amendments they have agreed to. The amended Law was then passed and signed into Law by the President on 12 April 2005. However, shortly after signing the Bill into Law, the President asked the House of Representatives to repeal Article 30 of the Law dealing with the increase of the membership of the Electoral Commission. This caused considerably controversy as this Article was not one of the provisions affected by the Supreme Court ruling. As the Law (including this article) was passed by two thirds of both Houses previously, this meant that the President could not, under Article 77 (4), refer it back to the House. The House resisted the President's direct referral, but, on 24 April 2005, 40 members of the House adopted the proposal as their own motion tabled that the deletion of Article 30 be accepted. After a very short debate, the motion was passed even though 20 members left the House in protest before the matter was put to the vote. In my view, as this was, in effect a new Bill amending an existing Law, it should have been forwarded to the second parliamentary chamber (the House of Elders) under Article 77(1) and 78(1) of the Constitution, after which the President would sign it before it becomes Law and this Article is repealed.

[136] Three weeks (21 days) as set out in the preceding Clause and also in Article 75.

[137] If the Elders propose amendments, they may refer back the bill to the House of Representatives within 30 days of receiving the bill as set out in Article 61(2) and Article 77(2).

[138] This is, however, subject to the provisions of Article 77(5) which relate to bills rejected by the House of Elders on a point of principle and by a two thirds majority, which will require a two thirds majority endorsement by the Representatives to pass.

[139] If the Representatives propose to amend the draft legislation rather than to reject it outright, they may refer it to the Elders, but only once (see Article 77(2)).

[140] This means the bill will thereby lapse. In contrast, bills approved by the House of Representatives which are rejected (or amended) by the House of Elders and are therefore referred back to the House of Representatives under Article 78(2) can be returned by the House of Representatives and, at that stage, even if the Elders still reject them or do not respond within one month, the bills shall become law and will be forwarded to the President (see Article 78(1)).

[141] This is also set out in Article 75.

[142] This appears to be the same period of 21 days, which is also in Article 75.

[143] Under Rule 14 the House of Representative Standing Rules, the House Standing Committee consider disciplinary matters relating to members and forward their conclusions to the Speaker and the House.

[144] The other reference to this special court is in Article 96(5) which sets out its composition and gives it the jurisdiction to try impeachment cases against Ministers and Deputy Ministers.

[145] For more details of the Council of Ministers, see Article 94.

[146] See the footnote comments on the similar requirement under Article 41(1) for membership of the House of Representatives and, by extension (under Articles 59 and 94(5)), for membership of the House of Elders and the Council of Ministers.

[147] See the Presidential and Local Elections Law (Law No: 21 of 2001).

[148] This was done by the House of Elders on 12 January 2002 when the 5 year term of President M I Egal which was due to expire on 23 February 2002 was extended by one year to 24 February 2003. On his death in May 2002, President Egal was succeeded by Vice-President Dahir Rayale Kahin for the remainder of the term of office. As the Presidential election was due to be held in April 2003, the House of Elders decided on 18 January 2003 to extend the term of President Kahin to 15 May 2003.

[149] In the Arrangements, this Article is titled "The President and the Vice-President".

[150] The phrase used to describe the spouse is literally "lady wives", but as Article 82 of the Constitution does not disqualify women from being eligible for election to the office of President/Vice-President, the word "spouse" is more apt.

[151] The phrase used can also be translated as "commercial" which denotes a narrower range of activities.

[152] The period in the previous Constitution was 30 days. The sanction for a contravention of this Article will be the impeachment process under Article 96.

[153] See Articles 89 and 130(4) for the procedures for filling the office of President in the event of a vacancy arising in between elections.

[154] If the offence is impeachable under Article 96 (i.e. it involves high treason or a contravention of the constitution), then the impeachment procedure will have to be followed before the loss of office can arise. However, there are no provisions in the Constitution for dealing with other crimes allegedly committed by the President/Vice-President, whilst there are provisions for crimes relating to ministers which can be dealt with under Article 94(8) through arrest in the case of very serious offences or through normal prosecutions on removal of immunities and privileges by the President, and, in impeachable offences, under Article 96(4) & (5). Although there are no express provisions in the Constitution, the President does have immunity from prosecution for non-impeachable offences if we follow the widespread practice in other countries. In the US case of *Nixon v. Fitzgerald*, 457 US 731 (1982), the US Supreme Court explained that absolute presidential civil immunity (from private law suit) is "a functionally mandated incident of the President's unique office, rooted in the constitutional tradition of separation of powers and supported by our history." The Court raised the following arguments in favor of presidential immunity: 1. The visibility and influence of the Office of the President, which makes its occupant an easy and tempting target for lawsuits; 2. The importance of insulating presidential judgment and energy from the distractions and pressures that potential liability for damages would create; and 3. The availability of alternative checks on presidential action, such as media scrutiny, congressional oversight, and the threat of impeachment. In the 1997 case of *Clinton v. Jones*, 520 U.S. 681, 117 S. Ct. 1636, 137 L.Ed. 2d 945 (1997), the US Supreme Court ruled that President Clinton, who is then the incumbent president, was liable to a suit for damages, based on actions taken before his term began. So far as criminal immunity (outside the range of impeachable offences) is concerned there is a considerable debate the US, but the view of the US Solicitor General is that it is recognized that the President (and not the Vice-President) is immune from criminal process, whilst still in office or until he is removed from office through impeachment. It is said that the Framers of the Constitution assumed "that the nation's Chief Executive, responsible as no other single officer is for the affairs of the United States, would not be taken from duties that only he can perform unless and until it is determined that he is to be shorn of those duties by the Senate." The opinion adds that the "Framers could not have contemplated prosecution of an incumbent President because they vested in him complete power over the execution of the laws, which includes, of course, the power to control prosecutions." http://www.usdoj.gov/olc/sitting_president.htm (Last visited 17/12/2004). In France, following a previous ruling by the Constitutional Council, the Court of Cassation held (in Arrêt No. 481 of October 10, 2001) that the French president could not be tried or even questioned in court proceedings for any criminal offence which is not high treason for the duration of his term - <http://www.courdecassation.fr/agenda/arrets/arrets/01-84922arr.htm> (last visited 17/12/2004).

[155] No such law has been passed yet.

[156] This was added in 2000 revision of the Constitution and was not in the 1997 Constitution. In the old Constitution, the Vice-President assumed the office of President until the end of the presidential term.

[157] The Constitution says here “for the remaining two years”, but clearly the period could be, and is likely, to be less than 2 years. The Presidential term of office is five years and the succession process during the first three years is dealt with in the preceding Clause.

[158] This Clause was invoked on 3 May 2002 when President Egal died and Vice-President Kahin assumed office for the remainder of the term, which was, at that time, due to expire in February 2003. President Kahin’s nomination as Vice-President, Mr Ahmed Yusuf Yasin, was approved by the two Houses. There was a controversy arising, well after the event, that as the first presidential election was not held by then and the formation of the party system has not been completed yet, any presidential succession should have been dealt with under the more relevant Article 130(4). As there appeared to be a number of serious practical difficulties in following Article 130(4), a decision was made, apparently at a meeting of the speakers of both House of Parliament, on the sudden death of President Egal, that this Clause should be chosen in preference to Article 130(4).

[159] The need for the confirmation of the nomination of Vice-President by the two Houses in these circumstances was made clearer in this Clause in the revision of the Constitution.

[160] See Article 94.

[161] Note that under Articles 113 and 114, the Auditor-General, the Governor of the Central Bank, the Chairman and members of the Civil Service Agency and the Attorney-General are considered to be holding special offices and their appointment is subject to ratification by the House of Representatives. The other senior officers listed in this Clause do not require parliamentary approval.

[162] *Qisas* imposes a specified punishment imposed by Sharia as an obligation in order to carry out the rights of mankind as the victim has the right to seek retaliation or retribution. It imports a sense of “equality” or “balancing” or “proportionality” in that the treatment of the offender should match the harm of the offence and relates to offences that involve bodily injury or loss of life. The punishment is death or imprisonment, but compensation in the form of a sum of money or property (*diyat and irsy*) is accepted if the guardian of the victim forgives the offender. The concept of retribution was found in the first statutory “Code of Hammurabi” and in the Law of Moses in the form of “an eye for an eye”, but Muslims add to that saying, “but it is better to forgive.” It follows, therefore, that the victim or his guardian possesses the power to pardon or, at the very least, any pardon must be subject to their rights. Indeed the Somali Criminal Procedure Code (Article 14) allows an “injured party” or his legal representative to apply to the criminal court for recovery from the accused damages for any civil liabilities arising from the offence.

[163] It is not clear how far the limits of some Sharia principles may be applied. On the whole, the punishment for *Hudud* offences which are considered to be based on the right of Allah cannot be commuted, whilst *Qisas* offences, which are based on a mixed right are subject to can be pardon by the victim or his relative. Punishments for *T’azir* and *ijtihad* offences based on individual and state rights may also be commuted or pardoned. The Somali Penal Code divides offences into crimes and contraventions, which are less serious and an amnesty or an indult or a pardon can apply to all offences.

[164] I have translated the Somali phrases “cafis iyo saamaxaadda” as “pardon and amnesty”. The US Constitution (Article II, S.2) uses the phrase “reprieves and pardons for offenses against the US except in cases of impeachment” which has been accepted as including “pre-conviction” pardons, as a pardon presupposes an offence only and nothing else. The power to pardon has been held to include the power to grant amnesty by proclamation. Broadly, pardon is governmental forgiveness for an individual offence, whilst amnesty is the decision not to punish for the offence: “Amnesty is the abolition and forgetfulness of the offence; pardon is forgiveness” – US Supreme Court in *Knote v U.S.*, 95 U.S. Article 149 The Somali Penal Code (following the 1960 Somali Republic Constitution) deals with amnesty which extinguishes the offence (and applies to offences committed before the amnesty is given) and also the sentence, where sentence has already been passed. It shall cause the execution of the sentence and that of other linked accessory penalty to come to an end (Article 149(1)). Also Article 149 of the Penal Code refers to “indult and pardon” which “shall constitute condonation, wholly or in part, of the punishment imposed or shall commute it to another punishment...”. “Indult” applies to all persons in a specific category, and hence is impersonal, whilst a “pardon” applies to a specific person, but neither extinguish linked accessory penalties unless this is specifically stated in the indult or pardon decree. Under Article 255 of the Somali Criminal Procedure Code, appeals for pardon (or for conditional release) from convicted persons or their descendants, ascendants or spouses shall be addressed to the President and sent to the Attorney General. The President, on the advice of the Minister of Justice and the Attorney General, may grant the appeal. Interestingly in the 1960 Somali Republic Constitution, the power to grant amnesty or indult laid

with the Parliament which may delegate it to the President on a two-thirds majority vote (Article 64), whilst the power of pardon laid with the President (Article 75(c)). In Somaliland, all these powers lie with the President. Both the late President Egal and the incumbent, President Kahin, have exercised this power at Eid festivals - the last one on 09/02/2003 when 368 prisoners were offered an indult, with the decree specifically excluding persons convicted of various listed offences. Amnesties have also been extended to various individuals in connection with offences relating to their involvement in Somalian peace conferences. There are no published criteria for the exercise of this important power.

[165] The phrase used is “heshiisyada caalamiga ah” – international agreements. See also Article 53(3) which sets out the House of Representatives’ power to approve “heshiisyada dawliga” – Governmental agreements. The two Arabic based adjectives are likely to mean the same in most instances, but it is arguable that specific agreements with international organizations or bodies and not with their governmental members would be included in the former, but not in the latter definition, which is confined to Governmental bilateral or multilateral treaties.

[166] This power is subject to the oversight by Parliament as set out in Article 92.

[167] It is not clear which laws this Clause refers to. Article 98 of the Constitution gives the judiciary power to interpret and adjudicate in all laws, and, this Clause may simply refer to the enforcement of laws which are not enforced by orders of the courts. Any other interpretation would give the Executive judicial powers, which would be contrary to the separation of powers set out in this Constitution.

[168] Article 86 and 89 deal adequately with the vacancy of the office of President and the role of the Vice-President.

[169] In the previous Constitution, there was the additional requirement that the House of representatives must not be in session or, even if in session, could not, in the view of the President, be able to reach a resolution urgently before the President could issue emergency decrees.

[170] In the previous Constitution initial oversight of emergency legislation was the responsibility of the Standing Committees of the two Houses.

[171] These are Decree-Laws, similar to those allowed under Article 63 of the 1960 Somali Republic Constitution. It is implicit in this Clause that the such Decree-Laws are subject to “negative” resolution procedure (rather than a “positive” resolution procedure) of both Houses and will continue to be in force unless the two Houses resolve otherwise at their initial meeting or the subsequent three monthly review meetings.

[172] The periodic review of emergency legislation has been reduced from six to three months in the revision of the Constitution.

[173] Rule 44(d) of the Rules of the House of Representatives refer to a 30 day period for submission of the appointment to the House, but, this is an incorrect re-statement of Article 94 (or its predecessor Article 119 in the 1997 Constitution). The 30 day period refers to the swearing in period after confirmation of the appointment by the House and not the period for submission of the appointment to the House. In fact no such period is set by the Constitution, but Article 114(3) confirms that all “office holders of the state whose appointments are, according to the Constitution, subject to confirmation shall not hold office in a temporary capacity for more than three months (*whilst awaiting confirmation*).” This, in my view, applies equally to ministers and deputy ministers, and it is submitted, therefore that such appointments should be presented to the House for approval within that period. It follows, therefore, that if no such approval has been received within the three months, then the appointment shall lapse. Renewing the appointment immediately on the expiry of the three month period, or re-submitting a rejected appointee to the House immediately after the three month period would, in my view, be contrary to Article 114(3) as that would be tantamount to allowing the appointee to hold office without confirmation for a period longer than three months. See also the note relating to Article 114(3).

[174] See Article 41 above.

[175] In the last Constitution, this Clause also included a bar on members of the House of Representatives or the House of Elders being appointed as Ministers or Deputy Ministers. This has now been removed in the revision, but no one can hold a ministerial post and be a member of parliament, at the same time (see Articles 48 and 70).

[176] This ancient phrase has come into Somaliland Constitution through its adoption in Article 73(6) of the 1960 Somali Republic Constitution, and prior to that Article 90 of the Italian Constitution, but many other countries’ constitutions, such as, France, include the same impeachable offence. The offence is narrower than its US Constitution counterpart of “*treason, bribery, or other high crimes and misdemeanors*” (Article II, Section 4). It initially appeared in the Somaliland National Charter 1993 (Article 28) which also included, other than contraventions of the Constitution, the imprecise offence of

“major scandal”. In English Law, **high treason was** the crime of disloyalty to the Sovereign. Offences constituting high treason included plotting the murder of the Sovereign, levying war against the Sovereign and adhering to the Sovereign's enemies, giving them aid or comfort. Several other crimes have also constituted high treason and included counterfeiting and attempting to undermine the lawfully established line of succession, and in 1795 the offence was extended to include the contemplated use of force to make the King change his counsels. "High" in the legal language of the 18th century meant "against the State". A *high crime*, is therefore one which is aimed at the sovereign or state and not an individual and, in the modern context, includes seeking to overthrow a state, giving aid or comfort to its enemies, or injuring the state to the profit of an individual or group. In democracies, it may also include crimes which attempt to alter the outcome of elections. In the Somaliland context, the only attempted impeachment of a President in 2001 included allegations that the President was not committed to Somaliland's sovereignty as an independent state, and any evidence indicating acts to undermine the sovereignty of the state may well fall within the definition of a high crime.

[177] This US style impeachment process was introduced at the revision of the Constitution. The previous procedure for the President and the Vice-President was a two-thirds majority of both Houses leading to a trial at the High Court of Justice.

[178] In the previous Constitution, if the President was not satisfied with the information laid by the Attorney General, he was obliged to forward the charges to the House of Representatives which would decide by a simple majority whether or not to accept the charges.

[179] This Court has also jurisdiction under Article 79(2) to hear cases relating to members of Parliament. This Court's origin goes back to Article 76(3) and 84(2) of the 1960 Somali Republic Constitution where it had jurisdiction to deal with the impeachment of the President, the Prime Minister and the Ministers. Under Article 7 the Somaliland Organization of the Judiciary Law 2004, the Court sits as a full bench and conducts its trials in line with the Criminal Procedure Code.

[180] I have translated “Qaran” as “the state” rather than “the nation” which is its normal meaning.

[181] Judges cannot also be members of political parties nor can they engage in any activities that might damage the office they hold - Article 26(3) of the Organization of the Judiciary Law 2004.

[182] The Organization of the Judiciary Law 2004 has replaced the 1993 similarly titled Law. The Law lays down the structure of the courts and the procedures for appointment of judges at all levels, their qualifications, salaries and privileges. Judges in courts other than the Supreme Court are appointed by the Judicial Commission which is set up under Article 107 of the Constitution.

[183] This refers to the national prosecution service, which, in Somali, is known as “Xeer-ilaalinta” meaning literally “the guardians of the law”. Although it is not mentioned in the Constitution, the Somaliland Attorney General's Office has a wider role than prosecution services, and, for example, looks after civil suits on behalf of the Government organs and inspects the prison system. Article 45 of the 2004 Law list the duties of the office as not only instituting criminal charges and directing the police in criminal investigations, but also protecting the rights of orphans and incapacitated persons, instituting and/or intervening in civil proceedings where the public interests demands his intervention, preferring appeals in criminal and appropriate civil matters, inspecting the prisons and other places of detention, and undertaking other tasks assigned to the Office under the Constitution, such as Article 79(2). I have, therefore, chosen the word “the Procuracy” as a generic term for this office of state. Article 103 sets out the composition of the Procuracy, and it is unclear why it is considered to be part of the Judiciary, when, indeed under Article 113, it is identified as being an organ of the state and under Articles 90(3)(h) and 114, its head, the Attorney General, is appointed in the same way as the heads of other state organs and is very much part of the Executive. The reason appears to be historical as after the union of Somaliland and Somalia, the first Organization of Judiciary Law (Law No: 3 of 12/6/1962) which set up this office followed the Italian *Pubblico Ministero* office which was functioning in Somalia and which undertook prosecutions for major crimes whilst other prosecutions were undertaken by Regional Judges. The Office of Attorney General was then given the combined new powers as well as civil powers which were previously undertaken by the Judiciary Law (Law No: 3 of 12/6/1962) which set up this office followed the Italian *Pubblico Ministero*. The Somaliland Constitution maintained the same duties and position for the Attorney General, but there is still a serious question mark over the retention of this office as part of the Judiciary, when it clearly belongs to the Executive branch. Whilst the office of Attorney General has no judicial functions, the Attorney General himself belongs to the Judicial Commission (see Article 107).

[184] Under Article 6 of the Organization of the Judiciary Law 2004, the Constitutional Court consists of the Chairman and all the judges of the Supreme Court and shall consider all issues as a full bench. The court has the exclusive jurisdiction to decide on any suits from interested parties relating to decisions of

the Executive and the Legislative branches of the state, which are considered to be unconstitutional; and to interpret the provisions of the Constitution and other laws, over which there may be a conflict.

[185] In addition to the Chairman who was appointed in 2004, there are currently six Supreme Court Justices, all appointed on 29 June 2002 by the President Dahir Rayale Kahin.

[186] The Organization of the Judiciary Law 2004, Articles 6 –10 deal with the composition and functions of the Supreme Court.

[187] The Organization of the Judiciary Law 2004.

[188] The Deputies of the Attorney General are appointed by the Judicial Commission on the advice of the Attorney General – see Article 108 (below and Article 44(3) of the Organization of the Judiciary Law 2004).

[189] These courts deal only with military personnel under the Code of Military Criminal Law in Peace and War (Legislative Decree No: 2 of 24/12/1963 and the Code of Military Criminal Procedure in Peace and War (Legislative Decree No: 1 of 31/3/1964).

[190] See Articles 107 and 108 for the composition and functions of the Judicial Commission.

[191] In the previous Constitution, the requisite experience was 20 years.

[192] In the previous Constitution, the President required the written consent of the Standing Committees of both Houses of Parliament

[193] These decisions are the ones relating to the functions of the Commission, which are set out in Article 108 of the Constitution. Article 34 of the 2004 Law makes this link, for the avoidance of any doubt (a there has been some concerns in this respect) and adds that “the decisions of the Judicial Commission shall come into force when the Commission makes them and signs them, and it is incumbent on the Ministry of Justice to implement them.” Final Decisions relating to disciplinary issues shall be implemented by the Ministry within 7 days (Article 39(4) of the 2004 Law). In these cases concerning disciplinary action, the subject may ask for a review of the decision within 7 days, and the Commission is obliged to consider the review (Article 42 of the 2004 Law).

[194] It is not clear why these two Articles 107 and 108 are not in the preceding Part relating to the Judicial Branch.

[195] Articles 31 to 43 of the 2004 Law deals in more detail with the powers and functions of the Commission which are said to be “to direct the administration of the judiciary”. The Quorum of the Commission is seven and their decisions can be reached on a majority vote. The Commission shall provide an Annual Report of their work to both Houses of Parliament and to the Cabinet.

[196] He will not have a vote when he makes these submissions (Article 32(1) – Organization of the Judiciary Law 2004).

[197] The relevant law is the [Regions and Districts Law](#) (Law No: 23 of 2003), under Article 555 of the Law, the country is divided into six regions and each region shall consist of districts graded A, B, C or D.

[198] Other than the Regions & Districts Law which does include provisions relating to the respective roles of central and local government and gives power to the Internal Affairs Minister to issue Regulations (under its Article 54), no such special law has been passed yet.

[199] The Regions have non-elected councils chaired by the Government appointed Regional Governor (see Article 111(5) of the Constitution) and have an Executive Committee and a Development Council, but not a Legislative Council (see Articles 12 –14 of the Regions and Districts Law). In the Law on the Structure of the Ministry of Internal Affairs and the Administration of the Regions and Districts 1993 which was largely replaced by the Regions and Districts Law, the Regional Council was called the Legislative Council.

[200] For districts, see Articles 5, 6 and 25 of the Regions and District Law; and for regions, Article 12 of the same Law.

[201] The procedures for elections of members of District Councils are set out in the Presidential and Local Council Elections Law (Law No: 20 of 2001). Regional Councils are not elected

[202] The maximum number of members of each such Council shall be 7 – Article 33 of the Regions and Districts Law.

[203] This constitutional term of five years for Regional Councils does not appear to be addressed in the Regions and Districts Law and might be covered in the forthcoming Regulations under 54 of that Law. In reality, the term limit does not effect the composition of the Regional Council whose membership is defined by the posts held, rather than the post holders – i.e the Chairman and Deputy and the Executive Secretary, all appointed or dismissed by central government, at any time, and the Mayors of the Districts who are elected or dismissed by the District Council members, at any time (s.12 of the Regions and

Districts Law). As Clause 2 of this Article mentions the “election procedures” of Regional, as well as District Councils, this Clause is more suited to elect Regional Councils.

[204] For District Councils, this is set out in Article 38 of the Regions and Districts Law and is triggered by failure to meet, without good reason for two consecutive ordinary sessions or by the passing of a dissolution resolution of the Council under qualified majority. As for Regional Councils, the Chairman may be dismissed by the President, but there is no dissolution procedure for them as the Council members (other than the Mayors of the districts in the region) are not elected (see Article 12 of the Regions and Districts Law).

[205] This clause relates to situations where the local council has been dissolved.

[206] I have chosen the word “community services” rather than “social services” to denote the wider local services which the regions and districts could undertake.

[207] In effect, the President – see Articles 81 and 94(7).

[208] This is a new Clause which was not in the 1979 Constitution. It puts a limit on the period presidential appointees can hold office pending the confirmation of their appointments. There were allegations that a number of former President Egal’s appointments (including the Supreme Court Chairman) held office without confirmation for long periods without approval by the House of Representatives and this Clause was brought in to remedy that problem. Appointees should therefore receive confirmation from the House within the three month period or otherwise their appointments shall lapse. Re-appointing them on expiry of the three month period would be tantamount to extending their temporary office and would be contrary to this Article, but re-appointing the same person, after an interval, to the same position if it has since become vacant or remained vacant, could be permissible under this Clause as there is no express ban on re-submitting previous nominees.

[209] Muslim scholars.

[210] Islamic jurisprudence. Ijtima “interpretation and reasoning based on the sacred texts”

[211] No such Council has been set up so far, but 17 members of the House of Elders tabled a motion on 10 April 2005 proposing the setting up of the Council.

[212] See Article 117.

[213] It is submitted that this Clause was a transitional one which marked the development of the Somaliland Army from a liberation army consisting of units raised by various communities during the liberation war to a unified fully assimilated command. The Clause has been amended during the revision of the Constitution to make it more imperative. The previous wording included the phrase “as far as possible”.

[214] The [Law of the Referendum on the Constitution](#) 2001.

[215] A national referendum on the Constitution was held on 31 May 2001 and the constitution was endorsed overwhelmingly (97% of those voting being in favor). This Constitution, therefore, came into force on that date.

[216] The third Grand Conference of the Somaliland Communities finished in February 1997 and the three year period referred to in this Clause which expired in February 2000.

[217] In early (January) 2000, the two Houses passed a Resolution under this Clause which extended the 3 year period of the interim constitution by a further year to 16 February 2001. On 13 February 2001, the two Houses, in a highly contested joint session, extended the period by a further six months, on a vote of 64 for and 44 against.

[218] Also, by implication, the circumstances listed in Article 68, in respect of the members of the House of Elders.

[219] This is a transitional provision which was valid before the first direct elections of the President through the political parties system took place on 14 April 2003. After this first presidential election, Article 89(2) is the standard Clause which deals with succession on the occurrence of the eventualities listed in Article 86. Nonetheless, the circumstances described in this Clause did arise in 2002, before the three political parties allowed under Article 9 of the Constitution could be chosen through the first nationwide local elections, when President Egal sadly died on 3 May 2002 with 8 months of his extended term remaining. Although Article 130(4) was the obvious Clause applying to these circumstances, the decision was then made at an urgent meeting on 3 May 2002 attended by the Speakers of both Houses to follow Article 89(2), in preference to the former Article. Surprisingly this decision was not taken by the two Houses and neither did the Supreme Court give any formal advice/decision. The main reason for the decision appears to have been the overwhelming need to ensure a smooth transition of power and the perceived difficulties associated with implementing Article 130(4). This was a time when a number of political parties were just created and were getting ready for the first nation-wide elections, which under

the Registration of Political Parties Law would decide which among the parties become the three allowed under the Article 9 of the Constitution and will then move on to contest the presidential and parliamentary elections. There were also the obvious difficulties posed by implementing Article 130(4). There were no procedures or laws laid down anywhere for the election of a President by the two Houses within the time limit of 45 days set under Article 130(4). It may have been feasible for the two Houses to pass urgently a law setting out the procedures, such as the number of candidates, the voting procedures etc, but what about the term of office of the new President? Under Article 88, the Constitution sets out a fixed term of 5 years for any president, but there was no specific provision that a President elected under Article 130(4) will serve any shorter term. It was possible for Parliament to amend Article 88 so that the elected President will have a shorter term, but amendments take time (at least 2 months under Article 126) and require a qualified majority of both Houses and could not have been effected within the 45 day period set for elections under Article 130(4). Also it was highly unlikely that the new parties gearing themselves for popular elections would have accepted another president selected under procedures similar to 1997 and 1993, rather than one popularly elected as laid down in this Constitution. Although there was no publicized disagreements with this decision at the time, this decision has remained highly controversial.

[220] Notwithstanding the provisions of Article 128 which make null and void any law which is in conflict with the Constitution, this Clause specifically mentions the two conditions (Islam and human rights) which would make old (pre 1991) laws void.