

## THE HOUSE OF REPRESENTATIVES ELECTION LAW 2005

*(This note, translation of the Law and annotations were published in 2005)*

This Law was initially passed by the House of Representatives on 18 January 2005 (with 64 votes for, 7 against and Speaker not voting – 72 members present out of 82), and was also endorsed by the House of Elders on 5 February 2005 (with 58 votes for, 4 against, 1 abstaining and the Speaker not voting – 64 members present out of 82). The Law included provisions to the effect that the allocation of seats must be based on a census or a nationwide voter registration which must be carried out before the election, the date of which was already set by then as being 29 March 2005 and with the twice extended term of the House of Representatives coming to an end on 25 May 2005. The Law also set out that if the polling did not take place in every part of the country, it would be tantamount to ‘high treason’.

The political parties and the President objected to these clauses which they felt would mean that the election could be held in the foreseeable future. In particular, many pointed out that in the prevailing political situation in the country no one could guarantee that polling would take place in every corner of the land. Under Article 77(4) and 77(6) of the Somaliland Constitution, any law passed by a two-thirds majority of both Houses cannot be referred back to the Houses by the President and, in such a case, the House which initiated the Law (almost always the House of Representatives) shall itself then promulgate it if the President fails to sign it within 21 days of the law being forwarded to him. But, if the President considers that such a law is in conflict with the Constitution, he shall inform the speakers and ask the Attorney General to refer the law to the Constitutional Court, which in Somaliland is the Supreme Court (see Article 101 of the Constitution). The President did just that in respect of this law on 21 February 2005, after having received it from the House of Elders on 17 February 2005, and the [Constitutional Court issued a unanimous ruling](#) on 26 February 2005 in which it partially accepted the President’s arguments.

The Court decided to declare null and void Articles 10, 13, 38 and 44 of the Law (as it was then) and added that any procedural deficiencies in the Law (arising out of the decision) could be remedied by importing the relevant provisions of the 2001 Presidential and Local Council Elections Law (Law No. 20 of 2001). The Court decision did not cover the controversial issue of the allocation of the 82 parliamentary seats to constituencies or electoral units, and neither did the 2001 Election Law. This was the very issue that the House of Representatives had been unable to agree on since 1999, and had then finally chosen on 18 January 2005 when it passed the Law to shelve the whole issue by insisting that it be decided after a national population census and voter registration had been conducted. While this was of course a sensible idea, it was not an option that could be implemented for some years, let alone within the remaining term of office of the House which was due to come to an end on 25 May 2005.

In the light of the Supreme Court decision, the President, following the joint advice of all the three parties and the Somaliland Electoral Commission, proposed to the House on 27 March 2005 the adoption of a ‘sunset’ clause which would allow only the first election to take place before a population census and voter registration, and set out that this election should be conducted on the basis of allocation of seats to the six regions on a pro rata formula based

on the February 1960 Somaliland Legislative election. The House of Representatives approved the President's proposed changes to the Law on the allocation of seats on a vote of 61 for, 2 against, with Speaker not voting (total of 63 members present out of 82) on 2 April 2005, and this formula now appears in Article 12 of the Law. The House also agreed to set up a committee to ensure that the final wording of the Law was in accord with the Court's decision and the amendments they had agreed to. **The amended Law was then signed by the President (Decree No. 068/2005 of 11 April 2005), and is set out below.**

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**REPUBLIC OF SOMALILAND**  
**HOUSE OF REPRESENTATIVES ELECTION LAW**  
**(Law No. 20-2/2005 )**

*(As amended after the Supreme Court Ruling and including References to the Electoral Code of Conduct<sup>1</sup>)*

The House of Representatives of the Republic of Somaliland

Having seen: Articles 22, 40, and 41 of the National Constitution of the Republic of Somaliland;

Having Considered: The constitutional right of the citizen to stand for elections and to vote;

Having Confirmed: That the holding of the election of the House of Representatives shall complete the democratic processes aimed at consolidating fully the statehood of Somaliland.

**Has promulgated the following Law, which shall form an annex to Law<sup>2</sup> No. 20 of 2001:**

**Article 1: Definitions**

**Election:** means the process of sifting of candidates running for membership of the House of Representatives by means of majority votes cast by the citizens who vote.

**Commission:** means the national committee responsible for the organisation of electoral activities.

**Polling Stations:** means the places where a number of the public who reside near each other cast their votes, as assigned by the Commission.

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<sup>1</sup> The National Electoral Commission and the three political parties agreed to and signed the 'Code of Conduct for the Political Parties' on 18 July 2005. The sections of the Code which explain further this Law or fill some of its gaps are added here as footnotes under the relevant articles of this Law. Another code of conduct for electoral reporting was also signed on the same date by the two main Somaliland journalists' associations, SOLJA and SSWJ.

<sup>2</sup> The Presidential & Local Council Election Law 2001, which shall be referred to in these footnotes as the 2001 Election Law.

<b>Agent:</b>	means the person delegated by a party to follow the election activities at the polling stations or at the district or regional electoral offices or the Commission headquarters.
<b>Candidate:</b>	means the member nominated by a party to run for membership of the House of Representatives in accordance with the law.
<b>Voter:</b>	means the person who fulfils the conditions for voting set out in this Law and casts his vote.
<b>Seat:</b>	means the position of membership of the House of Representatives to which one person can be elected.
<b>Symbol:</b>	means the registered unique logo or sign which identifies one party/candidate <sup>3</sup> .
<b>List:</b>	means the names of candidates for election to the House of Representatives submitted by each party to the Commission, who shall compete equally for the election regardless of their position <sup>4</sup> in each list, which shall have no bearing on their election.
<b>Public Officials:</b>	means the senior public officers of a rank equivalent to a departmental director or above and the heads of the governmental agencies, as well as the senior officers of the armed forces and the police of a rank equivalent to a commander of a group or of a police station, or above.
<b>Election Campaign:</b>	means the activities of the parties and their candidates in competing for the support and understanding of the voters, in accordance with this Law.
<b>Central Office:</b>	means the supreme headquarters for the management of the election activities to be carried out by the Commission.
<b>Regional Office:</b>	means the office, set up by the Commission in accordance with this Law, which manages the election activities in the region.
<b>District Office:</b>	means the office, set up by the Commission in accordance with this Law, which manages the election activities in the district.

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<sup>3</sup> In a society with very high illiteracy, such symbols are crucial for helping the voters identify their choice of party and while this definition refers to 'candidates' as well, neither Articles 13 and 16(2) of the Law referring to the lists of candidates nor Article 18 relating to symbols make provision for candidates' symbols. This is understandable, as this would have considerable implications for the cost, design and size of the ballot papers. It would be advisable for the Commission to conduct a research after the election to assess the effect that using names of candidates only, under each party symbol, might have on the voting, and also what effect, if any, the position of the names within each party list might have on the voting, as there are indications in other electoral studies that names appearing higher on a list tend to attract more votes. These issues are explored further in the notes to Articles 12 and 13 below. This also presages the move from a closed list system to a partially open list system although it appears that the Law has not gone so far as to propose 'panachage' where voters may either vote en bloc for an entire list (as each list contains the same number of available seats), vote for individual candidates on more than one list, or vote for only some individual candidates on one list. This would have been very complicated and the system that this Law adopts is a simple one in which each voter shall have only one vote for one candidate only, even though each of the six electoral regions will have multiple seats ranging from 10 to 20 (see Article 12).

<sup>4</sup> This confirms that lists submitted by the parties are not closed and are hence open, unlike those in the local government elections – see Articles 1, 22(4) and 23(3) of the 2001 Election Law where the lists for local elections were submitted by each party in sequential order, which signified their position in the allocation of any seats which that a party may win. There is only one exception to this, which is set out in Article 12(7) and relates to the very unlikely situation where the voting cannot take place in a whole region. See also Articles 12 and 13 of this Law.

- Polling Station Office:** means the station where the citizens cast their votes and the voting activities are managed.
- Officeholders:** means the various personnel assigned by the Commission to work at polling stations, the district and regional electoral offices and the central headquarters as set out in this Law.
- Contraventions:** means any act, be it a deed or a spoken word, which affects the conduct of the election and the public order;
- Observers:** means the international or national inspectors accredited by the Commission, who shall check that the election activities are conducted properly.
- Remainder<sup>5</sup>:** means the number of (*remaining*) votes which amount to less than the total needed for the allocation of one seat.
- Sequential Order:** means various things which are connected and are noted in a way that they follow each other sequentially.

## **PART I: GENERAL PRINCIPLES**

### **Article 2: Scope of this Law**

This Law shall be used for the conduct of the election of the members of the House of Representatives of the Republic of Somaliland.

### **Article 3: Total Membership and Election of the House of Representatives**

The House of Representatives of the Republic of Somaliland shall consist of 82 (eighty-two) members who shall be elected in a direct general election through a free and secret ballot, as set out in Article 40 of the Constitution.

### **Article 4: Term of Office**

The term of office of the successful candidates for the election of the House of Representatives shall be five (5) years, beginning from the date the Supreme Court declares the outcome of the election as set out in Article 42(1) of the Constitution of the Republic of Somaliland.

### **Article 5: Conditions relating to Voters**

1. He<sup>6</sup> must be a patrial citizen of Somaliland or a naturalised citizen<sup>7</sup> in accordance with the Citizenship Law<sup>8</sup>.
2. He must not be less than 16 years<sup>9</sup> of age during the year<sup>10</sup> that the elections are being held.

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<sup>5</sup> The Somali word '*jajab*' can more accurately be translated as a 'fraction', but I have preferred the word 'remainder' which although it exists in Somali as '*hadhaa*', is, in my view, more suitable to explain the remaining votes left after the quotient for a seat is deducted.

<sup>6</sup> It is trite to state that he includes she throughout this Law. Note also Article 8 of the Constitution which gives all citizens equality of rights and obligations before the law regardless of gender, birth, status, etc.

<sup>7</sup> This is a welcome addition clarifying Article 5(1) of the 2001 Election Law which raised the danger of non-patrial citizens ending up with fewer rights when indeed Article 22(2) of the Constitution confirmed that "every citizen who fulfils the requirements of the Law shall have the right to be elected (to an office) and to vote".

<sup>8</sup> Somaliland Citizenship Law – Law No. 22 of 2002.

<sup>9</sup> This is in line with Article 5 of the 2001 Election Law. Previous laws set the voting age as 18.

3. He must be free and not in prison on the date of the election.

*Note: Article 30 of the Voter Registration Law 2007 states that “the Commission shall issue a voting card to every citizen who has registered. To exercise his right to vote, it is incumbent on a citizen to go to the (relevant) polling station<sup>11</sup> while carrying his voting card”. This is in effect the main condition relating to voters. Article 10 of the 2007 Law enumerates the above conditions as being also necessary for voter registration.*

#### **Article 6: Rights of the Voter<sup>12</sup>**

Every voter who fulfils the conditions set out in this Law shall have the right to:

1. Cast his vote at the *place where he is*<sup>13</sup> and where the election is being held.  
*(Article 30 of the Voter Registration Law 2007 lays down that a person may cast his vote only at the polling station where he is registered – Editor)*
2. When the Republic of Somaliland receives international recognition, citizens who fulfil the conditions<sup>14</sup> relating to voters and who reside in a foreign country at the time when the election is held shall cast their votes at their nearest diplomatic offices of the Republic of Somaliland abroad.
3. Voting shall be personal, free, direct, and secret, and all votes shall be given equal weighting.
4. Each voter shall have only one vote for each election.

#### **Article 7: The Right to Stand for Election**

1. Every citizen who fulfils the condition set out in this Law may stand, in accordance with this Law, as a candidate through the Party<sup>15</sup> of which he is a member.
2. The Executive Committee of each Party has the exclusive power to appoint candidates, and shall, on receiving the proposals of the Regional Committee of the Party, issue, in an Executive Committee resolution, the list of candidates which the Committee has endorsed on a majority vote.
3. Employees of the state and those of the independent governmental bodies, as well as members of the armed forces, of whatever rank, shall not be eligible to stand for election to the House of Representatives unless they have submitted their resignations four months before the date of the election, as set out in Article 41(7) of the national Constitution<sup>16</sup>.

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<sup>10</sup> The choice of this imprecise phrase, in the Law as well as in the 2005 Law, has, in my view, more to do with the Somali custom of identifying age by year and season, rather than by date, as there was (and is) no birth registration. When the registration of voters is completed, however, the issue of the qualifying age of prospective voters would be addressed at the registration stage and not at the election polling stations.

<sup>11</sup> See Article 31(8): the Voting Card confirms the relevant polling station.

<sup>12</sup> Note that the corresponding Article in the 2001 Election Law contains an additional clause to the effect that “the members of the Electoral Commission shall not be entitled to vote while in office”.

<sup>13</sup> This Clause refers literally to the location of the voter on the date of the election, rather than the place where he normally resides and applied to elections before the voters’ register was introduced.

<sup>14</sup> See the preceding article, Article 5.

<sup>15</sup> Article 9(2) of the Constitution states that there shall only be three political parties in the Republic of Somaliland. The three parties registered under the Regulation of Political Associations and Parties Law (as amended), Law No. 14 of 2000, are UDUB (the incumbent President’s Party), KULMIYE and UCID. No independent candidates can stand for elections and a legal challenge on this point before the Presidential elections in 2003 was dismissed by the Somaliland Supreme Court.

<sup>16</sup> Article 41(7) states that “No employee of the state shall be eligible for candidacy (*of the House*) unless he has tendered his resignation from office prior to a period determined by law. Such resignation shall be

4. Such resignation shall be accepted and shall be confirmed in writing by the person who has the power to do so.<sup>17</sup>

#### **Article 8: Timing of the Elections**

The Commission shall declare the date when election of the House of Representatives shall be held, as set out in Article 42 of the Constitution<sup>18</sup>, and the declaration of the Commission shall be published as a Presidential Decree.

#### **Article 9: Establishment of Electoral Regions**

1. In the election of the House of Representatives of the Republic of Somaliland, the country shall be divided, in accordance with Article 109 of the national Constitution<sup>19</sup>, into electoral regions which will have the same boundaries as the six districts which existed on 26 June 1960 and which are now the regions.
2. The National Commission, in consultation with the Ministry of Internal Affairs, the Chairmen<sup>20</sup> of the Regions and the three national parties, shall establish the electoral regions<sup>21</sup>, at the latest, 60 days before the polling day.
3. Having consulted the Ministry of the Interior, the Chairmen of the Regions and the three national parties, the Commission shall announce, and inform the media of, the assigned electoral regions.

### **PART II: THE ELECTORAL SYSTEM**

#### **Article 10: The Electoral System**

1. Every party which intends to stand in the election of the House of Representatives shall be required to submit to the national Commission a list of the candidates it has chosen to run in the election. The names of the candidates shall be set out in a sequential order,

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accepted". Incidentally, the corresponding period set in the 2001 Election Law was 180 days, except for the first local elections, when the period was 40 days (see Article 7(1)).

<sup>17</sup> Presumably, this is the head of the governmental office or body which employed the person concerned.

<sup>18</sup> Article 42(2) of the Constitution states that "the President shall announce the election of the new House a month before the expiry of the period of office of the outgoing House". The extended term of the current House expires on 25 May 2005, and the original date set for the election, 29 March 2005, has passed and no date which accords with Article 42(2) of the Constitution was possible. Now that 15 September 2005 has been set as the date of the election, an extension of the term of the current House under Article 42(3) of the Constitution is very much on the cards. This Article, which was used before twice in 2002 and 2003, states that "if the election of the House of Representatives cannot be conducted due to dire circumstances, the outgoing House shall continue in office until the end of these circumstances and a new House is elected. Dire circumstances are: a widespread war, internal instability, serious natural disasters, such as earthquakes, epidemic diseases, (and) serious famines, and shall be determined and resolved by the House of Elders on the proposal of the Council of Government."

<sup>19</sup> Article 109 simply confirms that the country will be divided into regions and districts, but it is the Regions and Districts Law (Law No. 23 of 2003), which states that the country shall be divided into six regions, and each region shall consist of districts graded A, B, C or D (Article 5). The six regions, which correspond to the six Principal Districts in 1960 are: Hargeisa region, Togdher region, Sanag region, Awdal region, Sool region and Sahil region. See Article 12(1) of this Law for the number of seats allocated to each region.

<sup>20</sup> Otherwise known as Governors.

<sup>21</sup> This will not be onerous as this Law (Article 12) sets the existing six regions as the electoral regions.

and shall relate to each region on the basis of the number of seats<sup>22</sup> allocated to each region.

2. The seats allocated to each electoral region shall be won by the parties on the basis of 'proportional representation system'<sup>23</sup> as reflected by the votes cast for each party in the region.

#### **Article 11: Polling Stations**

1. Every electoral region shall have polling stations which shall be chosen by the national Commission, in consultation with the Ministry of Interior, the Chairmen of the Regions and the national parties.
2. The Commission shall establish such polling stations, no later than 60 days<sup>24</sup> before the polling date.

#### **Article 12: The Procedure for Allocation of Seats**

1. In order to give priority to the national interest which will be served by the holding of an election, the allocation of the seats of the House of Representatives to each region<sup>25</sup> for this election only<sup>26</sup> shall be as follows:
  1. Hargeisa Region                      20 seat
  2. Togdher Region                      15 seats
  3. Awdal region                      13 seats
  4. Sanag Region                      12 seats
  5. Sool Region                      12 seats
  6. Sahil Region                      10 seats
2. On completion of the polling and counting of the total valid votes for each region, the total votes shall be divided by the number of seats allocated for each region, thus arriving at the number of votes required for each seat<sup>27</sup>. The total votes cast for each party in each region shall then be divided by the number (of votes) required for each seat to arrive at the number of seats each party shall gain in each region.

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<sup>22</sup> In comparison, the 2001 Election Law set out that each party list for the District Council election must not be less than twice the number of seats to be filled in each district (Article 22(2)). The 2001 Election Law included a further Clause 22(4) which made it clear that where there is only one party list submitted for a district, there will be no need to hold the voting, as there is no contest and the allocated seats shall be gained by that party. Although this is unlikely to happen in the parliamentary elections which are based on the smaller number of regions, the Supreme Court ruling which stated that any deficiencies in this Law can be remedied by the application of the relevant provision of the 2001 Law means that should this eventuality happen in respect of the parliamentary elections, Article 22(4) of the 2001 Election Law can be relied upon in these circumstances.

<sup>23</sup> The English language phrase 'proportional representative system' is used in parenthesis in this Clause in the original Somali version. See also Article 12 below for how the local seats shall be divided on the basis of the Hare Quota and the largest remainders.

<sup>24</sup> In the 2001 Election Law, the period was 40 days.

<sup>25</sup> The Regions and Districts Law (Law No. 23 of 2003) defines the six Regions, which are practically coterminous with the six 1960 Principal Districts.

<sup>26</sup> This is a 'sunset' Clause applying only to this first popular direct election of the House of Representatives and is based on a pro rata formula of the number of seats allocated to each of the six principal districts in Somaliland in 1960, which are now the six regions. There were only 33 seats then (as was later confirmed by section 17 of the first 1960 Constitution of the independent State of Somaliland) and the allocation per region was first used for the February 1960 Somaliland Legislative Council elections, and was also followed in the subsequent 1964 and 1969 parliamentary elections. This allocation was not based on any population census or voter registration.

<sup>27</sup> This is the quotient or the quota per seat.

3. If, when the total valid votes for each region are divided by the number of seats for that region, there is a remainder of votes for each specific party which are less than the number required for one seat, the parties shall divide the remaining seats on the basis of the largest remainders.
4. When the activities set out in Clauses 2 and 3 of this Article are completed, the seats each specific party gains from the total seats for each region shall be allocated amongst the candidates in that party on the basis of a simple majority of the total votes cast for each candidate<sup>28</sup>.
5. If serious circumstances or situations do not permit the holding of the election in any locality of the country, the Commission shall evaluate the situation and arrive at a decision about it after having gained the agreement<sup>29</sup> of the Government and the national parties.
6. The seats allocated<sup>30</sup> for the polling stations where the election can not take place shall be distributed to the parties on the basis of the proportion of total valid votes each party gained in the relevant region.
7. If, however, the election can not take place in the whole of one region, the seats for that region shall be divided among the parties on the basis of the proportion of total valid votes each party gained throughout the country. The seats allocated for each party will then be distributed among its candidates in the order that their names appear on the candidates' list.

### Article 13: List of Candidates

1. Every party shall submit to the Commission a list of the names of its candidates who have been chosen by the party to contest the election. The list shall be based on the

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<sup>28</sup> Except for the unusual position in Clause 7 of this Article, this is why the position of the candidates within each list does not matter as set out also in Article 1 of this Law, but this Clause fails to state what will happen in the possible situation where two or more candidates in the same list receive the same number of votes (even after recounts) and there is only one seat for that party to be allocated. The 2001 Election Law does not assist in this matter and the issue may well have to be adjudicated upon, in the end, by the Supreme Court under Article 61 of this Law. It is open, however, for the Commission and the three parties to agree before the election a fair mode of breaking such a tie, which could be a toss of the coin (for a tie between two candidates) or the drawing of lots (for a tie between more than two candidates) conducted openly by the Commission in front of the candidates concerned and the agents. *The Code now includes the following agreed provision, which will apply in this eventuality:*

- "1. The National Electoral Commission will, in the presence of the concerned party's regional executive committee, recheck the spoiled ballot papers that were marked for the candidates who are tied for a seat to see if there are any valid ballot papers that were inadvertently counted as spoiled ballot papers. During the recheck, if valid ballot papers are found, they will then be counted for the candidate that they were marked for. If, however, the recheck process does not produce a clear winner, then*
- 2. The National Electoral Commission will openly conduct a drawing of lots between or among the candidates to determine who wins the tie seat. This will be done in front of the concerned party regional executive committee, Election Monitoring Board, media, etc."*

<sup>29</sup> *The Code adds that further elaboration on the allocation of such seats shall be provided when the National Electoral Commission undertakes the inspection of the polling stations in late June and early July 2005, and then, using the information gathered by NEC, the three political parties and the NEC shall devise a joint solution on the allocation of seats in these districts or regions.*

<sup>30</sup> Seats are only allocated to the electoral regions and not to the districts, let alone to polling stations and this Clause simply confirms that the votes cast for the three parties in the region where the election has taken place will decide the allocation of seats as between the parties in the whole region. This is clear enough, and strict adherence to the consultation process with all the three parties set out in Clause 5 of this Article should minimise disagreements.



total number of seats allocated for each region and the names shall be written in a numbered order.

2. As set out in Article 22 of the Constitution<sup>31</sup>, the Parties shall respect the electoral rights of citizens and their right to participate in political activities, and citizens may not be treated differently<sup>32</sup> on the basis of their ethnicity, language, etc. The Parties must also encourage the participation of women and minorities in the affairs of the country as set out in Article 36(2) of the Constitution<sup>33</sup>.

#### Article 14: Successful Candidates

1. The candidates in the parties' lists who are unsuccessful in gaining seats shall remain as reserve candidates and shall have the right to fill<sup>34</sup> any seat in the House of Representatives vacated by members of their party.
2. When a member (or members) of the House of Representatives vacates a seat in line with the reasons set out in Article 50 of the Constitution<sup>35</sup>, and the Chairman (Speaker) of the House so declares, the Commission shall substitute, within a period of no more than two weeks, the departing member with a reserve candidate of the same party on the basis of the total votes<sup>36</sup> the reserve candidate has gained.

### PART III: CANDIDATES

#### Article 15: Conditions Relating to Candidates

<sup>31</sup> " Article 22: Political, Economic, Social and Electoral Rights

Every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution.

Every citizen who fulfils the requirements of the law shall have the right to be elected (*to a public office*) and to vote."

<sup>32</sup> This Clause also echoes Article 8 of the Constitution which states that "all citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion etc." and that "Precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited...."

<sup>33</sup> "Article 36: The Rights of Women

1. The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Islamic Sharia.

2. The Government shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their person and dignity. ..."

<sup>34</sup> Subject, of course, to the total number votes they received.

<sup>35</sup> "Article 50: Loss of Membership of the House of Representatives

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

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

"Article 51: Filling Vacant Seats in the House of Representatives

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

<sup>36</sup> The comments relating to a tie of votes set out in the note to Article 12(4) apply equally to this situation. *In such a situation, the Code now says that same mechanism for breaking the tie under Article 12(4) shall be used in these circumstances as well.*

As set out in Article 41 of the Constitution, anyone standing for the House of Representatives' election must fulfil the following conditions:

He must be a patrial citizen of Somaliland or a naturalised citizen in accordance with the Law<sup>37</sup>.

1. He must be a Muslim<sup>38</sup> and must behave in accordance with the Islamic religion.
2. He must not be less than 35 years of age during the year when the election is being held.
3. He must be physically and mentally able to fulfil his duties.
4. He must be educated to at least secondary school level or equivalent.
5. He must be a responsible person with appropriate character and behaviour.
6. He must not have been the subject of a final sentence for a criminal offence by a court within the preceding five years.
7. He must confirm in a note signed by him his candidacy for the election and that he will comply with the electoral laws and the codes of conduct.
8. He must pay the necessary candidate's deposit<sup>39</sup>.

#### **Article 16: Conditions Relating to Candidates**

1. The Chairman or the General Secretary of each party shall forward the party's regional lists of candidates for election to the House of Representatives to the Commission office by six o'clock in the afternoon (6 p.m.) of the day which is 60 days<sup>40</sup> before<sup>41</sup> the polling date. The lists must indicate clearly the four names<sup>42</sup> of each candidate<sup>43</sup>, his age and the region in which he is contesting a seat. If there are candidates whose full names are identical, then their nicknames (if any), as well as their full four names should be used.

<sup>37</sup> Somaliland Citizenship Law – Law No. 22 of 2002.

<sup>38</sup> This Clause is a constitutional requirement and appears in Article 41 of the Constitution and, incidentally in other articles of the Constitution. Examples are Clauses relating to office holders such as membership of the House of Elders (Article 59); appointments as Ministers/Deputy Ministers (Article 94(5)) and presidential candidates (Article 82(2)). All of these clauses are likely to be regarded as questionable under, for example, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the African Charter on Human and Peoples' Rights which confirm that the rights and freedoms in both international instruments shall be enjoyed "*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". However, Article 8(1) of the Constitution which sets out equality of citizens covers all these grounds, but leaves out religion.

<sup>39</sup> See Article 21 for the amount of the deposit.

<sup>40</sup> The similar period in the 2001 Election Law was 45 days.

<sup>41</sup> On the whole, where any act must be done not less than a certain number of days 'before' or 'after' an event, the date of the event is excluded from the calculation. So, for example, if the polling date is, 30th June, the deadline for submitting the list of candidates is 1 May.

<sup>42</sup> The patrilineal nomenclature of Somalis means that a full name (be it male or female) consists of the (first) name of the person followed by the (first) name of his/her father and then the (first) name of his/her grandfather. The fourth name will be that of the great grandfather.

<sup>43</sup> *The Code now covers the situation where a candidate dies or becomes incapacitated between the submission of his name to the NEC and the polling day, in which case, the following provisions shall apply:*

- "1. If, after the period established by the law to present the candidates and before 14 days before the voting day, a candidate's position becomes vacant due to the above-mentioned reasons, then the parties have the right to replace that candidate. However there shall be no change to the ballot paper and the replacing candidate will use the name and the symbol of the replaced candidate. When the final election results are announced, the replacing candidate's name will appear in all official election documents.*
- 2. If, however, the position becomes vacant less than 14 days before the election date then the party can not replace the candidate. However, if there are any votes for the vacant position then they will be counted for the concerned party."*

2. The lists of candidates of each party forwarded to the Commission shall be accompanied by the following:
  - a) Evidence of the state of health, absence of criminal convictions, education, resignation from public service appointments (if relevant), etc. of each candidate.
  - b) Four copies of the lists which show clearly the symbol of the party.
  - c) Declaration by each candidate to the effect that he accepts his candidacy and that he shall comply with the law and the codes of conduct of the elections.
  - d) The Resolution of the Executive Committee of the party endorsing the list of candidates.
  - e) Receipts issued by the Ministry of Finance for payment of the candidates' deposits<sup>44</sup>.
3. Any disagreements within a party relating to the selection of the candidates or the submission of the list of candidates shall be resolved by the Executive Committee of that relevant party.

#### **Article 17: Checking the Eligibility of Candidates**

1. The leadership of a party must take note of the national interest when they are selecting candidates and shall ensure that the candidates fulfil the fundamental conditions set out in the law, are able to execute properly the responsibilities they are competing for and can enhance the reputation and worth of the party and the nation.
2. The Commission shall, for its part and independent of others, verify that candidates submitted to it fulfil the (necessary) conditions. If the Commission is satisfied that a candidate (or candidates) in a list does not fulfil a (relevant) condition or conditions, it shall ask, within three days<sup>45</sup>, the party that submitted the list to ensure that the relevant conditions be met or that a substitute candidate be submitted within a specified period.

#### **Article 18: Symbols of the Lists of Candidates**

1. The symbols shown in the lists of candidates submitted by the parties shall be different from each other.
2. No party may use a symbol which has been used previously in an election by another party.
3. Symbols shall be unique and shall show a recognised sign<sup>46</sup>, but shall not show a governmental, tribal or sectarian sign.

#### **Article 19: Privileges of the Commission, Candidates and Officeholders**

Candidates for the election of the House of Representatives whose candidacy has been publicised by the Commission shall not be detained during the elections unless they have

<sup>44</sup> See Article 21 for the requisite deposits.

<sup>45</sup> It unclear as to when this three-day period will start, but it is likely to be the date when the Commission is satisfied that a candidate in a list does not fulfil a necessary condition.

<sup>46</sup> The symbols used by the three parties are as follows:



been caught *in flagrante delicto* in respect of an offence<sup>47</sup> punishable by imprisonment for three years or more.

#### **Article 20: Publicising the Lists of Candidates**

1. The Commission shall publish the list of candidates for each region and shall ensure that the various symbols of the parties are shown clearly.
2. The Commission shall ensure that every polling station receives copies of the (relevant) lists of candidates for the region so that they can be displayed in all the polling stations of the region.
3. The Commission and its offices shall distribute formally 45 days<sup>48</sup> before the polling day the parties' lists of candidates by using the various types of media, and shall at the same time take all measures<sup>49</sup> to ensure that the public, wherever they are, are able without hindrance to see the lists of competing candidates.

#### **Article 21: Deposit**

Candidates competing for membership of the House of Representatives shall pay non-refundable deposit<sup>50</sup> of Sl.Sh. 1,000,000, at the Inland Revenue Office of the Ministry of Finance.

### **PART IV: ELECTION CAMPAIGNS**

#### **Article 22: The Beginning and End of the Election Campaign**

The election campaigning shall start when the Commission declares that the election campaign is open, 30 days before the polling day, and shall finish 24 hours before the polling day<sup>51</sup>.

#### **Article 23: The Holding of Demonstrations**

1. Party officials who are organising public demonstrations relating to the election campaign shall inform the relevant town mayor<sup>52</sup> in writing 48 hours before the planned event.

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<sup>47</sup> Note also that Article 21 of the 2001 Election Law adds that any offences committed "shall be pursued after the election has taken place and the person is relieved of his responsibilities." The Article also extends the same privileges to electoral officeholders and party agents.

<sup>48</sup> This period was 30 days in the 2001 Election Law.

<sup>49</sup> Article 27 of the 2001 Election Law suggests displays at public meeting places, notice-boards, and local government offices, and also publicity through loudspeakers transported around the streets, and, if possible, through radio broadcast or publication in the press.

<sup>50</sup> This amount is the same as that payable for Presidential elections (see Article 25 of the 2001 Election Law).

<sup>51</sup> Under Article 28 of the 2001 Election Law, campaigning was to close 48 hours before the polling day.

<sup>52</sup> More appropriately, the Chairman of the District, as Mayors are known under the Regions and Districts Law (Law No. 23 of 2002). The 2001 Election Law also imposed an obligation to inform the local police station (Article 29). *The Code adds that:*

*"The mayors shall prepare and publish a schedule of planned rallies and demonstrations for the three political parties during the campaign period. Furthermore, the schedule shall allocate equal number of days to the political parties for organising rallies, demonstrations, etc. Copies of the schedule must be sent to the NEC and to the parties at least 15 days before the start of the campaign period.*

*The political parties shall inform the mayors 48 hours in advance of their intention to proceed with scheduled events (rally, demonstration).*

2. If two or more demonstrations are requested and planned to take place on the same day, the town mayor may order them to be held at different times. The town mayor may ban the holding of demonstrations if he is satisfied that they may damage the health, morals or public order<sup>53</sup> etc., and it is incumbent on him to order that these demonstrations may be held at a place or time specified by him.
3. No more than one demonstration<sup>54</sup> can be held in a town or a village in any one day.

#### **Article 24: Display of Posters**

Election campaign posters and leaflets<sup>55</sup> shall not be affixed to mosques, government offices and transport, the premises of foreign diplomats or those of international organisations, etc.

#### **Article 25: Conduct of Assemblies and Demonstrations**

In election campaign meetings and demonstrations held by the parties to attract the support of the voters, it is forbidden:

1. to carry weapons or wear military or similar uniforms;
2. to hold such campaigns or demonstrations near venerated sites, such as mosques, or other unsuitable places, such as schools, hospitals, etc.;
3. to utter speeches or show displays intended to damage the culture, religion, peace and public order, etc. or, in the same way, intended to damage a clan, a district, etc.; *and*
4. to use public property, of whatever kind, for the benefit of a candidate or a party.

#### **Article 26: Use of Public Resources**

1. The national parties shall have equal access to the government owned media<sup>56</sup> and to the use of the public assembly grounds<sup>57</sup> during the election campaign. The Commission,

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*Any party that has been denied by a mayor the right to hold demonstration has the right to appeal to the National Electoral Commission."*

<sup>53</sup> These are the standard grounds for justifying derogation from rights of assembly and expression and are also set out in Article 25(4) of the Constitution, as well as international instruments such as Articles 21 and 22 of the International Covenant on Civil & Political Rights which say that any restrictions on freedoms of assembly and association must be laid down by law and must be "... necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health and morals or the protection of the rights and freedoms of others." It should be noted, however, that any such decision of the Mayor can be challenged at the Supreme Court under its general power to review administrative decisions if it is considered to be unlawful or unreasonable. *The Code now states that "any party that has been denied by a mayor the right to hold a demonstration has the right to appeal to the National Electoral Commission."*

<sup>54</sup> The 2001 Election Law set a maximum of two demonstrations in any one day (Article 29(1)).

<sup>55</sup> Although both this Law and the 2001 Election Law include this provision, the obligation to submit such posters and leaflets to the town mayor 48 hours before they are displayed which was in Article 30(1) of the 2001 Election Law has not been repeated in this Law. The Supreme Court ruling on 26 February 2005 to the effect that the provisions of the 2001 Election Law be read across was limited only to the articles of this Law which the Court declared invalid in its ruling (which have all now been replaced) and in which, according to the Court ruling, the importation of the 2001 provisions was necessary for the conduct of the election activities. It is submitted therefore that any application of the 2001 Election Law to the House of Representatives election must pass this test. The need to submit posters and leaflets to the mayor is not, in my view, one that can be read across to this Law as it neither relates to the articles declared void by the Court, nor is it necessary for the conduct of the election.

<sup>56</sup> For example, Radio Hargeisa, which is controlled by the Government and the daily paper, Maandeq. *The Code states that the NEC shall put in place the the following enforcement mechanisms to ensure compliance with the electoral law and procedures.*

"1. Use of Government Mass Media

a) Radio Hargeisa Broadcast During the Campaign Period

in consultation with the parties and the Ministry of Information, shall undertake the allocation of the requisite hours (for each party).

2. No party may use for its own purposes the property<sup>58</sup> of the nation.
3. No party may use directly or indirectly property owned by foreigners, such as that of foreign NGOs and that of the UN agencies.

*Implementation Mechanism:*

*Stage one: Daily Monitoring of Radio Hargeisa Somali Language Broadcast*

*The National Electoral Commission will monitor and record daily Radio Hargeisa Somali language broadcast. The mechanism for monitoring Radio Hargeisa Somali service broadcast is detailed in Annex 3 of this Code.*

*Stage two: Allocation of equal Radio Hargeisa air time for the three political parties*

*The National Electoral Commission will in consultation with the Ministry of information allocate equal airtime to the three political parties in line with the provisions of the airtime equal access schedule in Annex 4.*

*b) Maandeeq and Horn Tribune Newspaper: The National Electoral Commission will make the following two arrangements in respect of Maandeeq.*

1. *Monitoring, on a daily basis, the content of Maandeeq and Horn Tribune newspapers*
2. *Allocation of equal space in Maandeeq and Horn Tribune to the parties*

*The details of this arrangement are in Annex 5 of this Code.*

*c) Privately owned Media: The privately owned media shall also provide equal access of the media to the political parties who are prepared to purchase space in the private newspaper. No party shall be discriminated against in terms of this access. This provision shall also be included in the media Code of Conduct and the Media Guide shall clearly state the need for objective and balanced reporting on the part of the media.”*

<sup>57</sup> All towns and villages in Somaliland have designated open air public assembly points used for large assemblies, parades and demonstrations.

<sup>58</sup> *The Code adds the following:*

*“The National Electoral Commission shall establish an Election Monitoring Board that will ensure that the three parties have equal access to the Public funds, Government owned mass media and Public Assembly Grounds. The Board members representing a cross-section of the society will be chosen on the basis of their moral authority (distinguished religious figures), academic qualifications, work experience, etc. The members will include academicians, former senior public finance officers, civil society members, etc. The Terms of Reference for the Board of Monitors are in Annex 3 of this Code. The Board will perform its tasks under the overall direction and supervision of the National Electoral Commission.*

*In order to enable the Board members to carry out their responsibilities effectively, the following prerequisites must be obtained.*

- *Presidential Decree directing government officers to cooperate fully with NEC and any other body established by NEC to assist it in carrying out its national duties.*
- *Presidential Decree officially prohibiting the use of government vehicles, etc. for use of campaigning and affixing of party emblem, logos, slogan, etc., on government offices, premises and vehicles*

*It shall be the responsibility of the National Electoral Commission to obtain from the President the above-mentioned Decrees.*

*In order to ensure the effectiveness of the Board, NEC will grant the Board the authority to investigate on its behalf any violation of the electoral law and the Code of Conduct and, if they deem it necessary, to recommend to the Commission a course of action to be taken against the offender.*

*During the election period, the government Ministers are not allowed to use government vehicles for campaigning for the party that they belong to.*

*Civil servants are also not allowed, in accordance with the civil service law, to publicly campaign for a party. Doing this will be considered as a serious contravention of the election management process and NEC may initiate appropriate disciplinary action against the culprit(s).*

*To enhance the trust and confidence among the parties and to create a climate conducive to the smooth and efficient conduct of the election, it is necessary that the government refrain from any action that might be construed as an abuse of power. Likewise, it is necessary that political parties refrain from any action that may be construed as being detrimental to the peace and stability.”*

**Article 27: Movement of Transport at Polling Day**

1. Except for essential transport, such as those needed for public order, ambulances, water carriers, trucks with lifting equipment needed for electric pylon repairs etc., which will all be given permission<sup>59</sup> to move, no other public/government and private transport shall be allowed to move during the polling day from six o'clock in the morning (6 a.m.) to eight o'clock in the evening (8 p.m.).
2. The Commission shall issue travel permits and a distinct sign that can be recognised to persons involved in the conduct of the election and to the senior officials of the parties.
3. The Commission shall inform the public through the media, seven days before the polling day, of the ban on the movement of transport during the polling day, and any transport that contravenes the ban set out in this Article shall be dealt with in accordance with the Law<sup>60</sup>.

**Article 28: Agents of the Parties**

1. The Executive Committee of each party may send two agents<sup>61</sup> who have the right to vote to any polling station where its candidates are standing for election and to any district, regional or national electoral offices. Each party may also send substitutes, if the agents are absent.
2. Agents sent by the parties shall be present when the electoral offices are conducting electoral activities, and shall submit their concerns or requests for clarification (if any), which shall be recorded.
3. The names of the agents of the parties shall be submitted to the Commission or its offices 21 days<sup>62</sup> before the polling day. The Commission or its offices shall issue each agent with an accreditation or written permission allowing him access into and freedom to exercise his duties at the polling station or electoral office to which he was assigned.

**Article 29: Conditions Relating to Party Agents**

The agents assigned by the parties to the polling stations or the electoral offices shall fulfil<sup>63</sup> the following conditions<sup>64</sup>:

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<sup>59</sup> *The Code adds:*

*"The NEC is the only body authorised to grant permission for the circulation of vehicles during the election day. In accordance with the electoral law, the NEC will inform the public through the media and through its regional and district offices of the ban on movement of vehicles during the voting day. The NEC will also make it publicly known that any person who violates the ban will be dealt with in accordance with the law."*

<sup>60</sup> At the very least this could lead to a prosecution under Article 505 of the Penal Code which states that the failure to observe an order given lawfully by a public authority in the interests of justice, public security, public order or hygiene shall be punishable (unless the act amounts to a more serious offence) with imprisonment of up to three months or a fine of 3,000 Shillings (at the 1960s rate).

<sup>61</sup> In contrast, Article 32(1) of the 2001 Election Law gives the parties the right to send only one agent. *The Code adds that:*

*"Parties may, if a need arises, substitute their agents provided that the substitutes are the reserve agents that were trained. The parties further agree that the Party agents at the polling stations cannot be candidates at the election."*

<sup>62</sup> Ten days in the 2001 Election Law (Article 32(3)).

<sup>63</sup> *The Code adds: "The NEC shall draft detailed terms of reference for the party agents, which shall form Annex 2 of this Code of Conduct."*

1. He shall be a patrial citizen of Somaliland.
2. He shall be not less than 25 years of age in the year when the election is taking place.
3. He shall be able to read and write.
4. He shall a responsible and well-behaved person.
5. He shall be trained by the Commission in the duties of an agent.

## **PART V: PREPARATION FOR AND MANAGEMENT OF THE ELECTION**

### **Article 30: Total Membership of the Commission<sup>65</sup>**

**REPEALED**

### **Article 31: The Schedule of the Electoral Activities**

1. Without prejudice to the duties and powers<sup>66</sup> of the Commission as set out in the Election Law (Law No. 20/2001), it shall also be the duty of the Commission to publish

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<sup>64</sup> The Commission may wish to add as part of its code of practice that agents must not be candidates at the election, which is a sensible condition usually found in electoral laws. *The Code now covers this point – see footnote 59 above.*

<sup>65</sup> Shortly after signing this Bill into Law on 12 April 2005, the President asked the House of Representatives to repeal this Article. This caused considerable controversy as this Article was not one of the provisions affected by the Supreme Court ruling. As the Law (including this Article) was passed by two thirds of both Houses previously, this meant that the President could not, under Article 77 (4), refer it back to the House. The House resisted the President's direct referral, but, on 24 April 2005, 40 members of the House adopted the proposal as their own motion and tabled that the deletion of Article 30 be accepted. After a very short debate, the motion was passed, even though 20 members left the House in protest before the matter was put to the vote. In my view, as this was in effect a new Bill amending a an existing Law, it should have been forwarded to the second parliamentary chamber (the House of Elders) under Article 77(1) and 78(1) of the Constitution, after which the President would sign it before it became Law and this Article was repealed. It is of course unusual for an amendment to be tabled so soon after a Law has been passed. However, the view of the Government was that a referral to the House of Elders was unnecessary as this amendment formed part of the Bill, as a whole, which had already been considered by the House of Elders, and need not be referred again to the Elders. The President has therefore signed the Amendment and it has now come into force, and so the composition of the Commission remains as set out in Article 11 of the 2001 Election Law. Incidentally, the text of the repealed Article was as follows:

*"In view of the experience gained from the previous elections and the breadth of the responsibilities assigned to the Electoral Commission and taking into consideration the concerns expressed by the national parties and their proposals for improving the electoral activities, it is necessary to amend Article 11(1) of Law No. 20/2001. The following Clause has therefore been added (to the Article):*

*"1. Two members have been added to the total membership of the National Electoral Commission, who shall be selected as follows:*

- a. One shall be selected by the opposition parties, and*
- b. the other shall be selected by the President.*

*The appointment of both members shall be subject to approval by the House of Representatives."*

<sup>66</sup> Article 14 of the 2001 Election Law:

"The Commission shall have the power to:

1. set the date of the elections, and inform the President so that he can issue a Decree;
2. set the number and the location of the polling stations of the districts and the regions;
3. appoint, dismiss, or discipline the staff of the central office and those of the electoral districts and the electoral regions;
4. plan the budget for administering the electoral activities;
5. declare the provisional results of the elections of the President and the Vice-President pending their confirmation by the Supreme Court;
6. inspect the polling stations and any other places connected with their duties either randomly or in a planned fashion;



officially a schedule with timeframes, which sets out clearly the plan of its activities. Copies of the schedule shall be sent to the parties and shall also, at the same time, be publicised in the various media.

2. After the publication of the schedule, any changes to the plan of the activities considered to be necessary by the Commission shall be communicated to the parties and shall, at the same time, be publicised in the media.

### **Article 32: Electoral Officeholders**

Without prejudice to the matters set out in Articles 19 and 20 of the Election Law (Law No. 20/2001)<sup>67</sup> which relate to officeholders, it shall be the duty of the Commission to:

1. check thoroughly that the officeholders entrusted to undertake the heavy responsibilities of the election are proficient and able to fulfil these responsibilities;
2. provide the officeholders with adequate training and, at the same time, ensure that the officeholders can fulfil their duties properly, before the polling day;
3. prepare transport for undertaking the activities and communications equipment for the electoral offices and the inspectors<sup>68</sup>.
4. If the need arises, the Commission shall have the power to increase the number of officeholders at the polling stations and the district and regional electoral offices.

### **Article 33: Contracts for Provision of Electoral Equipment and Materials**

1. To avoid corruption, personal interests and injustice, the Commission shall offer contracts for the supply of electoral equipment and materials through competitive tendering.
2. The Commission shall enter into a comprehensive agreement with the successful bidder, which shall set out clearly the details of the contract, the period and the time for the supply of the equipment and materials, the method of payment, etc.
3. Members of the Commission or their families or businesses shall not be awarded such contracts, nor shall they benefit in any other way from their responsibilities<sup>69</sup>.

### **Article 34: Electoral Offices' Equipment/Materials**

1. The National Electoral Commission shall prepare for each polling station the following equipment/materials<sup>70</sup>:

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7. adjudicate on the disagreements relating to the elections, which have been forwarded to them by their electoral offices;
  8. conduct research into how the country can have polling stations where candidates can compete for votes;
  9. register voters before the date of the election."

<sup>67</sup> These two Articles set out the conditions for the appointment of electoral officeholders and their allowances.

<sup>68</sup> Inspections are the responsibility of the Electoral Commission under Article 14(6) of the 2001 Election Law, and can presumably be carried out also by members of the Central, District and Regional Electoral Offices who are all empowered to fulfil the election activities, in general: see Articles 17(4) and 18(2) of the 2001 Election Law.

<sup>69</sup> Commissioners are public officers under Article 21(1) of the 2001 Election Law and also fall within the category of public officers under Article 240 of the Penal Code and are, therefore, covered by crimes such as peculation (Article 241), misappropriation (Article 242), corruption (Article 245), abuse of office (Article 250), etc. Note, however, that Commissioners enjoy privileges under Article 21(4) of the 2001 Election Law, and see also Article 63 of this Law dealing with allegations against the Commissioners.

- a) A copy of this Law.
- b) A sealed container which has in it the stamp of the polling station as well as ink and a stamp pad.
- c) A sealed container which has in it the ballot papers.
- d) The Registration Book.
- e) A numbered ballot box for the ballot papers.
- f) A four copy notepad for recording the electoral materials.
- g) Three forms for recording the voting activities.
- h) A tabulated form.
- i) Enough red ballpoint pens for marking the ballot papers.
- j) At least five printed posters showing how voters can mark the ballot papers.
- k) A box of candles and matches for use in places where there is no electricity or if required.
- l) The various stationery items that may be required.
- m) Eight official forms for recording the results of the polling and for signature by the Chairman of the polling station and three party agents<sup>71</sup>.
- n) Plastic cover or tent for covering the polling station electoral materials so as to prevent them from getting wet in the event of rain.

#### **Article 35: Getting Electoral Equipment/Materials Ready**

1. The Commission shall prepare for every District/Regional Electoral Office the following materials:
  - a) A copy of this Law.
  - b) A sealed container which has in it the stamp of the District or Regional Electoral Office as well as ink and a stamp pad.
  - c) A four copy note pad for recording the electoral activities at the district or regional electoral office.
  - d) Tabulation forms.
  - e) Various stationery.
2. The equipment for each electoral office shall be placed in a separate container which shall be locked and sealed. The Commission shall send the equipment and the numbered ballot boxes at the appropriate time to the Regional Electoral Offices which shall forward them to the district electoral offices so that the latter can, in turn, pass them on to the polling stations in their districts.
3. The Commission shall prepare for the District/Regional Offices extra ballot papers kept in sealed envelopes for use by any electoral office that requests them. Such requests must be accompanied by reasons, and the ballot papers shall be handed to the Chairman of the polling station.
4. All the various equipment and materials used for the election shall be guarded carefully, recorded in registers at every place they are kept and returned to the central electoral headquarters at the conclusion of the election.

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<sup>70</sup> One item missing from this list, but which is in the comparable list of equipment/materials in Article 37 of the 2001 Election Law is "a bottle of indelible ink for marking the voters". This is still essential for this election and is an example of one of the provisions in the 2001 Law which can be legitimately read into this Law in line with the Supreme Court ruling as, without voter registration, marking with ink is the only main way of preventing multiple voting.

<sup>71</sup> Presumably one from each of the three parties.

5. A five- to seven- copy notepad<sup>72</sup> for recording the official result of the votes cast in the electoral district, which shall stamped and signed by three party agents and the Chairman of the polling station.

#### **Article 36: Ballot Papers**

1. Ballot papers shall have three equal, parallel and separate vertical columns. Each party shall have its own column with its symbol printed at the top in an upright and rectangular manner. The names of the candidates of each party in each region shall be printed underneath the party's symbol. A blank rectangular box for the voter to mark his choice of a candidate shall be printed in front of the name of each candidate. Each ballot paper shall have a small gummed edge so that it can be sealed.
2. An adequate number of specimen ballot papers for use by the parties shall be printed and distributed to the parties during the election campaign so as to inform and acquaint the public with the voting procedure. The specimen ballot papers shall not have serial numbers.
3. Ballot papers shall contain secret holograms which cannot be forged and shall also have serial numbers.

#### **Article 37: Polling Booth and Ballot Box**

1. Every polling station where voting is taking place shall have two small booths for voters to use when marking the ballot papers.
2. The ballot boxes for holding the ballot papers shall be placed in a visible place at the polling station, which is in full view of the Chairman of the polling station, the other officeholders at the polling station and the party agents.

#### **Article 38: Display of the List of Candidates**

A printed copy of the lists of the names of party candidates running for election at each region shall be displayed in a place at the electoral office or outside the polling station which is clearly visible.

#### **Article 39: Distribution of Electoral Equipment/Materials**

1. Taking into account any unexpected circumstances which might hinder the distribution of the electoral materials, the Commission shall ensure that the materials needed for the election reach each Regional Electoral Office at an appropriate time. The Regional Electoral Office shall, ensure that the materials reach District Electoral Office, at the latest, ten o'clock in the morning (10 a.m.) of the day before the polling day.
2. The District Electoral Office shall ensure that all the polling stations where the voting will take place in its district receive all the necessary materials before five o'clock in the morning (5 a.m.) of the polling day<sup>73</sup>.
3. The Chairman of each polling station shall be issued with:
  - a) A note declaring the names of the polling station officeholders<sup>74</sup>.

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<sup>72</sup> This Clause could have been more appropriately placed in the list of electoral materials set out in Clause 1 of this Article.

<sup>73</sup> This is an hour earlier than the deadline set in Article 41 of the 2001 Election Law.

<sup>74</sup> Articles 16(1) & 16(2) of the 2001 Election Law set out the composition of the Polling Station Office as follows:

- b) A note declaring the names of the agents of parties who shall be present at the polling station.
- c) A note declaring the names of the international and local observers who are working in the district.

#### **Article 40: Getting the Polling Station Office Ready**

1. When the polling station Chairman receives the equipment<sup>75</sup> referred to in the preceding Article, he shall:
  - a) prepare the office and inform the scrutineers and the secretary of their duties and brief them on how they can fulfil their assigned responsibilities;
  - a) ensure that the approved agents of the parties are present;
  - b) having confirmed that the containers are sealed, in the presence of the station officeholders and the agents of the parties, open them and check that the materials are complete;
  - c) having confirmed with the station officeholders and the party agents that the envelopes containing the (polling) station stamp and the ballot papers are sealed, open the envelopes, mark the ballot papers with the polling station stamp and place them neatly in a suitable container. No person, other than those assigned in writing<sup>76</sup> to the polling station, shall be present in the polling station at this stage;
  - d) ensure that the displays setting out the voting procedures and the lists of the candidates are affixed to the assigned places;
  - e) ensure that the necessary equipment assigned for the voting is utilised in the way set out in the Law so that the election activities are carried out properly.
2. He (the polling station Chairman) shall record that all the above activities have been carried out. The record shall carry the stamp of the polling station and shall indicate the total number of ballot papers received by the polling station and the Registration Book.
3. He shall then ensure that all the officers and the agents confirm through their signatures that everything is in place as planned.
4. When the Chairman of the polling station confirms that all the above activities have been carried out, he shall declare that the voting may commence.

#### **Article 41: Powers of the Chairman of the Polling Station**

1. The Chairman of the polling station shall keep order during the election. He may instruct the police to remove a person from the polling station or detain a person who has committed an offence in connection with the electoral activities or a person who is manifestly insane.
2. The police shall not enter the polling station unless ordered to do so by the Chairman.
3. If an unforeseen event arises which may have a detrimental effect on the proper conduct of the election, the Chairman of the polling station has the power to take

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"1. The Polling Station Electoral Office shall consist of a chairman and two scrutineers. The elder of the two scrutineers shall act as deputy chairman. The Office shall also have a secretary.

2. The chairman, the secretary and two scrutineers shall be appointed by the Commission which has the power to transfer them, if that is deemed necessary."

<sup>75</sup> The words equipment (*qalab*) and materials (*agab*) appear to be used in various Clauses either separately or together and sometimes interchangeably.

<sup>76</sup> As set out in Article 39(3) of this Law.

interim measures to resolve the problems and shall record, in writing, the measures taken and forward the record to the District Electoral Office.

4. Police officers and state employees shall fulfil any requests made by the Chairman of the polling station so as to ensure smooth voting and avoid overcrowding around the polling station officerholders' table or in the immediate vicinity of the polling station.
5. The Chairman of the polling station shall have the right to exercise the powers<sup>77</sup> set out in this Article.

#### **Article 42: Order at the Polling Station**

1. Only officeholders working at the polling station, agents of the parties and voters casting their votes may enter the polling station<sup>78</sup>.
2. It is forbidden for anyone, other than the forces keeping the peace at the polling station, to carry weapons at the polling station.
3. Voters shall form queues and only one person at a time may proceed to the polling booth. Voters shall move in the order of their arrival (in the queue), but a person may be allowed to proceed ahead if there are any special circumstances relating to him or he is a person working on electoral activities and wishes to cast his own ballot.

#### **Article 43: Persons who can not Vote**

1. Only voters who attend the polling station in person<sup>79</sup> may place their votes in the ballot box.
2. If, because of physical incapacity or age or other reason, a person in the polling station is not able to cast his vote, the Chairman of the polling station may mark the ballot for him in the presence of the party agents<sup>80</sup>.
3. The Secretary<sup>81</sup> of the polling station shall record the reason why the person was allowed to be helped in casting his vote and the record shall also show the name(s) of the person and that of his helper<sup>82</sup>.

#### **Article 44: The Voting Procedure**

1. On completion of the activities set out in Articles 40 and 42 of this Law (*and those set out in Article 45 of the 2001 Election Law*)<sup>83</sup>, the Chairman of the polling station shall

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<sup>77</sup> See also the additional power of the Chairman set out in Articles 44(6) and 44(7) and relating to persons who may loiter inside the polling station or those who possess additional ballot papers.

<sup>78</sup> This Clause which mirrors Clause 44(1) of the 2001 Election Law seems to overlook the fact that observers and inspectors may need to enter the polling stations for observation and inspection.

<sup>79</sup> This confirms that the Law does not allow any postal or proxy votes.

<sup>80</sup> In Article 46(2) of the 2001 Election Law, the Chairman, in these circumstances, may allow another voter who is trusted by the incapacitated person to help him cast his vote.

<sup>81</sup> Under Article 16 of the 2001 Election Law, the polling station officeholders shall consist of a Chairman, two scrutineers, one of whom shall act as a Deputy Chairman, and a Secretary.

<sup>82</sup> The helper will now always be the Chairman of the polling station, as set out in Clause 3 of this Article, and it appears that Clause 3 simply repeated the wording of the corresponding Clause 46(3) of the 2001 Election Law.

<sup>83</sup> The 2001 Election Law includes another activity to be carried out before a ballot paper is handed to a prospective voter and that relates to ascertaining the voter's identity and eligibility to vote. When this Law was initially passed by the two Houses, it set out a voter registration system which was deleted after the Supreme Court decision. It is possible, therefore, that this may be the reason why the provision relating to the procedure for checking eligibility at the polling station, which is in the 2001 Election Law, was left out from this Article. The Supreme Court ruling to the effect that any shortcomings relating to its decision can be remedied

hand the voter a ballot paper which has the polling station stamp affixed to it and which has been detached from its remaining counterfoil.

2. The voter shall then enter the small booth where he will mark<sup>84</sup> the ballot paper and fold it.
3. Using a red ballpoint pen provided by the Secretary of the polling station, the voter shall put his mark (on the ballot paper) in the blank rectangular box in front of the name of the candidate he is voting for. The voter shall then fold the ballot paper, seal the gummed edges together and place it in the appropriate ballot box.
4. When the voter puts his ballot in the box through its opening, he must leave the polling station after the Chairman of the polling station has checked that the voting ink stain on the voter is clearly apparent<sup>85</sup>.
5. If the voter notices before he casts his vote that the ballot paper he was given is incomplete or damaged, he shall return it and ask the Chairman of the polling station for a replacement. Such an incident shall be recorded in writing.
6. The Chairman of the polling station shall have the power to eject from the station and to confiscate the ballot paper of any voter who, without any excuse, loiters at the station. Any such ejected voter may be allowed to vote after all the other waiting persons at the polling station have cast their votes.
7. If any voter is found to have additional ballot papers or ballot papers which are different from the ones used for voting or who has voted previously, the Chairman of the polling station shall order promptly that the voter be detained and handed over to the police so that he can be taken to court<sup>86</sup>. Such an incident shall be recorded in writing.

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by following the relevant provisions of the 2001 Election Law means, therefore, that another activity to be completed before a person is given a ballot is as described in Article 45 of that Law and is as follows:

"1. A voter may cast his vote after:

- a) he has given the particulars of his name, age and identification;
- b) his right to vote has been verified and he has fulfilled the voting conditions after his identification, including any documents he is carrying, other witness statements or any other means of proof, have been checked promptly;

2. Indelible ink shall be marked on the little finger nail of the voter's left hand. If he has no left hand, then the right-hand little fingernail shall be marked, and if he has no hands, then a visible part of his body shall be marked."

<sup>84</sup> *The Code adds the following:*

*"This Article (44(3)) is very specific and restrictive in terms of where the voter can put his/her mark in the ballot paper. Given the fact that a large percentage of the people are unable to read or write, the probability of disenfranchising a lot of voters due to high rate of illiteracy cannot be ruled out. To avoid this situation the parties have agreed to the following, which is in line with the practice that was used in earlier elections.*

*The voter is allowed to put his/her mark on the ballot paper anywhere within the row that is designated for each candidate.*

*Any mark, be it a dot, cross, tick, sign, etc., is acceptable so long as it is clearly within the row.*

*If a voter's mark spills over to an adjacent row then neither of the two candidates gets the vote.*

*However, the vote shall be counted for the party of the candidates whose votes were counted as invalid.*

*If the Mark spills across two party columns, then that vote is treated as being an invalid vote."*

<sup>85</sup> The corresponding Article 47(4) of the 2001 Election Laws adds that "If the ink stain is not so apparent, it shall be applied again so as to show that the person has already cast his vote".

<sup>86</sup> Note Article 64(3) of this Law which introduces a controversial, and in my view, unconstitutional power of the Commission to impose fines on individuals, but in this case it is the courts that will deal with this offence. I have repeatedly recommended since the first Election Bill was published in 1999/2000 that the Electoral Laws

8. It shall be the duty of the Chairman of the polling station and the three party agents to verify that every ballot paper has the stamp (of the polling station) affixed to it.

**Article 45: Period of the Voting**

1. Voting shall be completed within one day, beginning at six o'clock<sup>87</sup> in the morning (6 a.m.) and finishing at six o'clock in the evening (6 p.m.). However, electoral officeholders and party agents must be present at their assigned stations an hour before the voting starts.
2. If at the finishing time for the voting there are voters who are still queuing and have not yet voted, the finishing time shall be disregarded and voting shall continue until all such waiting voters have cast their votes.

**Article 46: Complaints at the Polling Station**

The Chairman of the Polling Station shall reach decisions about the complaints or arguments (if any) arising out of the electoral activities at the station, including any submitted to him orally or in writing. These complaints and arguments shall be recorded in writing.

**Article 47: Preparations for the Counting of Votes**

1. After all the voters in the queue have cast their votes, the Chairman of the (polling) station shall announce loudly that the voting has finished.
2. Having ensured the presence of polling station electoral officeholders and the agents of the parties, the Chairman of the polling station shall collect from the table all the papers and equipment which are not necessary for the count, and shall start the following activities:
  - a) Confirm the total number of voters by comparing the total number of ballot papers issued with the total number of voters recorded in the register.
  - b) Collect and count all the ballot papers that have not been used and place them in the first envelope.
  - c) Confirm the total number of damaged<sup>88</sup> ballot papers which were returned by the voters or were seen to be so<sup>89</sup>, and place them in the second envelope.
  - d) The Chairman of the polling station and the three party agents and the head of the security at the station shall jointly sign the Registration Book of the polling station and shall declare that the voting took place and was completed in an orderly manner.

**Article 48: Procedure for Counting of the Votes**

1. When the Chairman of the (polling) station has completed the preparation activities set out in Article 47, he shall start the count of the ballot papers in the ballot box. To enable this, a Scrutineer shall remove from the ballot box one ballot paper<sup>90</sup> at a time, which he shall pass on to the Chairman. The Chairman shall unfold each ballot paper and announce loudly (the name of) the party/candidate who gained each vote. The ballot paper shall then be passed by the Scrutineer to the second Scrutineer who shall show it

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should include specific electoral offences, as the Penal Code does not cover all the likely offences that may be committed in connection with elections.

<sup>87</sup> It was seven o'clock in the 2001 Election Law (Article 48).

<sup>88</sup> See Article 44(5) of this Law.

<sup>89</sup> Presumably by the polling station officeholders before the ballot papers are handed to the voters.

<sup>90</sup> It was two ballot papers at a time in the corresponding Article 51 of the 2001 Election Law.

to the agents of the parties. The Secretary shall then record the vote in the appropriate tabulated form which relates to the party for which the vote was cast and shall place the ballot paper in a secure box which has the symbol of the same party on it.

2. No ballot paper shall be removed from the ballot box while the preceding ballot paper is still being processed and has not been placed in the (appropriate) box. Only the officeholders of the (polling) station shall manage these tasks, but the party agents shall pay particular attention to the counting activities and shall satisfy themselves of each vote.
3. When the Chairman of the (polling) station completes the count, he shall confirm the total number of ballot papers and reconcile it with the total number of votes cast for all the parties as well as the total number of votes noted in the Registration Book. He shall also add to that the total number of disputed ballot papers or incorrect ballot papers which have been recognised as being void<sup>91</sup>.
4. When the Chairman of the (polling) station completes these activities, he shall place in the third envelope the incorrect ballot papers or those which were considered to be void and/or disputed ballot papers, as well as the records of any complaints or claims.
5. The Chairman of the (polling) station shall finally place in the fourth envelope the counted ballot papers in their separate bundles.

#### **Article 49: The Closure of the Counting Activities**

1. When the Chairman of the (polling) station completes the counting activities set out in Article 48, he shall declare publicly the total number of voters, the total correct votes, the number of void votes and the total votes cast for each party.
2. The envelopes shall then be sealed, and shall have affixed to them on the outside the stamp of the polling station and the signatures of the Chairman of the (polling) station, and those of at least one of the scrutineers and of all the agents of the parties which have candidates standing for election at the polling station.
3. If a party agent<sup>92</sup> refuses deliberately or argues against or refrains from signing the outcome of the vote at the polling station, it is sufficient to have the signatures of the agents of the other two parties and the signatures of the polling station officeholders, so as to avoid the loss of the votes cast by the citizens. This will not affect the legality of the activities, but the complaint shall be recorded.
4. If, however, two or more party agents refrain from signing because of complaints they may have, their complaints shall be forwarded to the District Electoral Office within a period of no more than 12 hours so that a decision can be made. Such an event shall be recorded.
5. The details of the materials in each envelope shall be noted on the outside of each envelope.
6. The counting activities shall be completed as set out (above) in a continuous manner and without any interruptions or engagement in other activities until their completion.

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<sup>91</sup> See Article 50 below for invalid votes.

<sup>92</sup> *The Code adds that "in the remote but possible situation of party agents from two political parties who have been present at the polling station and who deliberately refuse or disappear from the polling station before the signature of the outcome of the vote", the following shall apply: "in order to avoid the loss of votes cast by the citizens, the signature of only one party agent and the signatures of the polling station officeholders shall suffice. However, the reasons for such an event shall be recorded".*



7. The written records shall show clearly the activities set out above and each party agent shall take a copy<sup>93</sup> of the polling station voting result forms which have been signed by all and stamped.

#### **Article 50: Incorrect or Disputed Votes**

1. When the ballot papers are being counted, the following shall be considered as void:
  - a) If they are different from the ballot papers which the Commission has chosen for use in the election.
  - b) If they do not have the stamp of the polling station affixed to them.
  - c) If the ballot paper is damaged or is incomplete.
  - d) If the ballot paper contains any writing or signs or impressions which were not intended to be made on it.
  - e) If the ballot paper does not show clearly the party/candidate for which the vote was cast and this can not be ascertained.
  - f) If the ballot paper shows that the voter has marked the symbols of more than one party/candidate.
  - g) The ballot papers which are recognised as being void as set out in this Clause (a - f) shall not be included in the total number of valid votes and hence shall not be added to the count of votes for the parties.
2. A vote may become void when the all the officeholders of the polling station so resolve unanimously. If, however, there is no such unanimous resolution and there is disagreement, the relevant ballot paper shall be recognised as a disputed one.
3. The District Electoral Office may reach decisions about disputed ballot papers.

#### **Article 51: The Written Records of the Polling Station**

1. The written records of the polling station shall be kept in the appropriate forms consisting of eight copies<sup>94</sup> each, which were designed by the Commission.
2. Two sets of the written records shall be placed in the same container which holds the sealed envelopes referred to in Article 49 (of this Law) and which shall be forwarded to the District Electoral Office. The third set, together with the various remaining election materials, shall be forwarded to the Chairman of the Regional Electoral Office.
3. The remaining five sets of the written records shall be distributed to the three party agents and one set each shall be forwarded to the central headquarters of the National Commission and the Supreme Court<sup>95</sup>.

#### **Article 52: The Transport and Transfer of Equipment/Materials**

1. The Chairman of the polling station, accompanied by at least one of the officeholders (of the polling station) and the guarding police officers, as well as the party agents, shall transport the equipment, written records and the envelopes of the polling station and

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<sup>93</sup> This is a new addition and does not appear in the corresponding Article 52(5) of the 2001 Election Law.

<sup>94</sup> In contrast the 2001 Election law set out three copies of each form (Article 54(1)).

<sup>95</sup> *The Code now says that as this is not logistically possible, the Chairman "will send the copy of the written record of the polling station results intended for the Supreme Court to the District Election Officer who will then forward it to the Regional Election Officer for onward transmission to the Supreme Court".*

- shall hand them over to the District Electoral Office within a period of no more than 12 hours<sup>96</sup>.
2. When the equipment and the envelopes are being handed over to the District Electoral Office, they shall be checked so as to ensure that they are sealed and have not been opened or interfered with. The Chairman of the District Electoral Office shall issue, in the presence of the party agents, a receipt confirming transfer of the materials.
  3. The Chairman of the District Electoral Office shall forward<sup>97</sup> the sealed envelope containing the result<sup>98</sup> of the voting for the election of the House of Representatives and a set of the written records to the Chairman of the Regional Electoral Office.
  4. Three sets of the written records shall be given to the party agents at the District level.
  5. One set each of the written records shall be sent to the Commission (central) office and the Supreme Court.

#### **Article 53: The Work of the District Electoral Office**

1. On receipt of the materials set out Article 52 of this Law, the Chairman District Electoral Office shall:
  - a) instruct the scrutineers, the secretary and the counting officers to get ready for the work;
  - b) call the agents of the parties and inform them that they should be present during the conduct of the (election) activities;
  - c) after he, the officeholders and the agents have checked together that the envelopes are sealed and have not been opened previously, open the envelope which contains the stamp and check that the number on the stamp has been affixed to the written records;
  - d) check that the written records and the envelopes set out in Articles 49 and 51 are complete;
  - e) check and add up the total votes cast in all the polling stations of the district;
  - f) check and add up the total ballot papers which have not been used;
  - g) check and add up the total number of void votes of all the polling stations in the district;
  - h) reach decisions about the disputed votes as set out in Article 50 of this Law;
  - i) add up the total votes cast for each party throughout the district;
  - j) forward the result of the district voting and the complaints and/or claims (if any) to the Chair of the Regional Electoral Office.

#### **Article 54: The Work of the Regional Electoral Office**

1. After receiving the set of the written records of the polling stations and the result of the total votes as declared by the districts in the region, as well as the total votes cast for each party as forwarded by the District Electoral Offices of the region, the Regional

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<sup>96</sup> It is not clear as to when this 12 hour deadline starts, but in practice this may well be from the time the counting activities under Article 49 are concluded. The Commission will presumably confirm this in its guidelines.

<sup>97</sup> See also Article 53(j). These last three Clauses of this Article would, in my view, have been placed better after, or as part of Article 53, which set out the activities the District Electoral Office has to undertake before it forwards records to the Regional Office, the Commission and the Supreme Court.

<sup>98</sup> See Article 53 below which deals with the work of the District Electoral Office.

Electoral Office shall check very carefully the calculations of the results of the total votes in all the districts of the region.

2. After completion of the activities in Clause 1 of this Article, the Regional Office shall calculate the total votes cast for each candidate and shall also look at each party separately.
3. When the Chairman of the Regional Electoral Office is satisfied with the activities undertaken, he shall make a written record of the activities in the appropriate forms with six copies<sup>99</sup> each, and shall forward two sets to the Central Electoral Office (the Commission) and the original set to the Supreme Court of the country.
4. The remaining three sets shall be given to the three party agents at regional level.

#### **Article 55: The Declaration of the Provisional Result of the Election**

The Chairman of the Regional Electoral Office, in the presence of the member of the National Commission who was assigned to the region, shall issue the provisional regional result of the election of the House of Representatives. This will be published in a short summary which shows the overall total of all the valid votes in the region and the total votes cast for each party and each candidate in the regional voting. Copies of the summary shall be forwarded to the Central (Electoral) Office and to the party agents.

#### **Article 56: Forwarding the Records**

1. The records of the activities set out in Articles 49, 51 and 54 of this Law shall be noted in the appropriate forms designed by the Commission for these purposes, and, at least six copies<sup>100</sup> each must be kept.
2. The copies of the records shall be distributed as set out in Articles 51 and 54 of this Law<sup>101</sup>.

#### **Article 57: The Work of the Central Electoral Office**

1. The Commission shall follow diligently all the matters which affect the election, and shall respond, without delay, to any requests made by the District/Regional Electoral Offices and to any other circumstances which need immediate resolution and decision-making.
2. On receipt of the equipment (materials) and the written records set out in Article 55 of this Law<sup>102</sup>, the Commission shall:
  - a) instruct the officeholders to get ready for the tasks;
  - b) call the agents of the parties so that they can be present during the conduct of the (election) activities;
  - c) check, together with others, that the envelopes are sealed and have not been opened and then open them and remove the materials therein;
  - d) verify arithmetically the results of the regional votes, and when satisfied, put together in tabulated format figures which show clearly against each polling station the total votes, the valid votes, the void votes, the total votes cast for each party and for the

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<sup>99</sup> Again the corresponding Article in the 2001 Election Law provided that there will be three sets (Article 58).

<sup>100</sup> This is a general provision to apply where no specific number of copies has been set in various other Clauses, some of which, such as Article 51 relating to the records of the polling station, suggest eight copies for each record.

<sup>101</sup> And Article 52 as well.

<sup>102</sup> Note also that the Commission would have received the records mentioned in Articles 51(3); Article 52(5) and Article 54(3) relating to the electoral offices at polling station, district and the regional level respectively.

- candidates of each party on its own, with all the figures set out in a district, regional and national basis;
- e) having followed the procedure set out in Article 12(2) and 12(3) of the Law<sup>103</sup>, compile the list of the names of the candidates who are successful in the election of the House of Representatives at national level, and at the same time compile the list of the names of the unsuccessful candidates put up by the parties who shall be in line for future vacancies;
  - f) reach decisions about the complaints and/or claims (if any) forwarded by the Regional Electoral Offices and the complaints or claims which are submitted by the party headquarters and record all these decisions;
  - g) complete its activities within ten days, beginning with<sup>104</sup> the date of the polling day.

#### **Article 58: The Declaration and Forwarding of the Provisional Result**

1. On completion of the activities set out in Article 57, and having satisfied itself that the election has been conducted properly, the Commission shall declare the provisional result of the election of the House of Representatives.
2. When the Commission declares the provisional result, it shall, on the same date, formally inform the Supreme Court of the nation of the comprehensive result of the election, together with the list of names of the successful candidates and the various supporting documents.

### **PART VI: THE FORMALISATION<sup>105</sup> OF THE ELECTORAL RESULT**

#### **Article 59: Confirmation of the Result**

1. The Chairman and the judges of the Constitutional Supreme Court<sup>106</sup> sitting *en banc* (full court) shall reach a decision about the result of the election of the House of Representatives after they have:
  - a) perused the written records of the election result, which have been forwarded by the Commission<sup>107</sup>;

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<sup>103</sup> As well as, presumably, Article 12(4).

<sup>104</sup> Normally when a Law sets a period beginning with the date of the specific event, that date is counted as day one and so in this example the final date is ninth day after the polling day. On the other hand where a Law sets a period from (and not beginning with) an event/date, that date of the event is excluded and hence, in this case, the deadline will be the tenth day. In Somaliland law, however, it is likely that the latter interpretation will be followed for all set periods, and the date of the event triggering the deadline period is usually excluded.

<sup>105</sup> The word used here in Somali translates literally as the 'legalisation' (*sharciyanta*), but I have chosen the word 'formalisation', which more aptly describes the process. In my view 'legalisation' suggests the provisional result was not legal, when indeed all it is waiting for is formalisation by the Supreme Court as indeed before that it was 'provisional' or interim.

<sup>106</sup> The Law has so far referred to the Supreme Court and this is the first time that the Constitutional Court has been mentioned, albeit wrongly referred to as the "Constitutional Supreme Court" – see also the following Clause of the same Article. Although the two courts have the same composition and seat, they are two distinct courts as set out in Article 101 of the Constitution. The Organisation of the Judiciary Law (Law No. 24/03), which finally became law in March 2008, confirms (in Article 10(3)(f)) that the Supreme Court (not sitting as the Constitutional Court) shall deal with all disputes relating to electoral matters. The declaration of the outcome of the election and the decisions relating to the routine complaints or suits relating to the elections are not necessarily constitutional issues unless they touch or concern a constitutional provision. The clarification in the Judiciary Law is now in line with the 2001 Election Law (Article 65).

- b) confirmed that the results were correct arithmetically and legally;
  - c) verified that there was no pending claim against the decision of the Commission, which has been instituted at the Court within the period<sup>108</sup> set by the law, and if there were a pending claim, that a decision about the claim had been reached by them.
2. The Supreme Court shall declare its decision<sup>109</sup> formalising the election result and the list of the names of the successful candidates at a court sitting attended by the heads of the parties, (members of) the Government and the press.

#### **Article 60: Administering the Oath to the Members**

On declaring the decision formalising the result of the election, the Supreme Court shall set a date<sup>110</sup> which is no later than a week (from the date of the declaration) for the meeting to administer the oath of office to the members elected to serve in the House of Representatives. The meeting shall be presided over by the Chairman of the Supreme Court as set out in Article 44(3) of the Constitution.

#### **Article 61: Elections Claims**

1. The Constitutional Supreme Court<sup>111</sup> shall have (the sole) jurisdiction to deal with claims relating to the election of the House of Representatives, after it has accepted the relevant petitions.
2. These claims must reach the Supreme Court office within 20 days, beginning from the date<sup>112</sup> when the election results are declared. No late claims shall be considered.

### **PART VII: CONTRAVENTIONS OF THE ELECTORAL LAW AND PROCEDURES**

#### **Article 62: Complying with the Electoral Law and Procedures**

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<sup>107</sup> Note also that, like the Commission, the Supreme Court would have received the records mentioned in Articles 51(3), Article 52(5) and Article 54(3) relating to the electoral offices at polling station, district and regional level respectively.

<sup>108</sup> The period of 20 days is set in Article 61(2) of this Law.

<sup>109</sup> The Supreme Court made the declaration of the results of the (29 September) 2005 House election on 1 November 2005.

<sup>110</sup> This provision is a drafting error and runs clearly contrary to the Article 44 of the Constitution which states:

“Article 44: The Convening of the New House

1. The new House shall hold its inaugural meeting within 30 (thirty) days from the date when the electoral results are declared and shall be convened by the President of the Republic.
2. If the President fails to convene the inaugural meeting, the House shall meet on its own initiative on the 45<sup>th</sup> (forty-fifth) day beginning from the date when the electoral declaration is made.
3. The new House shall be opened by the Chairman of the Supreme Court who shall administer the oath of office to the members ...”.

Following this Article, after the House election on 29 September 2005 and concerns about the alleged delays in the convening of the new House, the then Chairman of the Supreme Court on 7 November 2005 issued a very widely publicised order for the new members to convene on 6 November 2005 for their swearing-in ceremony, only to find that he had to retract the order in the light of the constitutional power given to the President under Article 44 of the Constitution. In the event, the new House was convened by the President on 29 November 2005.

<sup>111</sup> This is the Supreme Court not sitting as the Constitutional Court: see Article 59 of this Law and Article 10(3)(f) of the Organisation of Judiciary Law.

<sup>112</sup> See the note relating to the Article 57(2)(g) above, which sets a period in a similar fashion.

It is the duty of every patrial<sup>113</sup> citizen of the Republic of Somaliland to safeguard the public order and to comply with the electoral law and procedures. Therefore, contraventions of the law and the procedures shall attract punishment.

### **Article 63: Allegations against the Electoral Commission**

If a member (or members) of the Electoral Commission commits an act which may amount to a serious crime or may jeopardise the conduct and order of the election or the public order in the country, the allegations against the member, the removal of his privileges and the prosecution shall all be dealt with in line with the procedures set out in Clauses 96(1), 96(4) and 96(5) of the Constitution<sup>114</sup>.

### **Article 64: Disciplinary Action for Contraventions of the Electoral Law and Procedures**

1. As the Commission has the primary responsibility for ensuring the proper conduct of the election, it shall have the power to discipline anyone<sup>115</sup> who commits an act which is contrary to the administration (of the election) or to the Electoral Law and procedures.

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<sup>113</sup> This duty is on all citizens, patrial or not, and as Article 34 of the Constitution expressly enjoins all citizens to respect the Constitution and the laws of the country, the first sentence of this Article is superfluous. As for the second sentence, the proposed punishment for contravention of the electoral law and procedure is not precise enough for the courts and prosecutors to act upon, as it neither sets out clearly the nature of the contraventions/crimes and the requisite punishments, except in the following two Articles which relate specifically to the Commission and the political parties only. This author (and others) has previously recommended the inclusion of specific electoral offences in this Law (and also in the 2001 Law) to supplement the general offences in the Penal Code.

<sup>114</sup> Article 96 sets out the impeachment procedures for the President, the Vice-President, Ministers and Deputy Ministers accused of committing the two crimes set out in Clause 1, i.e. high treason or contraventions of the Constitution. Article 21(4) of the 2001 Election Law gives the members of the Electoral Commission the same privileges enjoyed by Ministers under Article 94(8) of the Constitution. Therefore, no Commission member may be detained unless caught *in flagrante delicto* in respect of an offence punishable by imprisonment for three years or more, or the President has removed his privileges after having been satisfied by proposals put to him by the Attorney General. Under Article 96(4) of the Constitution, if the privileges are removed following an accusation against the Minister (or the Commissioner) to the effect that he committed the crimes in Article 96(1) (i.e. high treason or constitutional infringement), then the prosecution of the case will be heard by the High Court of Justice (which consists of the Chairman and four judges of the Supreme Court sitting with four members of the two Houses – see Article 96(5)).

<sup>115</sup> In our formal comments on the draft Bill, the Somaliland Forum Constitution & Law Committee, of which I am Chair, was seriously concerned about this power given to the Commission to impose fines, especially in respect of ordinary citizens, and proposed 15 new electoral offences which could be dealt with by the courts. It remains my view that while the disciplining of the parties by the Commission may be acceptable if certain safeguards are followed, it is unacceptable for an administrative body, like the Commission, which is not a court of law, to impose fines on ordinary citizens. Such penalties imposed upon ordinary citizens may well be unconstitutional, in that this role usurps the role given to the judiciary under Article 97 of the Constitution, and may also contravene the fundamental rights of the citizen such as Article 26(3) (innocence until proven guilty by a court of law) and Article 28 (the right to defend oneself in a court), which includes fair trial by an independent and impartial court. The Commission may well choose (wisely in my view) to refer all contraventions by members of the public to the police and the courts, as they are enjoined to do so in respect of the serious contravention under Clause 2 of this Article and also in respect of the offence under Article 44(7) of this Law. So far as parties are concerned, any penalty imposed on them by the Commission could be challenged in the Supreme Court under its power of general review to deal with the decisions of administrative bodies. The Commission will therefore need to adopt a transparent procedure which, at a minimum, separates the investigation of the allegations from the decisions to impose a penalty (so that the same Commissioner does not act as a prosecutor and a judge), gives the accused party full details of the allegations and a chance to defend the allegations and to make any representations, and gives detailed reasons for any decisions.

Therefore, while taking into consideration the gravity and effect of any such contravention, the Commission may take the following disciplinary action:

1. criticism and condemnation, and/or
2. a severe warning which shall be recorded, and/or
3. a fine :
  - a) if the wrong or contravention is committed by a responsible person in a party or by a candidate, a fine of SI.Sh. 5,000,000 to 10,000,000 may be imposed on the party;
  - b) if the wrong or contravention is committed by an electoral officeholder, a fine of SI.Sh. 200,000 to 400,000 may be imposed;
  - c) if the wrong or contravention is committed by an ordinary citizen, a fine of SI.Sh. 300,000 to 500,000 may be imposed.
2. If the contravention is a serious one which merits a criminal punishment or which may jeopardise the conduct of the election or the public order or may damage the good order and the acceptance of the procedures by all, then the Commission or those responsible for electoral offices shall order that the culprit be detained so that he can be dealt with by the competent court<sup>116</sup>.

#### **Article 65: Implementation and Publication of the Law**

This Law shall come into force when the Parliament approves it and the President of the Republic of Somaliland signs it and it is published in the Official Journal of the Government.

Praise be to Allah

Ahmed Mohamed Adan  
Chairman, House of Representatives

Mohamad Hussain Osman  
General Secretary, House of Representatives

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<sup>116</sup> This will be either the District Court for offences carrying a punishment of up to three years and/or a fine of up to SI.Sh. 3 million; or the Regional Court for more serious offences.