Guidebook

To the Somali Draft Provisional Constitution

23rd July 2012

This Guide Book is designed to aid the Somali people to become familiar with the contents of the draft Provisional Constitution.

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How to read the Draft Provisional Constitution

What is a constitution?

A constitution is a set of fundamental principles or established precedents according to which a state and its institutions are supposed to function. The Xeer of the Somali clans, for example, carry constitutional functions, although they are not based on written documentation, but passed on orally from generation to generation. While even today some countries, such as the United Kingdom, do not have a written constitution, modern-day constitutions often consist of a single written document setting out the fundamental principles and structures under which the governmental institutions of a state should work and function.

After independence in 1960, the Republic of Somalia adopted a written constitution by national referendum. This was replaced by a new constitution in 1979, adopted again by national referendum. Following the total breakdown of governmental structures in Somalia in the 1990s, the Transitional National Charter, adopted in 2000, was the first attempt to reestablish governmental functions by means of a constitution.

The Transitional National Charter expired in 2003, and was replaced by the Transitional Federal Charter in 2004. Today, this remains the transitional constitution governing the Transitional Federal Government and its institutions. The National Constituent Assembly is now empowered to provisionally adopt a new constitution to replace the Transitional Federal Charter. This constitution would then become the permanent constitution for Somalia pending adoption by national referendum.

How to read a constitution

A constitution is a legal document. As such it is often difficult to read and to understand without having a legal background or training. The reason for this is that legal language often follows a specialized format and uses specific terminology. As a result of this, the terminology and logical flow of the text should not, ideally, be changed arbitrarily, as an isolated change may have an impact on other parts of the text.

Constitutions require not only consistency in wording and terminology, but also an inherent logic to their content. These elements are crucial, and must be considered in any review of the text of the draft Provisional

Constitution. It follows from this that a constitution must be considered as a comprehensive legal document. No provision stands on its own, but must be read and applied within the context of the document as a whole.

Often, it is only by reading different Articles together that the full meaning of an entire regulation or procedure, can be understood, and the intention of the constitution appreciated. Therefore, all Articles in a constitution must, at all time, be read and interpreted holistically rather than individually.

Islam and Shari'ah

Why a Constitution?

The question of whether a Muslim country can have a written constitution has been dealt with by various Ulamaa over the past century. The Ulamaa cited the Sahifa[1] as one of the early examples of a written constitution. This document testifies to both the Prophet's recognition that social and political compacts through a constitution were needed, and his great political skill in using such a constitution to unite the divided people of Medina. In the Sahifa, the Prophet (PBUH) defined the form of the Islamic State as one inhabited by a homogeneous group of people, and organizing its affairs through a written constitution regulating the administration of justice.

Furthermore, scholars note that since present circumstances are different from those of the time of Medina, the Sahifa is too limited in scope to be adopted by Muslim countries in its original form. The circumstances of each Muslim country also differ according to the size of their populations and their development status and needs. Nevertheless, the Sahifa serves as the foundation for today's more complex Muslim States. Accordingly, most Muslim countries have written constitutions in the present day.

What is the status of the Quran and the Shari'ah in the draft Provisional Constitution?

The draft Provisional Constitution is based on the foundation laid by the holy Quran and Sunna. It promotes the higher objectives of Shari'ah and social justice – see Article 3 (1). The draft Provisional Constitution adopts a special provision to the effect that parliament may not pass any law that contravenes the general principles of Shari'ah – see Article 2 (3). The courts have the power to strike down any law on the basis that it is contrary to the Shari'ah and thus to the Constitution – see Article 109 C (1) (a) and (b). The draft Provisional Constitution reaffirms Islam to be the state religion of Somalia – see Article 2 (1). In line with Shari'ah, the Constitution explicitly prohibits the propagation of other religions in Somalia – see Article 2 (3).

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[1] Sahifa is the one of the oldest written constitutions (some say it is the oldest written constitution) in the world. It was written by the Prophet Mohammed (PBUH) when he made the Hijra to Medina. It is sometimes referred to as the Constitution of Medina.

Citizenship

What does the draft Provisional Constitution say about who is Somali?

The draft Provisional Constitution proclaims that there shall be only one Somali citizenship– see Article 8. A Somali citizen cannot be deprived of his or her citizenship even upon becoming a citizen of another country – see Article 8 (3). The House of the People of the Federal Parliament will define how Somali citizenship may be obtained, suspended or lost – see Article 8 (2).

Fundamental Rights and Duties

Does the proclamation of fundamental rights and freedoms matter?

The fundamental rights and freedoms provided for in the draft Provisional Constitution will bind all state institutions in the making and application of the laws of the country and they must be respected by all state institutions, state officials, private organisations and individuals – see Article 12 (1). The state has the duty to protect the fundamental rights and freedoms of any person at all times – see Article 12 (2). The existence and value of fundamental rights and freedoms is, therefore, constitutionally guaranteed, and will be of great significance, as they will form the very foundation of the new Federal Republic of Somalia.

Do the fundamental rights in the draft Provisional Constitution reflect the particular needs of the Somali people?

As it is hard to enjoy rights if one lives in poverty or is sick and cannot get access to health care, the draft Provisional Constitution provides for a range of economic and social rights such as the right to clean potable water, the right to health care, and the right to full social security – see Article 27.

The draft Provisional Constitution proclaims the family to be the foundation of Somali society, protects motherhood and childhood, and recognises a child's right to care – see Article 28 and 29. Another significant feature relating to Somali society is the special attention paid to traditions and cultural practices, which the state has a particular duty to promote if they have a positive effect, or to eliminate if they have a negative effect, on Somali society – see Article 31 (1). The draft Provisional Constitution provides for the protection of cultural practices and local dialects of minority groups – see Article 31 (3). It forbids discrimination on the basis of language, to protect those linguistic minorities that exist in Somalia. The equality right additionally disallows any form of discrimination on the basis of clan, birth or dialect – see Article 11 (1).

The intention of the Constitution is to rebuild Somalia as a peaceful, prosperous, stable and cultured country.

What about fundamental duties of the citizens?

In recognition of the fact that in Islam rights must always be balanced by duties, the draft Provisional Constitution contains express statements concerning the duties of citizens. These include the requirement to be patriotic and loyal to Somalia, and promote its well being; to engage in useful work for the good of the citizen, the family and the common good; to contribute to national development; to promote responsible parenthood; to foster national unity in harmony with others; to promote accountability and the rule of law; to become acquainted with the provisions of the Constitution; to uphold and defend the Constitution and the law; and to contribute to the public expenditure according to his or her capacity to pay – see Article 42.

How are these fundamental rights protected, and the fulfillment of duties enforced?

The protection of fundamental rights and the fulfillment of duties will ultimately be ensured by the courts, which have the responsibility to hold all government officials and citizens to account in accordance with the constitution – see Article 39 (1). The state is obliged to provide available courts which the people can readily access – see Article 39 (2). The courts, when interpreting the fundamental rights, have to take an approach that seeks to achieve the purposes of the rights and the values that underlie them – see Article 40 (1). Furthermore, when interpreting and applying the law generally, the courts must ensure their decisions comply with the fundamental rights as far as possible – see Article 40 (3).

Federalism and Decentralization

What is federalism?

Federalism is a form of political decentralization of governmental authority, in which there is shared rule (in central government) and self-rule (in regional government). Unlike other forms of political decentralization, this combination of shared rule and self-rule is guaranteed and protected by the Constitution in a federal system, and cannot be revoked by the central government, without constitutional amendments, which require the consent of the regional governments.

The draft Provisional Constitution provides for the following features of a federal system:

1. There shall be two levels of government (the Federal Government level and the Federal Member State level of government, comprising the local governments and the Federal Member State governments) and both levels are elected by the citizens and accountable to them – see Articles 48 and 50.

2. The overall power of the state, and its governmental responsibilities, shall be divided between the Federal Government and the Federal Member State governments, pending their creation. The specific allocation of powers and responsibilities shall be subject to further negotiations with regard to all matters, except for those relating to Foreign Affairs, National Defense, Citizenship and Immigration, and Monetary Policy, which shall be part of the remit of the Federal Government – see Article 54.

3. The Federal Member States shall be represented in decision making at the Federal Government level through the Upper House of the Federal Parliament, which shall comprise representatives elected from the people in each Federal Member State – see Article 72. The members of the Upper House of the Federal Parliament shall have a special responsibility to represent the interests of the Federal Member State they represent – see Article 61 (3).

4. The federal system and the division of powers and responsibilities between the Federal Government and the Federal Member State governments is constitutionally protected. The system cannot be

revoked unilaterally by the centre as amendments to the constitution require the consent of both Houses of the Federal Parliament. This would therefore require the consent of the members of the Upper House of the Federal Parliament, who represent the Federal Member States – see Articles 132-134.

5. There is an arbitration mechanism in place to settle disputes between the Federal Government and the Federal Member State governments, or disputes among Federal Member State governments. This mechanism involves an Interstate Commission see Article 111F and the Constitutional Court as the final arbiter instance to decide and resolve such disputes – see Article 109C (1) (d).

Why should Somalia adopt a federal system when we are one united people?

Due to long years of over-centralized government structures and control, people in many parts of Somalia demand regional self-rule. During the years of conflict, some stability was maintained in specific regions by their local communities, and they believe they have demonstrated their ability to manage their affairs at a regional level while remaining loyal and responsible citizens of Somalia.

To guarantee such regional self-rule, the Constitution should provide and safeguard it. This constitutional guarantee forms the very essence of a federal system. Furthermore, there are effective government structures in many regions within Somalia, which were created when no central government structures existed. These regional governments provide governmental services for local people. It is much more efficient to incorporate these regional government structures into the administrative and political system of the country, than to relocate all state authority in one central government and thereby alienate them. Consequently the federal system will accommodate existing regional governments, such as those of Puntland, or Galmudug.

How will the Federal Member States be created?

The creation of Federal Member States proved to be a very controversial issue during the constitutional conferences leading to this Draft Provisional Constitution. It was noted that it is important to have fair and open procedures for the creation of Federal Member States. Reflecting

this, the draft Provisional Constitution itself does not create Federal Member States, but entrusts the House of the People of the Federal Parliament, which represents all people of Somalia, to decide on the number and demarcations of Federal Member States – see Article 49.

This decision of the House of the People of the Federal Parliament shall be based on the recommendations of the Boundaries and Federation Commission, an independent commission which shall be composed of experienced people representing all parts of Somalia. This commission will study the country, talk with citizens and experts, and propose the number and concrete demarcations of Federal Member States – see Articles 49 (2) and 111E. Therefore, in accordance with the draft Provisional Constitution, there will be more space and time for more public discussion on this matter.

Do federal systems undermine national unity and potentially lead to secession?

There can be problems in federations, but no more so than in unitary states. Some of the most prosperous and stable states in the world are federations – The United States of America, Germany, Switzerland, Austria, Australia – and there is no lack of national unity or patriotism in these countries. Comparative research has proved that secession is a much more likely threat in over-centralized unitary systems than in federal systems. One example of this is Somaliland, which tried to break away from the Somali Republic when it was unitary and over-centralized. The prevention of secession, and the promotion of national unity, is best guaranteed through the existence of a government that brings real benefits to all people and that all people want to belong to.

This is reflected in the Draft Provisional Constitution as the regional communities of Somalia will have the freedom to govern their own affairs to a significant degree, and will have the chance to participate in democratic decision-making at the federal level. This is more likely to reduce the desire for secession and independence than to produce it. In order to secure mutual coordination and cooperation between the different governments at the federal level and the Federal Member State level, the draft Provisional Constitution specifically provides for provisions demanding regular meetings of executive heads or senior governmental officials, mutual information and coordination and close cooperation between the different governments – see Articles 51 and 52.

Can Somalia afford to have a number of regional governments and, thus, more than one government?

A strong, properly functioning political system is the foundation on which a productive economy and material prosperity is built. Somalia's experience points to the huge economic price a nation pays if it fails politically. Thus, it would be much more expensive in the long term, if a unitary system fails to accommodate the distinct regional needs of the Somali people. Even though the concrete allocation of resources and tax-raising powers is still subject to negotiations and needs to be determined, the draft Provisional Constitution, in order to provide for an efficient political and financial system within in the federation, requires that governmental functions are exercised and taxes are being raised at the level of government, where they are most effectively being exercised or raised – see Article 50 (b) and (f).

Who owns and controls the land and the natural resources in a Somali federation?

The federal system combining shared rule and self-rule is also reflected in the draft Provisional Constitution provisions on land and natural resources. The regulation of natural resources and their use is subject to negotiations between the Federal Government and the Federal Member State governments – see Article 44. With regard to land, the draft Provisional Constitution allows the Federal Government to develop a national land policy that provides for equity in the allocation of land and the use of its resources as a national standard but needs also to provide for the freedom of the Federal Member States to formulate their own regional land policies – see Article 43.

The protection of the environment is a priority duty of the Federal Government, but the Federal Member States governments equally have a duty for the protection of the environment and the Federal Government needs to consult the Federal Member State governments when adopting the general environment policies of the country – see Article 45.

Local Government and Decentralization

While the draft provisional constitution establishes two levels of government, it mentions a third level of government, namely the local level of government. The local governments, however, together with the Federal Member State government are considered to form the Federal Member

State level of government – see Article 48 (1) (b). It is left for the constitutions of the Federal Member States to establish legislative and executive bodies of government in the Federal Member States – see Article 120. This includes the organization and the establishment of local government institutions.

The draft provisional constitution leaves the organization of status, structure and competences of local governments and, thus, any further political and administrative decentralization, for the Federal Member States to regulate and establish through their own state constitutions. Until such time, a Federal Member States is established and a Federal Member State constitution is adopted, the existing local government structures are directly administered by the Federal Government – see Article 48 (2).

The Federal Parliament

What is the new Federal Parliament?

According to the draft Provisional Constitution, Somalia will adopt a federal system and the new Federal Parliament will consist of two Houses: the House of the People and the Upper House – see Article 55. The members of the House of the People will have a special duty to represent the people of the constituency from which they have been elected, and the members of the Upper House will have a special duty to represent the Federal Member States from which they have been elected and to safeguard the federal system– see Article 61. The members of both Houses, however, shall at all times be guided by the interests of the Somali nation as a whole – see Article 61 (1).

What will be the shared duties of both Houses of the Federal Parliament?

The prime responsibility of the Federal Parliament will be to make laws for the country, including any changes to the Constitution – see Article 69 and 71. In the process of making the laws of the country, the two Houses will need to collaborate, even though the House of the People has the power to overrule decisions of the Upper House by a two-thirds (2/3) majority vote of its total membership with regard to all legislation – see Articles 81-83.

Amendments to the Constitution, however, will always require the consent of the Upper House of the Federal Parliament – see Articles 132-134. Collaboration and joint decision-making between the two houses of the Federal Parliament will also be required for the election and dismissal of the President of the Federal Republic of Somalia – see Articles 89 and 92, the declaration of a State of Emergency – see Article 131 and the declaration of war – see Article 71 (f). To facilitate the joint decision-making of both houses of the Federal Parliament, joint sittings and the establishment of joint committees will be possible at all times – see Articles 57, 62 and 81 (3).

What will be the specific duties of the House of the People of the Federal Parliament?

As the draft Provisional Constitution opts for a parliamentary system of government, in which the executive is dependent on the continuous support of parliament, the most important political institution in the new

Federal Republic of Somalia will be the New Federal Parliament. However, at the federal level the Prime Minister and Council of Ministers need only the confidence of the House of the People of the Federal Parliament – see Articles 69 (2) (e), 90 (d), 100 (c). Consequently, the House of the People exercises some powers exclusively without need for the support of the Upper House of the Federal Parliament. This includes approval of most members of Independent Commissions – see Article 69 (2) (a).

What will be the specific duties of the Upper House of the Federal Parliament?

It is a specific duty of the Upper House to represent the interests of the Federal Member States in any decision-making process of the Federal Parliament that is of relevance to the Federal Government or the Federal Member States. Thus, amendments to the constitution, the election and dismissal of the President of the Federal Republic, the declaration of war and the declaration of a state of emergency, the appointment of members of the Judicial Service Commission, the judges of the Constitutional Court, the members of the National Independent Electoral Commission, the members of the Boundaries and Federation Commission, and the members of the Interstate Commission, require the consent of a majority of members of the Upper House of the Federal Parliament – see Article 71.

The President of the Federal Republic of Somalia

What is the role of the President of the Federal Republic of Somalia?

According to the draft Provisional Constitution, the President of the Federal Republic of Somalia shall be the Head of State, the symbol of national unity, and the guardian and promoter of the founding principles of the Constitution – see Article 87. As Head of State he will, among other tasks, sign draft laws passed by the Federal Parliament into law; open and dissolve the House of the People of the Federal Parliament; appoint senior governmental officials including the Prime Minister, the Council of Ministers, and the judges of the Constitutional Court; serve as the Commander in Chief of the armed forces; and declare war or a state of emergency – see Article 90.

How will the President of the Federal Republic of Somalia be elected?

The President of the Federal Republic of Somalia will serve and fulfil duties that relate to both the Federal Government and the Federal Member States. Therefore, in order to strengthen legitimacy the President will be elected by both Houses of the Federal Parliament in a joint session by a two-thirds (2/3) majority – see Article 89. Only if after two rounds of voting no candidate gains the necessary two-thirds (2/3) majority, a third round of voting will be conducted between the two candidates who gained the greatest number of votes in the second round. The candidate gaining a simple majority of votes in this round will be elected President of the Federal Republic of Somalia – see Article 89 (5) (d). The term of office of the President of the Federal Republic of Somalia will be four (4) years and the President may only be removed from office for treason, or for gross violation of the Constitution or other laws of the Federal Republic of Somalia. His dismissal shall be processed through an official impeachment procedure requiring the support of the Constitutional Court, and a two-thirds (2/3) majority vote of the members of both houses of the Federal Parliament – see Article 92.

The Prime Minister and the Council of Ministers

What will be the role of the Prime Minister and the Council of Ministers?

While the President of the Federal Republic of Somalia is the Head of State, most executive functions of government are vested in the Council of Ministers – see Article 97. The Council of Ministers will be chaired by the Prime Minister, who will serve as the head of the Federal Government – see Article 100 (a) DPC. The members of the Council of Ministers will be individually accountable to the Prime Minister – see Articles 100 (b), 102 (1), and collectively accountable to the House of the People of the Federal Parliament, which may, at any time, dismiss the Council of Ministers by a vote of no confidence – see Articles 69 (2) (e), 90 (d), 100 (c). The Council of Ministers will be responsible for the formulation of overall government policy and its implementation, the preparation of draft laws to be tabled before the House of the People of the Federal Parliament, the implementation of the laws of the country, the preparation of the annual budget, the appointment and dismissal of senior public officials, and the nomination, appointment, and dismissal of ambassadors, consuls, and diplomats – see Article 99.

Who appoints the Prime Minister and the Council of Ministers?

The President of the Federal Republic of Somalia appoints the Prime Minister and, on his/her recommendation, the members of the Council of Ministers – see Article 90 (d). After the Prime Minister's appointment by the President of the Republic of Somalia, the Prime Minister must present the persons nominated for membership of the Council of Ministers, and the government's program, to the House of the People of the Federal Government – see Article 100 (c). If the Prime Minister fails to get the endorsement of the House of the People of the Federal Parliament, or loses its confidence at a later stage, the President is obliged to dismiss the Prime Minister and the Council of Ministers, and appoint a new Prime Minister – see Articles 69 (2) (e), 90 (d), 100 (c).

The Judiciary

What is the role of Shari'ah in the judicial system?

Shari'ah is the heart of the judicial system provided by the draft Provisional Constitution. Courts will only apply Shari'ah complaint laws, and will strike down any law that is in contravention of Shari'ah – see Articles 4, 109 (2).

How will the Judiciary operate?

The Judiciary will be independent from the other branches of government. Its members will be protected against any criminal proceedings related to the exercise of judicial functions, and is subject only to the law, as provided for by the Constitution – see Article 106. Justices and judges on the federal level may only be appointed, dismissed, or disciplined upon the recommendation of the Judicial Service Commission, which will operate independently from the Federal Government – see Articles 109A and 111A. To provide further transparency and legitimacy of the Judiciary, court proceedings shall generally be held in public, and reasons given for all judicial decisions – see Article 107. In order to guarantee that everyone will have access to courts, the draft Provisional Constitution protects the fundamental right to legal aid – see Article 34.

What will the national court structure look like?

The draft Provisional Constitution provides for three different levels of courts. These are the Constitutional Court, the Federal Government level courts, and the Federal Member State courts. The Constitutional Court will function as a specialized court with the responsibility to make final judgements in all matters concerning the interpretation of the Constitution– see Article 108. While the Constitutional Court and the Federal Government level courts will be administered by the Judicial Service Commission, Federal Member State courts will be administered by institutions provided for by the Federal Member State constitutions – see Articles 109A and 111A. Federal law shall, however, regulate the relationship and collaboration between Federal Government level courts, and Federal Member State level courts – see Article 109 (3).

Why a Constitutional Court?

In a federal system, disputes between different governments (i.e. between the Federal Government and Federal Member State governments, and between different Federal Member State governments) over their precise boundaries of their respective jurisdictional limits are not unusual. This is even more often the case in instances in which a formerly unitary system develops into a federal one, and jurisdictional limits need to be freshly defined.

Anticipating a significant number of cases concerning constitutional law and interpretation, the draft Provisional Constitution provides for a Constitutional Court, consisting of specialized judges to handle these cases. The judges of the Constitutional Court will be appointed by the President of the Federal Republic of Somalia upon the recommendation of the Judicial Service Commission, and with the approval of the House of the People and the participation of the Upper House of the Federal Parliament – see Articles 71 (i), 90 (j), 109B.

What will be the duties of the Constitutional Court?

The Constitutional Court will be the final authority in all constitutional matters, – see Article 109 (2) (b) and will have sole jurisdiction on matters concerning constitutional interpretation not arising out of court litigation – see Article 109 (2) (c). The Constitutional Court will have the exclusive power to decide on the constitutionality of draft laws, and the constitutionality of legislation passed by the Federal Parliament if challenged. It will also have the responsibility to resolve disputes between the Federal Government and the Federal Member State government(s), disputes between different organs of the Federal Government, or disputes among Federal Member State governments, and to establish whether the impeachment of a President of the Federal Republic of Somalia has legal grounds or not – see Article 109C.

Independent Commissions

What are Independent Commissions?

The draft Provisional Constitution provides regulations on Independent Commissions, which shall be bodies operating separately from government or political control to handle specific governmental functions. The members of the commission are selected based on their expertise, rather than on political considerations – see Article 110. Each independent Commission, its mandate, functions, and competences, shall be regulated by a law passed by both Houses of the Federal Parliament – see Article 110 (1).

To ensure transparency, and the accountability of commissioners, they are nominated by the relevant Minister, approved by the Council of Ministers, and appointed by the Prime Minister subject to the approval of the House of the People of the Federal Parliament. In the case of some Independent Commissions, the approval of the Upper House of the Federal Parliament is also required– see Articles 69 (2) (a), 71 (i), 112. During the appointment process the Federal Member State governments also must be consulted if the mandate of the Independent Commission has the potential to affect Federal Member State interests – see Article 111 (2).

Which Independent Commissions does the draft Provisional Constitution envisage being established?

While the establishment of Independent Commissions is not limited to those mentioned in the draft Provisional Constitution, the draft Provisional Constitution explicitly names some Independent Commissions that must be appointed according to the constitution. There must be established:

A Judicial Service Commission, responsible for the administration of the Judiciary including the appointment, dismissal, and discipline of members of the Judiciary – see Articles 109A and 111A. This is to be appointed 30 days after the new Council of Ministers is formed – see Article 135 (2) (a).

A Human Rights Commission, responsible for the promotion and protection of Human Rights, and the monitoring and supervision of their observance – see Article 111B. This is to be appointed 45 days after the new Council of Ministers is formed – see Article 135 (2) (c).

An Anti-Corruption Commission, responsible for the investigation and publication of corruption allegations, and cases involving the public sector – see Article 111C.

A Parliamentary Service Commission, responsible for providing services, facilities, and offices to ensure the effective functioning of the Federal Parliament – see Article 111D. This is to be appointed 15 days after the new Council of Ministers is formed – see Article 135 (2) (d).

A Boundaries and Federation Commission, responsible for studying and recommending on the number and boundaries of future Federal Member States – see Article 111E. This is to be appointed 60 days after the new Council of Ministers is formed – see Article 135 (2) (e).

An Interstate Commission, responsible for ensuring intergovernmental coordination and cooperation, and the amicable resolution of intergovernmental disputes between the Federal Government and the Federal Member State governments, or among the Federal Member State governments – see Article 111F. This is to be appointed 1 year after the new Council of Ministers is formed – see Article 135 (2) (f).

A National Independent Electoral Commission, responsible for the development of a comprehensive legal framework for the management, monitoring, and publication of electoral results at the Federal Government level, and the registration of voters, candidates and political parties – see Article 111G. This is to be appointed 60 days after the new Council of Ministers is formed – see Article 135 (2) (e).

A National Security Commission, responsible for the development of an integrated security framework providing for civil oversight and public monitoring of expenditures of the security forces – see Article 111H. This is to be appointed 45 days after the new Council of Ministers is formed – see Article 135 (2) (c).

A Truth and Reconciliation Commission, responsible for fostering national healing, reconciliation and unity – see Article 111I. This is to be appointed 30 days after the new Council of Ministers is formed – see Article 135 (2) (g).

Civil Service

Who will manage the civil service in the Federal Republic of Somalia?

The Federal Government and the Federal Member State governments may recruit their own employees, and run their civil service independently – see Article 119 (1). In order to promote national unity, and to ensure that expertise and experience is available wherever it is needed, the Federal Government and the Federal Member State governments may cooperate in the deployment of staff – see Article 119 (3). The draft Provisional Constitution provides common values and protection standards for civil servants at all levels of government. The draft Provisional Constitution requires that all civil servants serve the people based on the values of the Constitution: compassion, transparency with respect to administrative hierarchies, efficiency, effectiveness, professionalism, equality, and best practices. Civil Servants may not be victimized because of the fulfilment of their duties, or dismissed or transferred without reasonable, legal grounds – see Articles 115, 116.

Who will appoint the high ranking officials in the civil service?

The draft Provisional Constitution only regulates the appointment of civil servants in the Federal Government. These will be appointed by the President of the Federal Republic of Somalia, upon the recommendation of the Council of Ministers, subject to regulations provided by a law passed by the Federal Parliament – see Article 117 DPC.

Public Finance

Who manages public finance in the Federal Republic of Somalia?

The Constitution commits Somalia to be a Federal Republic although at this stage the Federal Member State governments have not been established as yet. Hence the draft Provisional Constitution leaves the formulation of the principles of public finance for discussion and negotiation between the Federal Government and the Federal Member State governments pending their creation – see Article 122.

The framework for the financial management of the Federal Government and the National Treasury shall be provided by a law passed by both Houses of the Federal Parliament based on international standards and principles providing for accountability and transparency in the management of public finance – see Articles 124, 125. A law passed by both Houses of the Federal Parliament shall provide for the establishment of a Federal Central Bank responsible for the formulation and implementation of monetary policies that all banks in the country must abide to – see Article 123.

Peace and Security

Who guarantees peace and security in the Federal Republic of Somalia?

The Federal Government is responsible for the guarantee of the peace, security and national sovereignty of the Federal Government through its security forces, namely the armed forces, the intelligence service, the police force, and the prison force – see Article 126. The Federal Member States, however, are entitled to the establishment of their own Federal Member State police forces, which shall protect the lives and property of the people of each Federal Member State alone or in cooperation with the Federal police force – see Article 126 (5).

The draft Provisional Constitution provides general principles that all security forces of the Federal Republic of Somalia must abide by, and which include respect for the rule of law, democratic governance, and fundamental rights; and the commitment to uphold the Constitution of the Federal Republic of Somalia, transparency and accountability, and political neutrality – see Article 127 (1).

Specialized courts for the armed forces may be established, but alleged human rights violations committed by the armed forces must always be tried before civilian courts – see Article 128. Complaints of human right abuses committed by the security forces may also be addressed to the office of the Ombudsman, which shall investigate such cases, and, where necessary, take them up before a competent court of law – see Article 129. A law passed by both houses of the Federal Parliament shall regulate the structure, functions, and levels of the security forces in the Federal Republic of Somalia – see Article 130.

Amendments to the Constitution

Can this constitution be amended?

With regard to amendments of the constitution, the draft Provisional Constitution differentiates between two different periods when constitutional amendments may be proposed and adopted: The period before the adoption of the Provisional Constitution as the permanent Constitution of the Federal Republic of Somalia by public referendum, and the period following its adoption

How can the provisional constitution be amended?

Before the Constitution becomes permanent through its adoption by public referendum, any amendment to the provisional constitution shall be prepared for by an Independent Provisional Constitution Review and Implementation Committee. This shall be an independent legal drafting expert committee consisting of five (5) members. The Independent Provisional Constitution Review and Implementation Committee shall work under the supervision and guidance of the Provisional Constitution Review and Implementation Oversight Committee, which shall be a parliamentary committee consisting of an equal number of members of the two Houses of the Federal Parliament, and one additional member per existing Federal Member State. Any amendment prepared by the two committees must be approved by a two-thirds (2/3) majority vote of the total membership of both Houses of the Federal Parliament – see Articles 133, 134.

The value of this provision is that it enables the Constitution to receive additional inputs from the public and political stakeholders, and to be further improved before it is submitted to public referendum.

How can the permanent constitution be amended?

Following its adoption as the permanent constitution of the Federal Republic of Somalia, the draft Provisional Constitution allows for amendments to the constitution when approved by a two-thirds (2/3) majority vote of both houses of the Federal Parliament – see Article 132. The constitutional amendment, however, will be prepared by a twenty (20) member joint committee of the two Houses of the Federal Parliament with ten (10) members appointed by the Speaker of each house from the

members of his House – see Article 132 (5). Public awareness and debate of draft amendments to the Constitution shall be promoted at all times – see Article 132 (6) DPC. After the adoption of the permanent constitution by public referendum, another official constitutional review process shall be initiated and conducted by a parliamentary commission of both houses of the Federal Parliament in consultation with the Federal Member States and subject to its approval – see Article 137. Any amendments proposed through this official constitutional review process, will equally be subject to the approval of a two-thirds (2/3) majority vote in both houses of the Federal Parliament – see Article 137 (4), 132.

Effect of the Provisional Constitution

When will the Provisional Constitution come into effect?

The draft Provisional Constitution will come into effect on the day following its adoption by the National Constituent Assembly – see Article 138.

What effect will the Provisional Constitution have?

The Transitional Federal Charter will expire upon the dissolution of the National Constituent Assembly – see Article 143. All existing laws in force before the adoption of the Constitution will remain in force, but must be interpreted and applied in such a way that conforms with the Provisional Constitution – see Article 139.

Equally, all international obligations and treaties that the Republic of Somalia is a party to remain in force – see Article 140.

Until such time that all Federal Member States are formed, the Federal Member State's constitutions are harmonized with the Federal Constitution, the Federal Member States that existed before the adoption of the provisional constitution by the National Constituent Assembly retain and exercise their powers on the basis of their state constitutions independently from the Federal Government, but must at all times be consulted in any decision-making process regarding the federal system, or security arrangements – see Article 142.