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Somali Republic**

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Bannaan**



**Independent Federal &  
Constitutional Commission  
IFCC**

*Xukuumadda Federaalka KMG Soomaaliyeed  
Transitional Federal Government*

**Progress Report  
of the  
INDEPENDENT FEDERAL CONSTITUTION  
COMMISSION**

**FINAL VERSION**

## **1. Introduction**

The Draft Constitution making process represents a critical phase in the Djibouti Peace Agreement and The Transitional Federal Charter of the Somalia Republic 2004” (Charter). The Charter provides that a new Federal Constitution be written within two and half years of the formation of an Independent Federal Constitution Commission. The Commission was established in June 2006 in accordance with Article 68 of the Transitional Charter and Djibouti Peace Agreement.

The principal task of the Commission is to prepare a Draft Constitution with the aim of establishing a Just, Federal, Islamic Shari’ah compliant state based on democratic principles, the separation of powers, traditional law, good governance, constitutionalism and the rule of law. The importance of the constitution making process is to help the country move peacefully from the post-conflict situation and lay the foundation for a normal and stable Somalia.

## **2. The Mandate of the Commission**

The Transitional Federal Charter, the Act No.TFP/1/193/06 provide for the preparation of the Draft Constitution of the Republic of Somalia sets out the mandate of the Commission and of other institutions for the preparation of the Draft Constitution in very clear and specific terms. The primary mandate of the Commission is to prepare a Draft Constitution.

## **3. The Vision and Mission of the Commission**

The Commission’s vision is to prepare a Draft Constitution, consistent with the principles of Shari’ah and in line with the aim and purposes set out in the Charter, namely:

- Establish a Just, Federal, Islamic Shari'ah compliant state based on democratic principles, the separation of powers, traditional law, good governance, constitutionalism and the rule of law;
- Protect the human rights and fundamental freedoms vested by the Almighty God in every person, and as expressed in international human rights instruments, without discrimination on the grounds of race, colour, gender, language, religion, political or other opinion, origin, or other status;
- Provide for the equitable distribution of resources and the even development of all federal units of the Republic;
- [Protect and promote Somali cultures and values; and](#)
- Promote the peaceful co-existence of people in the country and to develop and support regional and international cooperation.

The Commission will do the above by ensuring that –

- the public are able to participate in the process of making this Constitution;
- our rich history, traditions, and the value systems are reflected in the supreme law of Somalia; and most of all
- accepting the guidance of Shariah.

The Commission's objective is to be the instrument through which the Somali people will express their collective will to adopt a Constitution that will –

- reconcile and unite all our people in a common cause;
- heal the divisions of the past and act as a bridge between a divided past and a better future for all the people of Somalia; and

- Promote the values enshrined in the Holy Quran and Sunnah.

#### **4. Setting up the Commission**

The Independent Federal Constitution Commission began on 15<sup>th</sup> June 2006 with Presidential Decree Reference No. RS-OP/3951-06 and approval by the Parliamentary Decision TFP/1/193/06. Under the approval 15 members of the Commission were appointed in line with The Federal Transitional Charter.

Initially the Commission attended to a number of logistical and administrative matters before beginning its substantive work. These included collecting background data and comparative study of the Somali Constitutions since 1949 and the Federal Transitional Charter of 2004. The Commission also attended several technical and capacity building workshops.

Following the reconciliation conference held in Djibouti in 2009, the Commission was expanded 30 members to include representative of Alliance for Reliberation of Somalia (ARS). In March 2010 the Commission started its technical work and has accomplished the following:

- Induction workshop for the Commissioners in general;
- Election of a new Steering Committee, Management Committee and establishing its Thematic Committees and Technical Working Groups;
- Design of the Code of Conduct for the Commission

- The examination and analysis of all Somali constitutions since 1949 to see what lessons can be learnt from the experience of their implementation and operation;
- Formulating both the Constitutional and Technical Principles and recommendation to guide the design of the Consultation Draft Constitution;
- Preparation of the process of civic education and public consultations;
- Studied world (Muslim, African and other federal countries) experiences of constitution making, particularly the process of consultation, but also specific constitutional issues;
- Undertaken an indepth study of the Koran and the Sharia to explore how the constitution can reflect their values, and has consulted some leading Muslim scholars and experts on this subject-in order to make sure that the constitution will be Sharia-compliant;
- Formulated the rules of procedure which will govern its deliberations and work;
- Set up thematic committees to make recommendations on specific aspects of the constitution;
- Examined possibilities of consultation with the people, realising the difficulties due to security problems in many parts of the country; with the help of the Consortium partners, it has

surveyed the possibilities of using modern technology to send its messages to the people and to receive their comments;

The Commission is now ready to undertake the task of preparing the consultation draft constitution by 30 June 2010 and will work intensively through June to meet the deadline.

Guddigu hadda wuxuu diyaar u yahay inuu bilaabo latashiyada diyaarinta Qabyoqoraalka Dastuurka 30<sup>ka</sup> Juun 2010 wuxuuna u shaqeyn doonaa si hakad la'aan ah si u guto xilkaas muddadii loo madlay.

#### **5. Agreed framework and principles of the Consultation Draft Constitution of the Somali Republic**

The following is the summary of the agreed framework and recommendations regarding the basic principles for the drafting of the constitution of the Somali Republic which the Commission has formulated:

##### **Preamble**

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

**W**e the Somali people:

- ❖ With firm faith in God Almighty and relying on His mercy, bear witness that there is no one worthy of worship but Allah and that the Prophet Mohammed SAW is indeed a true messenger and prophet;
- ❖ Reject ing violence and acknowledging the injustices and shortcomings of our past;
- ❖ Stand united to bring an end to the long conflict and strife in our country;

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- ❖ Inspired by the tireless struggle of our people for a better life and acknowledge the sacrifices and the historic struggles of our leaders to liberate and unite our country;
  - ❖ Reaffirm that Somalia is one country;
  - ❖ Are committed to the establishment of durable peace, the promotion of Federal unity and good governance.

**W**e therefore decide freely and by choice to base the Constitution onto these principles, recognizing the foundations laid by Shariah and as a bridge between a divided past and a better future for all the people of Somalia.

**M**ay God Almighty have mercy on all our people

### **Founding Provisions**

1. The Constitution of Somalia will be based on the foundations laid by the Holy Quran and Shariah and must promote Islamic values.
2. The Constitution, based on the foundations laid by Shariah, is the supreme law of the country. It will be binding on all of government.
3. The Constitution of Somalia is based also on democratic values, respect for human rights and the rule of law, separation of

powers between the legislature, executive and an independent judiciary, with appropriate checks and balances to ensure accountability, responsiveness and transparency.

### **The Republic**

4. The Constitution of Somalia will provide for the establishment of a sovereign republic that is independent, united, democratic, federal, and provides for a common Somali citizenship.
5. There will be representative government embracing multi-party democracy, free and fair elections, and universal adult suffrage.
6. Government will be structured at Federal, State and County and/or district levels with appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. These powers and functions must be defined by the Constitution and the law and include exclusive, concurrent and residual powers as well as the power to perform functions for other levels of government on a cooperative basis.
7. The Federal government shall respect the geographical, functional or institutional integrity of the states.
8. The powers and functions of a State defined in the Constitution of a State must not be less than or inferior to those provided for in the Federal Constitution.



9. Disputes between different levels of government must be resolved by an appropriate court of law.

### **State and Religion**

10. Islam is the official religion of the State.

### **Citizenship**

11. The Constitution shall define citizenship of the Somali Republic in accordance with Somali culture, values, history and modern state practice informed by human rights principles.

### **The Bill of Rights**

12. Everyone must enjoy universally accepted fundamental rights and freedoms consistent with Shariah.
13. The Constitution will prohibit all forms of discrimination and promote equality and Federal unity. The legal system will ensure the equality of all before the law and an equitable legal process.
14. Provision will be made for the –
- a. freedom of information,
  - b. freedom of conscience and expression; and
  - c. the transparent and accountable administration at all levels of government.

15. The freedom of association and the right to form, join, and maintain organizations of civil society will be recognized and protected.
16. Constitutionally recognized human rights would not prevent legislation recognizing marriages concluded under Islamic law.

### **Land**

17. Land being Somalia's primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.
18. The Federal Government must define and keep constant the Federal land policy and framework of the land in the Somali Republic which must ensure the registration, use, ownership, access, occupation, management rights, security, and interests.
19. The natural resources of the country such as the minerals, water, flora and fauna must be public property and a law must be enacted which defines the management of exploitation for the common good.

### **Property**

20. The right to own property will be guaranteed by law which will define the modes of acquisition and the limits of the enjoyment thereof for the purpose of ensuring its social function.

21. Property may be expropriated only for reasons of public interest and in the manner prescribed by law, in exchange for equitable and timely compensation.

### **Representation of the people**

22. The electoral system must comply with the following principles:
- a. freedom of citizens to exercise their political rights under the constitution;
  - b. universal adult suffrage; and free, fair and legitimate elections

### **The President**

23. There shall be a president of the Somali Republic

### **Executive**

24. The Constitution will include provisions describing the Federal executive branch and the President, its functions and powers to ensure good governance.

### **Legislature**

25. The legislative branch of the Somali Republic will consist of the Federal Assembly and the Senate. The Federal Assembly and the Senate will perform the following functions in accordance with the Constitution:-
- a. To represent the people;
  - b. To propose and enact legislation; and

c. Oversee the activities of Executive Branch.

26. The Senate will be constituted by equal representation from each of the Federal Units.

### **Judiciary and Courts**

27. The judiciary must be independent, appropriately qualified, and impartial and will have the power and jurisdiction to safeguard and enforce the Constitution.

28. The institution, status and role of traditional and religious leadership, according to customary and Shariah, will be recognized and protected in the Constitution.

29. Shariah /Customary law must be recognized and applied by the courts.

30. Legislation must provide for the powers, functions and independence of the Judiciary including:-

- a. The appointment of judges;
- b. Judicial immunity and dignity;
- c. The protection against any kind of interference in the decisions of judges;
- d. Preventing the arbitrary removal or retirement of judges;
- e. Preventing or delaying the promotion of judges for political reasons;
- f. Ensuring that judges are sufficiently remunerated, their salaries not arbitrarily reduced and that their pensions after retirement are guaranteed.

31. A Judicial Services Commission consisting of representatives of all States will be established with the responsibilities of –
  - a. Promoting the independence of the judiciary; and
  - b. The nomination and removal of judges.

### **States**

32. Federal and State boundaries must be established and defined by law.
33. The Constitution must establish an Independent Census, Federal Boundaries, and Demarcation Commission to determine boundaries of states.

### **Decentralized Governments**

34. The Constitution will provide for government at the National, State/Regional and local level.
35. Legislation will define the establishment of special rural, urban areas and municipalities which are not formed as a region or state.
36. The seat of government and capital city will be set out in the constitution.
37. The constitution must provide for the legal framework for the decentralisation of government, including traditional and local forms of government institutions and services which will be defined by legislation.

**Public Finance**

38. The Constitution must define the fiscal powers and functions of all levels of government.
39. Each level of government is entitled to an equitable share of revenue collected so as to ensure that state and local governments are able to execute the functions allocated to them and provide basic services.
40. A Federal Revenue Commission in which each State will be represented must be established by the Constitution. The Commission will recommend equitable revenue and financial allocations to the state and local governments from revenue collected, after taking into account the national interest, economic disparities between the states as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the states.

**State Institutions Supporting Constitutional Democracy**

41. In the interests of maintaining effective transparent and accountable public finances, administration, and a high standard of professional ethics in the civil service, the Constitution must provide for and safeguard the independence and impartiality of the Civil Service, a Central Bank, an Auditor-General and a Public Protector.

## **National Security**

42. The Constitution must provide for one impartial national armed and disciplined forces.
43. The armed forces must be subject to civilian oversight.
44. No member of the armed forces may be able to carry out a manifestly unlawful order.

## **Amendment of the Constitution**

45. Amendments to the Constitution must require special procedures.

## **6. Plan of Action**

A Consultation Draft Constitution will be published by June 30, 2010, along with a report explaining its provisions and the reasoning behind them. The draft will be distributed widely and will form the primary basis for public consultation, which will run for 3 months, until September 30, 2010.

The Commission will ensure that the people have opportunities to study the Consultation Draft Constitution and to submit their views and recommendation to the Commission. To facilitate the involvement of the Somali people in the consultation process, the Commission will make the following avenues for the receipt of submissions from the public:

1. Consultative meetings will be held with the Somali people at home and abroad. Mini-stakeholder consultation with specific specialized and identifiable groups will be conducted with, Parliament, the Judiciary, among others.
2. An email address will be advertised to allow for electronic submissions;
3. The Commission's website will soon be inaugurated allowing for submissions to be directly uploaded;
4. The Commission will monitor the media and extract relevant issues for the exercise from the media.
5. Other mechanisms would include television and radio programmes aimed at improving the understanding, stimulating dialogue and enabling public comment through call-in programmes;
6. A text messaging service will be developed to allow people to give feedback.
7. In partnership with civil society, community focus groups will be formed to enable a structured mode of feedback;
8. In partnership with the print media both in and outside Somalia, formal publications will be prepared and distributed.



After the above consultations, the Commission will conclude the analysis of the views and recommendations of the people on the Consultation Draft Constitution and based on the analysis, the Commission will complete, publish and disseminate the Draft Constitution in December 2010.

## **7. Process Management**

The Commission wishes to assure the Somali public that:

- The IFCC is an independent body and representing the diverse interests of the Somali people.
- The process of preparing the Draft Constitution is open, impartial and transparent in order to afford all Somalis, at home and abroad, the opportunity to participating in the process.
- Assure the Somali people that all inputs given during public consultations will be considered in the final drafting process.
- The IFCC calls on all Somalis to participate in this process and ensure that the final Constitution reflects the real needs of all Somalis.
- The IFCC will draw on the best international comparative practices.