

DRAFT CONSTITUTION FOR A FEDERAL REPUBLIC OF SOMALIA

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PREAMBLE

WHEREAS, the people of Somalia have suffered unprecedented hardships on a scale never witnessed before in the history of Somalia due to the civil war; and

WHEREAS, over 300,000 (three hundred thousand) Somalis have lost their lives directly or indirectly caused by the war, and

WHEREAS, over 6 million Somalis (three-quarters of the Somali population) have been rendered homeless and became refugees and/or displaced after the civil war; and

WHEREAS, this upward trend of refugee population growth from Somalia is an indication of civil disorder economic disparity, political intolerance and consequently a deficiency of social peace and tranquility; and

WHEREAS, minority groups, women and the children of Somalia have been subjected to terrible abuses of their fundamental human rights and indignities including physical elimination; and

WHEREAS, a major part of an improved and sustainable Somali society is the establishment of social, economic and political peace where all persons can develop and grow without fear and prejudice; and

WHEREAS, peace and stability as essential pre-requisites for development and prosperity require the end of all hostilities, eradication of mistrust and hatred, the healing of the wounds caused by the civil war and the establishment and maintenance of good neighborliness and co-operation; and

WHEREAS, for the fulfillment of the aforementioned conditions and for the reign of a just and lasting peace to prevail, the proclamation of a democratic order is a categorical imperative.

NOW THEREFORE, this Constitution witnesseth as follows:

We the people of Somalia, in order to form a more perfect and peaceful union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the Blessings of God to ourselves, our future generation and to our posterity, do hereby solemnly and sincerely and in Brotherhood of the Somali people ordain and establish this Constitution for the Federal Republic of SOMALIA.

CHAPTER 1

The Federal Republic of Somalia (FRS).

1. (a) Somalia is a sovereign Republic.

1. This constitution pledges to the people of the Federal Republic of Somalia to establish a Federal, representative and democratic Republic.

(c) Islam is the religion of the Federal Republic of Somalia and main source of the Laws of Somalia. The personal Law and Status of the Muslim people of Somalia is governed by the general principles of the Islamic Sharia. All laws of the Republic of Somalia will be guided by the general principles and doctrines of Islam.

(d) Sovereignty belongs to the Somali people who exercise it in the forms determined by this constitution and on the basis of consultation (shura) on all crucial and important Laws and development efforts. No part of the people and no individual may claim sovereignty for themselves nor arrogate to themselves the exercise thereof. The Somali people constitute an indivisible entity and are the source of the sovereign power of the Republic of Somalia.

(e) The National territory is sacred and inviolable and includes the continental territory, the Islands, the territorial sea, the sub soil, the air space above and the continental shelf.

2. (a) The public seal of Somalia shall be such device as may be prescribed by or under an Act of Parliament of the Federal Republic of Somalia.

(b) The National flag of the Federal Republic of Somalia is light blue, rectangular, and bears a white star with five equal points in the centre.

(c) The Emblem of Somalia is composed of a blue shield with a star of five silver points and a gold border. The shield surmounted by a battlement with five points in Moorish style, the two lateral points halved, is borne by two leopards rampant in natural form facing each other, resting on two lances crossing under the point of the shield, with two palm leaves in natural form interlaced with a white ribbon.

3. 1. This constitution of the Federal Republic of Somalia shall have the force of law throughout Somalia and, subject to Section 67 of this constitution, if any other law is inconsistent with this constitution, this constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

2. (a) The generally accepted rules of International law and International Treaties and Conventions concluded by the Republic and published in the manner prescribed for legislations have the force of Law.

1. The Republic repudiates war as a means of settling International disputes.

(c) It accepts, on conditions of equality with other states, the limitations of sovereignty necessary for an arrangement, which ensures peace among Nations.

CHAPTER 2

States

4. Somalia shall be divided into and shall be so constituted by the following states whose boundaries shall conform to the existing, traditional and internationally accepted lines:

(a) AWDAL STATE - Comprising of NorthWest, AWDAL, parts of Togdheer and Sanaag region.

(b) PUNTLAND STATE - Comprising of Bari, Nugaal, Sool, parts of Mudug, Galgadud, Sanaag and Togdheer.

(c) CENTRAL STATE - Comprising of Hiraan, Middle Shabelle, Banadir, parts of Muduq, Galgadud and lower Shabelle.

(d) INTER-RIVER STATE - Comprising of Bay, Bakool, parts of Gedo, Middle Juba and Lower Shabelle.

(e) JUBALAND STATE - Comprising of Lower Juba, Middle Juba and Gedo region

5.5 (a) Somalia shall be divided into such number of Constituencies and Districts having such boundaries and names as may be prescribed by any Law enacted pursuant to and under the Provisions of this Constitution.

(b) Each state shall be divided into such number of Constituencies and Districts as may be prescribed and each District and Constituency shall elect a fixed number of members to the Federal Parliament and State Parliament respectively.

5.6 (a) It is hereby proclaimed that there shall be a separation of Power and independence of each of the three organs of the Government whether Federal or State; namely the Executive, the Legislature and the Judiciary. The three organs of Government shall be distinct of and independent of each other in their functions, powers and duties but shall Mutatis Mutandis complement each other in affairs of the Government. Each of the arms of the government shall ensure sufficient checks and balances on the exercise of Power of the other.

(b) All constitutional offices established by or pursuant to this constitution shall enjoy security of tenure and the Officers appointed to these offices shall exercise their duties, functions and powers independently and without any interference from all or any of the organs of the Government and their removal shall be strictly in accordance with this Constitution or any other Law made pursuant to this Constitution.

CHAPTER 3

State Institutions

5.7 Each of the states will have the following state institutions:

- (a) State President
- (b) State Parliament
- (c) State Cabinet
- (d) State Judiciary
- (e) State Police
- (f) State Capital and

1. Such other state institutions that are incidental to and connected with the effective running of the affairs of the States. 5.7 (a) There shall be a President of each State who shall be the Executive Head of that State and shall be elected by the people of the State in a General Election.

(b) (i) The state President shall hold office for a term of five (5) years beginning from date on which he is sworn in as president. (ii) No person shall be elected to hold office as State President for more than two (2) terms.

(c) (i) The State President shall be elected in accordance with the Provisions of this Constitution and subject thereto, with any Act of Parliament or Enactment regulating the election of the State President.

1. A person shall be qualified to be nominated for election as State President if, and shall not be so qualified unless, he:

- a) Is a citizen of Somalia and that; and
- b) Has attained the age of thirty-five years; and
- c) Is registered in some Constituency as Voter in elections to the State parliament; and

1. He is nominated by a Registered Political Party in the manner prescribed by or under an Act of Parliament or Enactment; and

1. He is of sound mind and is not under a sentence of death or imprisonment; and (f) He is not a bankrupt and had no history of bankruptcy.

(d) Subject to the provisions of this constitution, the state President shall have the power to:

(i) Prorogue and dissolve the State Parliament; provided always that the state President shall only dissolve Parliament where:

The term of office of the State Parliament has expired in accordance with this Constitution; or there is no Party with a clear majority in the State Parliament to form the Government and there is no agreement between the Parties represented in the State Parliament as to the formation of a coalition Government; or

There is cause for Parliament to be dissolved because of the inability of the State Parliament to conduct its affairs in accordance with its mandate and the Speaker of the State Parliament so advises the State President. And provided that the term of the State Parliament may be extended despite the expiry of its term of office or its dissolution suspended if the national interest is at stake.

(ii) Give presidential assent to Bills and legislative Enactments emanating from the state parliament.

(iii) Appoint and dismiss for good cause the Commissioner of the State Police.

(iv) Nominate and appoint Judges of the High Court of the State and the Kadhi's Courts

of the State with the advice of the Judicial Service Commission.

(v) Constitute and abolish offices for the State and terminate any such appointments.

(vi) Appoint and dismiss the Prime Minister of the State.

5.8 (a) The Legislative Power of each State shall be vested in the State Parliament which shall consist of the State President and the members elected to the State Parliament.

(b) A person shall be qualified to be elected as a member to a state parliament in Somalia if, and shall not be so qualified unless, at the date of this nomination for election.

(i) He is a citizen of Somalia and of the State and has attained the age of 21 years; and

(ii) He is registered in some Constituency as Voter in elections to the State Parliament; and

(iii) He is able, unless incapacitated by other physical or mental cause, to take active part in the proceedings of the State Parliament; and

(iv) He is nominated by a Registered Political Party in the manner prescribed by or under an Act of Parliament or Enactment; and

(v) He is of sound mind and is not under a sentence of death or imprisonment; and

(vi) He is not a bankrupt and had no history of bankruptcy.

5.9 (a) There shall be a speaker and deputy speaker in each State Parliament and they shall be elected by the members of the State Parliament either from among the members of that Parliament or from outside.

(b) The Speaker of the state parliament shall be an ex- officio member of that parliament but shall not vote on any question before the State Parliament. Provided that the Speaker shall exercise a casting vote to break a tie in a Parliamentary motion where only a simple majority was required but not otherwise.

5.10 (a) There shall be a Parliamentary secretary to each State Parliament who shall be responsible for the running of the affairs of the State Parliament.

(b) The Parliamentary Secretary shall be a person in the Civil Service and shall be appointed by the Government of the State.

5.11 Subject to the provisions of this constitution, the legislative Powers of every State Parliament, shall include, and shall not be limited, to the following: -

(a) Power to make laws of the peace, order and good government of the state and parts thereof.

(b) Subject to and without prejudice to Section 28 (b) of this constitution, power to lay and collect local taxes and other revenues within the borders of the state; provided always

that a certain percentage (to be prescribed by Law) of such revenue collected by the state shall be credited into the consolidated fund of the Federal Republic.

(c) Power to make laws and regulations for the following: -

- (i) Education
- (ii) Property rights within the State or parts thereof
- (iii) Civil Law
- (iv) Water and sanitation
- (v) Industry and Energy
- (vi) Administration of Justice
- (vii) Health
- (viii) Agriculture and Natural Resources within the borders of the State
- (ix) Social security and social amenities.

1. Municipal institutions and other matters connected therewith and incidental thereto.

(d) State Parliament may make provision for the establishment of a contingency fund and for authorizing the minister for the time being responsible for the state finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that fund to meet that need.

5.12 (a) There shall be formed in each state a cabinet to be headed by a Prime Minister and shall be composed of such Ministers as may be determined by the Prime Minister for the effective running of the affairs of the State Cabinet.

(b) Subject to the powers of the Executive State President, the powers and functions of the Government of the state shall be exercised by the state Cabinet and the Prime Minister shall be the head of the State Government and is answerable to the state Parliament for the conduct of the State Government.

5.13 (a) The Prime Minister shall be the leader of the Registered Political Party with the highest number of seats or majority support in the state parliament.

(b) (i) The Prime Minister shall choose the members of his Cabinet from among the members elected to the State Parliament.

(ii) The Prime Minister may appoint members of his Cabinet from outside the state Parliament with considerations to the technical skills, experience and expertise which such a person so appointed may bring or have especially with reference to any Ministry which he may be in charge of.

5.14 (a) The Judicial power of each state shall be vested in the High Court in each state and such other inferior courts as the State Parliament may from time to time ordain and establish.

(b) Subject to Section 15 of this constitution, the High Courts in each state shall be a Superior Court of record and shall have unlimited original jurisdiction over civil and

criminal matters such as jurisdiction and powers as may be conferred on it by this constitution or any other law

(c) (i) Subject to Section 6 (d) of this constitution, the judges of the High Court in each state shall be such number of judges as may be prescribed by the State Parliament.

A person shall not be qualified to be appointed a Judge of the High Court unless;

1. He is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in Somalia or some parts of the commonwealth; or
2. He is an advocate of Somalia of not less than five (5) years standing.
3. A judge of a High Court shall vacate his office when he attains such age as may be prescribed by the state parliament

(d) There shall be established in each state a branch of the judicial service commission to manage the administration of justice in the state.

5.15 (a) Subject to Section 14 and 30 of this constitution, there shall be establishment in each state, such numbers of Kadhi's Courts as in State parliament may from time to time ordain and establish.

(b) The Kadhi's Courts in each state shall have powers and jurisdiction over the personal Law of the citizens of the state and such other powers and jurisdiction as may be conferred on it by this constitution or any other law.

(c) Where both parties to a dispute before a Kadhi's Court profess the Muslim faith, the Kadhi's Court shall have power to determine matters regarding their personal law, especially matter on marriage, divorce, inheritance and succession.

(d) Subject to Section 6 (d) of this constitution, the Kadhis of the Kadhi's Courts shall be such number of Kadhis as may be prescribed by or under an Act of Parliament or Enactment.

(e) A person shall not be qualified to be appointed to hold or act in the office of the Kadhi unless:

(i) He professes the Islamic faith; and

1. He possesses such knowledge of the Islamic Law applicable to the Muslims with respect to their Personal Law.

5.16 Each State will establish its police force headed by a commissioner of police appointed by the State President, for the enforcement of the state and federal laws and for keeping the peace and order in the state.

5.17 There shall be established in each state, a state capital which shall be the administrative headquarters of the State and the seat of the State Government.

5.18 Without prejudice to the generality of this provision, each State Parliament and State Cabinet may establish committees for such general or special purposes as is deemed fit and expedient for the effective administration of the affairs of the State.

CHAPTER 4 - Traditional Monarchies (isimo)

5.19 Full faith, respect and recognition shall be given to the traditional monarchies (isimo) of the people of Somalia.

5.20 Each of the several states and the Federal Government shall, within the limits of the Law, ensure the enhancement of the ceremonial rights and duties and of the faith, respect and recognition accorded to the traditional monarchies of the Somali people.

5.21 Subject to this constitution and any other Law, the duties of the traditional monarchies (isimo) in the states shall be an advisory capacity to consult with and advice the state Government and its institutions on matters regarding mutual community affairs including customary Laws, traditions, practices and customs of their people.

5.22 Without prejudice to the generality of this provision, the ceremonial roles and advisory duties of the traditional Monarchies within each state will be limited to such matters as will enhance the peace and security of the people and the Land of the State, the maintenance of Law and order and good governance within the borders of the state and beyond if and when necessary.

CHAPTER 5

Federal Government

5.23 (a) There shall be established a collective Federal or a council of Federal Presidency which shall comprise of the presidents of the respective 5 States.

(b) The Council of Federal presidency, comprising of the 5 Heads of State of the respective states, will choose from among themselves, one person to be the executive Head of the Federal Government, each for one year on rotative base.

(c) This collective federal or council of presidency shall be in office for a period of five (5) years in each term and shall not be eligible to be so elected if he or she has served as such in the council of federal presidency for a consecutive period of two terms of five (10) years.

(d) Subject to the power of the Federal parliament to determine, the capital city of the federal Government will remain rotatively on yearly bases in the respective 5 State Capitals.

5.24 (a) The Federal President shall be Commander in chief of the Armed forces.

(b) (i) The Federal President, shall give to the Federal Parliament and the State Parliaments a state of the union address informing them on the overall state of affairs of the country, and recommend to their consideration such measures as he shall judge necessary and expedient

1. The state of the union address shall be given by the Federal President to the joint

members of the parliaments at such times and at such places as it is deemed necessary and practical but shall in any case be given not less than once in every calendar year.

(c) Subject to the provisions of this constitution and confirmation by a simple majority of the Federal Parliament and state Parliaments, the Federal President shall have power by and with the consent and advice of the Council of Federal Presidency, to: -

(i) Make treaties, provided two thirds of the State parliaments and the Federal Parliament concur;

(ii) Nominate and appoint Ambassadors and other National representatives to International organizations and Foreign Governments; and accredit and receive diplomatic representatives.

(iii) Appoint the Prime Ministers and secretaries of the Federal Cabinet.

(iv) Nominate and appoint the Chief Justice the judges of the Supreme Court and the Chief Kadhi.

(v) Nominate and appoint the Chairmen and members of the Electoral Commission and the Public Service Commission.

(vi) Nominate and appoint the Attorney General and Controller and Auditor General.

(vii) Prorogue and dissolve the Federal Parliament.

(viii) Exercise the executive/prerogative power of mercy with the advice of the judicial service committee.

1. Do all such other matters that may be necessary for the effective administration of the Federal Government, including constituting and abolishing offices for the Republic of Somalia and terminating any such office.

5.25 (a) The legislative power of the Federal Republic shall be vested in the Federal Parliament which shall consist of the members of the Council of Federal Presidency and the members elected to the Federal Parliament from each District in Somalia.

(b) A person shall be qualified to be elected as a member of the Federal Parliament if, and shall not be so qualified unless, at the date of his nomination for election:

(i) He is a citizen of Somalia and has attained the age of 21 years; and

(ii) He is registered in some District as a voter in elections to the Parliamentary; and

(iii) He is able, unless incapacitated by mental or other physical cause, to take a active part in the proceedings of the Federal Parliament; and

(iv) He is nominated by a registered political party in the manner prescribed by or under an Act of Parliament; and

(v) He is of sound mind and is not under a sentence of death or imprisonment; and

(vi) He is not a bankrupt and had no history of bankruptcy.

5.26 (a) There shall be a speaker and a deputy speaker of the Federal Parliament and he shall be elected by the members of the Federal Parliament from among the members of the Federal Parliament, provided that any of the members of the council of the Federal Presidency shall not be so elected.

(b) The Speaker of the Federal Parliament shall be an ex-officio Member of Parliament and shall not vote on any question before the Federal Parliament. Provided that the Speaker of the Federal Parliament shall exercise a casting vote to break a tie in a parliamentary motion where only a simple majority was required but not otherwise.

1. There shall be a Parliamentary Secretary to the Federal Parliament whose office and members of staff shall be in the Federal Service and shall be responsible for the running of the affairs and business of the Federal Parliament.

5.28 Subject to the provisions of this constitution, the legislative powers of the Federal Parliament shall include, and shall not be limited to the following: -

(a) Power to make laws for the peace, order and good government of the Federal State or parts thereof.

(b) Power to lay and collect Federal taxes, Duties, Imports and Excise to pay the Debts and Expenses of the Federal Government and to provide for the common good, defence and general welfare of the Federal State.

(c) Borrow money from Foreign Nations and International Financial Institutions on the credit of the Federal Republic of Somalia for the Development of the Nation through the fair and equitable distribution of the borrowed Funds to the respective states forming the Federation.

(d) To regulate commerce and trade with Foreign Nations and among the several States.

(e) To establish uniform rules of citizenship, naturalization and immigration.

(f) To coin money, regulate the value thereof and fix the standard of weights and measures.

(g) To establish telecommunication between the several states and with foreign nations.

(h) To constitute tribunals inferior to the Federal Supreme Court.

(i) To define and punish piracies and felonies committed on the high seas and offences

against the Law of Nations and Crimes against humanity.

(j) To declare war and make rules concerning captures on land and water.

1. To raise and support the Armed Forces and make rules for the government thereof. (l) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the Federal Government of Somalia.

(m) Power to make laws and regulations for the following: -

(i) National Defence

(ii) Trade other than on the local level

(iii) Shipping

(IV) Federal Public Service

(v) Banking and Monetary system

(vi) Criminal Law

(Vii) Fisheries

(Vii) Aeronautics

(ix) Radio and Telecommunications

(x) Nuclear Energy

(xi) Offshore mineral rights and resources

(xii) National or Federal Capital and such other matters connected there with and incidental to the exercise of Federal legislative powers.

5.29 (a) (i) There shall be formed a Federal Cabinet which shall be headed by a Prime Minister and constitute such Limited number of secretaries as may be prescribed by or Under an Act of Parliament.

1. Subject to the powers of the Council of Federal Presidency, the powers and Functions of the Federal Government shall be exercised by the Federal cabinet and the Federal Prime Minister shall be the head of the Federal Government and shall be answerable to the Federal Parliament for the conduct of that Government.

(b) (i) The Prime Minister and the Secretaries of the Federal Cabinet shall be appointed by the Federal President, by and with the consent and advice of the Council of Federal Presidency and confirmation by the Federal Parliament in a simple majority from among the members elected to the Federal Parliament.

(ii) The Federal President, with the consent and advice of the Council of Federal Presidency, may appoint any of the secretaries to the Federal Cabinet and/or the Prime Minister, from outside the members of the Federal Parliament with special considerations and reference to the technical skills expertise and experience which such a person so appointed may possess.

(c) (i) The functions of the Federal Cabinet and State Cabinets shall be to aid and advise

the Federal President and the State Presidents respectively in the affairs of that Government.

(ii) The Federal Cabinet and the State cabinets shall be collectively responsible to the federal Parliament and state Parliaments respectively for all things done by or under the authority of their Government.

(iii) The Cabinet must have the confidence of the respective parliament within thirty days of its formation. The cabinet presents itself to the parliament and requests its confidence. The Parliament then expresses its confidence or no-confidence by means of a considered motion approved by a simple majority in an open vote. The motion of no confidence may also be proposed at any time by at least 10 members of the parliament. A vote of no confidence causes the collective resignation of the cabinet and the president will then ask another Prime Minister to form a cabinet of national or state unity.

5.30 1. (a) The Judicial power of the Federal Republic of Somalia shall be vested in one Supreme Court which shall be Superior Court of record and shall have unlimited original jurisdiction over all criminal and civil matters throughout Somalia.

(b) The Supreme Court shall have such powers and Jurisdiction in relation to appeals from the High Courts of the Several States as may be prescribed by or Under an Act of Parliament.

(c) Subject to Section 24 (c) of this Constitution the Judges of the Supreme Court shall be the Chief Justice and such number of Judges (herein referred to as Judges of Appeal) as may be prescribed by or Under an Act of Parliament.

(d) The Provisions for the qualifications of the Judges of the High Courts shall be apply to the Judges of the Supreme Court.

2. (a) Subject to the Provisions of Section 24(c) of this Constitution, there shall be established a Chief Kadhi's Court which shall have appellate jurisdiction over all Kadhi's Courts in Somalia.

(b) All appeals from the Kadhi's Courts in the States shall lie with the Chief Kadhi's Court shall be the final Courts of Appeal as far as personal Law is concerned.

(c) The judges of the Chief Kadhi's Court shall be the Chief Kadhi and such number of Kadhis as may be prescribed by or Under an Act or Parliament.

(d) The provisions for the qualification for a Kadhi's office shall apply to the Chief Kadhi and the other Kadhis of his Court.

3. (a) There shall be established a Judicial Service Committee to manage the Affairs and Administration of Justice in the Republic of Somalia.

(b) Subject to Section 24 (c) of this Constitution, the Judicial Service Committee shall consist the Chief Justice, the Chief Kadhi, the Attorney-General, the Chairman of the

Public Service Commission and such other number of persons as may be prescribed by or Under an Act of Parliament.

(c) (i) Laws and Acts having the force of law must conform to the Provisions of this Constitution and to the general Principles of Islam and questions of the Constitutional legitimacy or legality of any Law or action, in form or in substance, shall be decided by the Supreme Court constituted into a Constitutional Government.

(ii) The Supreme Court once constituted into a Constitutional Court will have the Power to decide on impeachment cases where the Federal or any of the State Presidents or Members of the Cabinet are guilty of high treason or attempt against the Constitutional Order

5.31 (a) There shall be established an Electoral Commission which shall be constituted by a Chairman and such number of members as may be prescribed.

(b) The members of the Electoral Commission will be appointed by the Council of Federal Presidency in accordance with Section 24 (c) of the Constitution.

(c) The duties of the Electoral Commission shall include the following: -

1. The registration of voters, the maintenance and revision of the register of voters.

(ii) Making rules and regulations for the election of State Presidents and Federal President.

(iii) Directing and supervising Federal and State Presidential elections, Federal and State Parliamentary elections and local government Elections.

(iv) Making rules and regulations for electoral boundaries, electoral districts and constituencies in accordance with 5.5 of this Constitution and such other functions as may be prescribed by or Under an Act of Parliament.

5.32 (a) There shall be established a consolidated fund, in which all revenues collected for and on behalf of the Federal Government shall be paid into:

(b) (i) All debts or other charges for which the Federal Government is liable shall be a charge on the consolidated fund.

1. Salaries and any allowances payable to the Officers of the Federal Government shall be charges upon the consolidated fund.

(c) The federal parliament may make provision for the establishment of a contingency fund and for authorizing the Minister for the time being responsible for the Federal finances, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

5.33 Without prejudice to the generality of this provision, the Federal Presidency, the federal parliament and/or the federal Cabinet, jointly or severally, may establish committees for such general or special purposes as is deemed fit and expedient for the effective administration of the Federal State.

5.34 (a) There shall be an Attorney General whose office shall be an office in the public service.

(b) The Attorney General shall be the principal legal adviser to the Federal Government.

(c) The Attorney-General shall have the power, in any case in which he considers it desirable to do so, to institute and undertake criminal proceedings against any person before any Courts (other than a Court Martial) in respect of any offence alleged to have been committed by that person, take over and continue any such criminal proceedings and discontinue any such criminal proceeding.

(d) The Attorney General may require the Commissioner of police of any state, to investigate any matter which, in the Attorney- General's opinion, related to any offence, and the commissioner shall then comply and report to the Attorney General.

(e) The Attorney General shall be an ex-officio member of the Federal Parliament but shall not vote on any question before the Federal Parliament.

(f) The Attorney General shall be the head of the Judiciary of the Federal Republic of Somalia and shall be appointed in accordance with 5.24(c) of this Constitution.

5.35 (a) There shall be a Public Service Commission, which shall consist a Chairman, a Deputy Chairman and such other members as may be prescribed by or Under an Act of Parliament.

(b) The members of the commission shall be appointed by the Federal President by and with the consent and advice of the Council of Federal Presidency.

(c) Subject to Section 24 (c) of the Constitution, the Power to appoint persons to hold or act in offices in the public service, the power to exercise disciplinary control and power to remove those persons from office shall vest in the public service commission.

5.36 (a) There shall be a Controller and Auditor-General whose office shall be an office in the Public service.

(b) The Controller and Auditor-General shall be appointed by the federal President in accordance with Section 24 (c) of this Constitution.

(c) It shall be the duty of the Controller and Auditor-General:

(i) to satisfy himself that any proposed or actual withdrawal from the consolidated fund or contingency fund is authorized by Law;

(ii) to satisfy himself that all moneys appropriated and disbursed by the Federal and State Parliament have been applied for the purpose to which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(iii) at least once in every year to audit and report on the public accounts of the federal and state governments and submit and lay the report before the respective parliaments.

(d) The controller and Auditor-General and any officer authorized by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in (c) above

CHAPTER 6

Relationship of the states and the Federal State

5.37 Subject to Section 11 (b) of this constitution, no state shall, without the consent of the Federal Government, lay any import duties or export duties, except what may be absolutely necessary for executing the state laws provided always that:

1. The state shall have authority to Levy and collect the taxes and other revenues within the competence and mandate of its parliament for the purpose of Funding the projects and Programmes in the state such as Education, health, Public Works, the Public Ministration and for the proper effective execution of the duties of the state.

(ii) The state is under a duty and obligation to Levy and collect the Federal taxes for and on behalf of the Federal Government and credit the same into the Federal consolidated fund or dispose of it in such other manner as may be prescribed by Law.

(iii) The state is under a duty and obligation to remit to the Federal Government the prescribed share or percentage of the state total revenues or receipts as provided.

5.38 No State shall, without the consent, of the Federal Government, keep troops or ships of war in time of peace, enter into any treaty or compact with another sate or a Foreign power or engage in war unless actually invaded, or in such eminent danger a will not admit of delay.

5.39 No tax or duty shall be laid on articles exported from any of the States.

5.40 No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another State.

5.41 No money shall be drawn from the Federal Treasury or State Treasury, but in consequence of Appropriations made by law; and a regular statement of account of the receipts and expenditures of all public money of the Federal and State governments shall be published at the end of each financial year.

5.42 Full faith and credit shall be given in each state to the public acts, records and

judicial proceedings of each state and the Federal State.

5.43 Citizens of each state shall be entitled to all the privileges and immunities of the citizens in the other States.

5.44 Any person who flees from justice and the due process of the Law from one State and is found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction.

5.45 Subject to the provisions of the constitution, new states may be admitted by the Federal States into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the parliaments of the states concerned as well as the Federal Parliament.

5.46 No State Parliament shall pass laws that are inconsistent with Federal Laws or undermine the authority of the Federal State. Laws passed by State Parliaments shall be entitled "Enactments" and the Laws passed by the Federal Parliament shall be entitled "Act of Parliament".

5.47 State governments shall enforce the Federal Law throughout the State Territories.

5.48 States shall have the right to establish and maintain direct or indirect contacts with relief, voluntary or international aid institutions and Non-governmental organizations with respect to relief and rehabilitation work within the State Territories.

5.49 The right of states, nationalities and peoples to self-determination is affirmed. To this end, each state nationality and people is guaranteed the right to:

- (a) Preserve its identity and have it respected promote its culture and history interalia.
- (b) Administer its own affairs within its own defined territory and effectively participate without any reservation, in the federal government on the basis of sovereign equality of States, freedom and fair and proper representation.

CHAPTER 7

Somali charter of Freedoms and Rights

5.50 The Somali charter of Freedoms and Rights guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

5.51 Everyone has the following fundamental rights:

- (a) Freedom of conscience and religion.
- (b) Freedom of thought, belief, opinion and expression, including freedom of the press

and other media of communication.

(c) Freedom of peaceful assembly and

(d) Freedom of association.

5.52 (a) Every citizen of Somalia has the right, if he has reached the age of majority, to vote in an election; whether Federal or State and whether presidential, parliamentary or civic election or otherwise howsoever.

(b) The Vote is personal, equal, free and secret.

5.53 (i) Every citizen of Somalia has the right to enter, remain in and leave Somalia.

(ii) Every citizen of Somalia has the right:-

(a) To move to and take up residence in any state of Somalia

(b) To pursue the gaining of meaningful livelihood or employment in any State.

5.54 Everyone has the right to life, liberty and security of his property and person and the right not to be deprived thereof in accordance with the principles of fundamental justice.

5.55 Everyone has the right not to be arbitrarily detained or imprisoned or subjected to slavery and forced labour.

5.56 Everyone has the right to be secure against unreasonable search or seizure.

5.57 Everyone has the right on arrest or detention to be informed promptly of the reason for his arrest, to retain and instruct a Legal Representative of his choice and to be released if the detention is not lawful.

5.58 Any person charged with an offence has the right: -

(a) To be informed without delay of the specific offence.

(b) To be tried within a reasonable time.

(c) Not to be compelled to be a witness for the prosecution.

(d) To be presumed innocent until proved guilty or he pleads so.

(e) Not to be denied bail without just cause.

(f) Not to be tried and punished for the same offence once convicted or acquitted or pardoned of the same and no law shall be made to operate with retrospective or retroactive effect.

(g) Not to be convicted of a criminal offence unless that offence is defined and the

penalty therefore is prescribed in a written law.

(h) No one can be condemned for an act, which was not punishable as an offence under the law in force at the time it was committed; nor may a heavier penalty be imposed than the one that was applicable at that time.

5.59 Everyone has the right not to be subjected to any cruel and inhuman treatment or punishment.

5.60 Everyone has the right to be tried in a language that he understands.

5.61 Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

5.62 Everyone whose rights or freedoms, as guaranteed by this charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and in the circumstances.

5.63 The guarantee in this charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Somalia

5.64 Nothing contained in or done under the authority of any Law shall be held to be inconsistent with or in contravention of any section or provision of this charter of rights and freedoms to the extent that the Law in question makes Provision: -

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health or,

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons.

5.65 This charter applies to and shall be enforced by:-

(a) The Federal Parliament and Government of Somalia in respect of all matters within the authority of the Federal State.

(b) The State parliament and Government of each State in respect of all matters within the authority of the State.

5.66 This part may be cited as the Somali Charter of Rights and freedom.

5.67 This Constitution may only be amended if and when two thirds of the Federal Parliament and the State Parliaments deem it necessary and so vote.

5.68 Subject to the provisions of this Constitution and without prejudice to Section 67 above, either the Federal Parliament or the State Parliament or both may institute a

referendum or plebiscite of the people of Somalia on any matter if it is deemed just and necessary and the results of such a referendum or plebiscite shall be binding on both the state and Federal Governments.

CHAPTER 8

Citizenship

5.69 Without prejudice to the generality of this Provision, every person of Somali origin or descent whether or not owing allegiance to another Foreign Nation, including the seventh Generation, is a citizen of Somalia.

5.70 Every person born in Somalia shall become a citizen of Somalia if, at the date of his birth, one of his parents is or was a citizen of Somalia.

5.71 A person born outside Somalia shall become a citizen of Somalia at the date of his birth if at that date his father is a citizen of Somalia.

5.72 Subject to the provisions of this chapter every person of Somali origin who holds a valid Somali passport is prima facie a citizen of Somalia until and unless the contrary is proved.

5.73 A woman who is married to a citizen of Somalia shall be entitled, upon making application in such manner as may be prescribed by law, to be registered as a citizen of Somalia.

5.74 Parliament may provide for the acquisition of citizenship of Somalia (whether by registration or by naturalization) by persons who are not eligible or who are no longer eligible to become citizens of Somalia under this chapter.

5.75 (1) It is the duty of the State

(a) to protect the family unit based in marriage as the fundamental element of society.

(b) to support and recognize its duty to protect Children of unknown parents.

(c) to ensure that the support, upbringing, and education of children is the responsibility of the parents under the law.

(d) to ensure that children who are of age have the obligation to support their parents who are unable to provide for themselves.

(e) to protect motherhood and childhood, encouraging the Institutions necessary to this end

(f) to promote and encourage the creation of welfare agencies for physically handicapped and abandoned children.

(g) to promote free medical and legal assistance to the poor.

1. to safeguard public morality accordingly to the Principles of Islamic Shariah
 - (i) to ensure that any person suffers damages from acts or omissions in violation of his rights by Officials or employees of the State or of Public bodies in the performance of their duties, shall have the right to prompt and proper compensation from the State or the public body concerned.
 - (j) to encourage education as a fundamental interest of the community and provide for the creation of State schools open at all.
 - (k) to enforce the teaching of the Islamic religion the Holy Quran for pupils of the Islamic faith in primary and secondary state schools and to insure that the Institutions of higher education have their own autonomous organization within the limits of the Law.
 - (l) To guarantee to its civil and security employees the right to a pension and assistance in case of an accident, illness, death or incapacity for work.
2. (a) It is the duty of all citizens to be loyal to the state and the Federal Government.
 - (b) the defence of the fatherland is a sacred duty of every citizen.
 - (c) Military service is governed by Law.
 - (d) It is the duty of every citizen to observe faithfully the Constitution and the Laws of the State and Republic of Somalia.
 - (e) It is the duty of every citizen to pay the taxes and contribute to public expenses according to his capacity to pay or contribute.

CHAPTER 9

Interpretations

5.76 (i) In this constitution, unless the context otherwise requires: -

- (a) " State Institutions" mean those organs or arms of governmental that form part of the state machinery and includes the ways in which the State Government discharges its duties.
- (b) "Constituencies" mean the electoral areas from which members of the State Parliaments are elected from.
- (c) "Districts" mean the electoral areas from which members of the Federal Parliament are elected from.
- (d) "State Parliament" means the Legislative Assembly Of a state whose members have been elected from each Constituency in a given State.

- (e) "Federal Parliament" means the National Legislative Assembly of the whole Republic whose members have been elected from each district in Somalia in a general election.
- (f) "Legislative Powers" also include the duties and function of that Legislature.
- (g) "Council of Federal Presidency" refers to the union of the five heads of each state.
- (h) "Federal President" refers to that person, for the time being chosen by the members of the council of Federal Presidency from among themselves, to be the Head of the Federal Government.
- (i) "State Cabinet" refers to the cabinet formed by the elected leaders of the registered political party with majority seats in the State parliament.
- (j) "Federal Cabinet" means the Prime Minister and secretaries of the Federal Government appointed by the federal president with the advice and consent of the Council of Federal Presidency.
- (k) "Federal Supreme Court" means the court of Appeal.
- (l) "Consolidated Fund" means the Federal Treasury.
- (m) "General Election" means an election to fill a vacancy or vacancies of an elective post upon the dissolution of the Federal and State Parliaments.
- (n) "Electoral Commission" means the body charged with the duty of supervising and regulation of the Federal, State, Municipal and Civic elections in the Republic of Somalia.
- (o) "Judicial Service Commission," means the body or Institution entrusted with the duty of overall administration of justice in the Republic of Somalia
- (p) "Criminal Offence" means a criminal offence under the laws of the Republic of Somalia
- (ii) In this constitution, unless a contrary intention appears:
- (a) "Contravention" in relation to a law, includes a failure to comply with that law or requirement, and cognate expressions shall be construed accordingly.
- (b) "Court" means any court having jurisdiction in Somalia or any part thereof.
- (c) "Legal representative" means a person entitled to practice as an advocate in Somalia.
- (d) "Somalia" means the territory comprised in Somalia on the 1st of July 1960 and the territorial waters of Somalia as for the time being defined by an Act of Parliament.
- (e) "Act of Parliament" means the legislation or law passed by the Federal Parliament.

(g) "Enactment" means the legislation or law passed by the State Parliament.

1. "Local Authority" means a Municipal, County, Town, or Urban Council or a Council for any other area established by or Under an Act of Parliament or Enactment.

1. "Person" means and includes a body of persons Corporate or Unincorporated.

(j) "Political Party" means a political party which is duly registered under any law which requires political parties to be registered, and which has complied with requirements of any law as to Constitution or rules of political parties nominating Candidates for elections.

(iii) Except where the context otherwise requires, any powers conferred upon parliament by this constitution to establish, provide for or prescribe any matter or thing shall be exercisable by an Act of Parliament or Enactment, whichever is applicable.

(iv) In this constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorized to exercise the functions of that office.

(v) Where this constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion arises.

(vi) Subject to this constitution, any provision of this Constitution that vests in a person or authority the power to remove a public officer from his office shall be without prejudice to the power of that person or authority to abolish the office.

(vii) Where an order, regulation or rule, or any amendment or revocation thereof, made under a power conferred by this constitution comes into operation on a particular day, it shall come into operation at the beginning of that day.

(viii) Where a power is conferred by this constitution to make an order, regulation or rule or pass a resolution or give a direction or make a declaration or designation, the Power shall be construed as including the power, exercisable subject to the same conditions, if any, to amend or revoke the order, regulation, rule, resolution, Direction, declaration or designation.

(ix) A reference to this constitution to a law that amends or replaces another law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or make different provision in place of that other Law.

(x) In this Constitution, save and except where the context otherwise requires:

(a) Words importing the masculine gender shall mean and include the feminine gender.

(b) Words in the singular include the plural, and words in the plural shall include the

singular.

(c) "Traditional Monarchies" refer to such person or persons holding such title of respect and following among certain sections of the Somali community as will qualify them to be the customary or Traditional Leaders of that section and include Boqor, Ugas, Garad, Taliye, Sultan, or any other traditional ruler by whatever name called.

(xi) In this Constitution, unless a contrary intention otherwise appears:

- (a) The word "shall" is to be construed to mean mandatory or obligatory and the word "may" is to be construed to import and mean a discretion or permission.
- (b) "Constitutional Offices" means and includes those offices established by and under this constitution and which enjoy security of tenure and includes the office of the Attorney General, the Auditor and Controller General, the Commissioner of police, the judges and Khadis of the Judiciary, the members of the Judicial service commission, the Public Service Commission and the Electoral Commission.
- (c) "Age of Majority" means the age of or equivalent or above 18 years.
- (d) "Personal Law" with reference to members of the Islamic faith means the Law regulating the personal status of such Muslims such as marriage, divorce, inheritance and succession.

END