

## Somalilandlaw.com Consolidation of the Regulation of Political Associations and Parties Law 2011 and its Amendments

*This Law was passed by the House of Representatives on 31 July 2011 on a vote of 29 for, 15 against and 4 abstaining. It was then passed, with no amendments by the House of Elders on 13 August 2011 on a vote of 33 for, 15 against and 4 abstentions. The President signed the Law on 20 August 2011 and it therefore came into force on that date (see page 35). The Amendments passed by the two Houses were signed into law by the President on 13 December 2011 (see page 36).*

*This is a consolidation of the Law and its amendments in one text. **For ease of identification, I have set out the amendments in italics and have crossed the old text that has been replaced by a new text.** The footnote annotations serve to identify the links of each article with the others in the Law or with other laws and, in some instances, explain the background information. I have also added some comments and recommendations, where appropriate, for consideration by the Registration Committee, the Electoral Commission or the parties/associations.*

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*(Translated and annotated in December 2011, but the annotations were updated to reflect some of the developments up to 21 April 2012)*

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PRESIDENTIAL DECREE NO. 0168/082011 dated 28/11/2001

PRESIDENTIAL DECREE NO. 0179/122011 dated 13/12/2001

**THE REPUBLIC OF SOMALILAND  
THE REGULATION OF POLITICAL ASSOCIATIONS AND PARTIES LAW (AS  
AMENDED IN 2011)  
LAW NO. 14/2011**

THE HOUSE OF REPRESENTATIVES

- Having Seen: Articles 9, 22 and 23 of the Constitution of the Republic of Somaliland;
- Having Seen: Presidential Decree No. **0165/07/2011**, reference **RSL/M/ERM/249-635/07211**, relating to the setting up of political associations, the advancement of the electoral process and the additions and changes to **Law No. 14/2000**<sup>1</sup>.
- Recognising: The necessity for introducing legislation<sup>2</sup> which sets out the way in which citizens can exercise their political rights in accordance with the Constitution so that they can participate in political activities peacefully and gain power in the country;
- Noting: That citizens have a right to enjoy their political rights and to fulfil their responsibilities when they set up political associations; and that there is a need for laying down the principles and laws applicable to the national parties which have legal personality;

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<sup>1</sup> [Law No. 14/2000](#) was the Law of the same name which came into force on 6 August 2000 and which has now been repealed by this 2011 Law. The 2000 Law consisted of only 7 articles and whilst it provided a workable framework for allowing new political associations to be formed (for the first time in Somaliland since 1969) and a process for the three national political parties ordained under Article 9(2) of the Constitution to emerge, it left unclear how long these parties would operate before they compete with emerging new political associations and the procedures for managing such contests. There have been considerable debates, since 2006, about the provisions of the 2000 Law and specifically on the point as to whether new political associations can contest the first (much delayed) local council elections after the 2002 elections or whether the three political parties would remain unopposed until the Constitution is changed.

<sup>2</sup> With the election, in June 2010, of a new President whose party pledged before the election to pave the way for the formation of new political associations, the need for addressing the shortcomings of the 2000 Law was accepted by the new Government. In view of the wide controversy about this issue, the President appointed on 15 March 2011 a “national advisory committee “ of 20 members (from the civil society and the political parties) to consult the stakeholders and the public about the issues relating to the setting up of new political associations and to submit an advisory report. The Committee reported on 7 June 2011 and recommended that political associations should be registered so that they can contest the forthcoming local elections within the next 18 months; that the 2000 Political Associations and Parties Law be amended and that a standing committee responsible for the registration of political associations and for the oversight of the internal democracy of the (three) national parties be set up. The President accepted these recommendations and forwarded a draft bill to the House of Representatives on 2 July 2011. The House Internal Affairs committee which dealt with the committee stage of the bill sought independent legal advice and presented their recommendations to the House which, after the second reading and debate, voted on 31 July 2011 to pass the bill (29 for, 15 against and 4 abstentions). The House of Elders, which was recalled from its recess by the President under Articles 71 and 46(2)(a) of the [Somaliland Constitution](#), approved the bill, without any changes, on 13 August 2011.

Convinced: Of the need for reforming and changing the Regulation of Political Parties and Associations Law, Law No. 14/2000;

**Has made additions and changes to  
the Regulation of Political Associations and Parties Law, Law No. 14/2000,  
and passed this Law No. 14/2011**

## **PART ONE: GENERAL PROVISIONS**

### **Article 1: Definitions**

1. "Committee": means the Committee for the Registration of Political Associations and the Approval of National Parties.
2. "Commission": means the National Electoral Commission (NEC).
3. "Region/District": means the Regions and Districts set out in Law No. 23/2002<sup>3</sup>.
4. "Political Association": means a group of citizens sharing common political opinions who has registered as an Association so as to participate in the local government elections prior to its recognition as a national party.
5. "Party/Parties": means the national party/parties that have been approved for participation in the general elections of the House of Representatives and those of the President and the Vice-president.
6. "Foreigner": means any person who is not a patriot<sup>4</sup> of the Republic of Somaliland.

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<sup>3</sup> [Regions and District Law](#), Law No. 23/2002, as amended in 2007. Article 5 sets out the six regions and Article 6 lists all the districts in each of these 6 regions, which are graded A to D. 23 districts are graded A to C whilst the remainder (19) are Grade D districts and it is stated in Article 7(4) of the amended Law that until their assessments are completed and their borders are delineated, the Government shall appoint for them an administration consisting of a Chairman, Deputy Chairman and an Executive Secretary. Article 7(5) of amended Law also enjoined the Ministry that such assessments or border delineations should be completed within 12 months of the amended Law coming into force (on 24 June 2007 when it was signed by the President – Decree No. 283/2007). Neither have these actions being completed thus far (in April 2012) and so no elections of their district D councils could be undertaken in the near future as a further condition set out in Article 7(6) is that districts should also receive parliamentary approval after their assessments and border delineations. Mindful of the delays in assessments, delineations and approvals, Article 7 of the 2002 Law, before its amendment in 2007 included Clause 7(d) which stated that no elections would be held for the district councils of Grade D Districts, and that the votes of the inhabitants of these districts (with the exception of Hagal district) shall count towards the district councils from which these new "D" districts were detached (Clause 7(e)). When the Law was revised in 2007, the new Article 7 did not include these transitional provisions and simply covered the position of the D Districts in Clause 4 to 6 which are explained in this footnote. What is missing from the new Law therefore is confirmation that the votes of the people who live in the Grade D Districts shall have their forthcoming local districts councils' elections votes added to the A to C districts from which they were provisionally removed. Unless the Government has undertaken the necessary assessments and boundary delimitation of the 2007 Law 19 "D" districts and is going to seek parliamentary approval soon, amendments need to be made to Article 7 of the Regions and District Law to clarify again as to which districts the votes of the inhabitants of these 19 Grade D Districts will be added to for the purposes of the nation-wide local elections to be held in 2012. *This is a matter for the Electoral Commission (and not for the new Registration Committee set up under this Law) to take up with the Government and the Parliament.* Furthermore, in March 2008, former President Rayale created by Presidential Decree and 16 new Districts and 6 new regions. (For further information on the legal implications of these Presidential Decrees, see my [2007 commentary on the decrees](#)). The President created another Region (Hawd) by a Decree dated 14 May 2008. The Decrees, however, stated that the creation of these new 6 regions and 16 districts would have no effect on the then forthcoming elections which include the 2012 local district councils' elections. Therefore, all these new regions or districts can be safely disregarded for the forthcoming 2012 local elections.

7. “Public media”: means radios, newspapers, cinemas, national television and other media which are managed by the state.
8. “Public assets”: means the movable or immovable assets of whatever form, which are owned by the state.
9. “Application form”: means the special form issued by the Committee for the Registration of Political Associations and the Approval of National Parties, which sets out the conditions to be fulfilled by any political association seeking registration.
10. “National elections”: means the general elections to be contested by the three national parties<sup>5</sup>.
11. “Leaders of a National Party/Association”: means the top leadership of a party/association such as the Chairman, the Deputy Chairman, the General Secretary and his/her Deputy.
12. “The legally recognised councils”: means the constitutionally set Councils of the Republic of Somaliland which are:
  - a) The House of Elders.
  - b) The House of Representatives.
  - c) The District Councils.

## **PART TWO**

### **Article 2: General principles and compliance with the law**

1. The parties/associations must comply<sup>6</sup> with the provisions of Constitution, the laws of the land and democratic procedures and must not damage the unity of the

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<sup>4</sup> See Article 4 of the Constitution and the [Somaliland Citizenship Law](#) (Law No. 22/2000). It would have been more appropriate to use the phrase “citizen” instead, as the latter includes both patrial citizens and other persons who have acquired Somaliland citizenship by naturalisation or by other means (e.g through marriage) under the Somaliland Citizenship Law.

<sup>5</sup> Under Article 9 of the [Somaliland Constitution](#), the number of political parties shall not exceed three and under this law (and the electoral laws), only the three parties, approved in line with the procedures set out in this Law, can contest these “national” or “general” elections, which are primarily the elections of the House of Representatives and of the President/Vice-President. The “nation-wide” but local district councils’ elections are not included in this definition. These elections will be contested by not only the three parties but also, once every ten years by newly formed political associations (see Article 6(5) of this Law).

<sup>6</sup> These fundamental compliance requirements are reiterated in Clause 4 of this article and in Articles 5(7) and 7(2) of this Law. The Constitution and the laws of the land are binding on everyone and consequently any association the objects of which are contrary to the Constitutional provisions including those that relate to the sovereignty of the Somaliland people, those that ban parties/associations based on “regionalism or clanism” (Article 9(3)) or have objectives “which are contrary to the national interest or are secret or are military in nature or armed or otherwise against the law, whatever their outward appearance might be” (Article 23(4)) will all fall foul of this Article. Articles 22 and 23 of the Somaliland Constitution guarantee the rights of political participation and of association, but Article 25(4) also confirms that these rights shall not override laws protecting the rights of other individuals, the security of the country, and public morals. These limitations are also found in human rights conventions such as the [International Covenant on Civil and Political Rights](#) (ICCPR) which, for example, states in Article 22(2) that restrictions on freedom of association must be “prescribed 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 or morals or the protection of rights of freedoms of others”. The requirements of compliance with the constitutions and laws of the land set out in Article 2(1) of this Law are necessary in any democratic society and the prohibition of conduct that may harm the unity and territorial of the country is also not only necessary but if unchecked will also affect the national security and public order and the rights of other Somaliland citizens. Comments about unfettered freedom of everyone to say what they

country, the territorial integrity of the Republic of Somaliland and the public security<sup>7</sup>.

2. The parties/associations shall participate in educating their supporters about electoral contests and democracy and shall pay particular attention to women and the youth<sup>8</sup>.
3. The parties/associations must not be based<sup>9</sup> on clanism, single gender or on any other issue<sup>10</sup> which divides the society.

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like and to form whatever associations they wish, overlook the fact that many (but not all) rights can be limited in the circumstances that are set out in international human rights conventions such as the ICCPR and the African Charter on Human and Political Rights 1981 which are both binding on Somaliland through their accession/ratification by the pre 1991 Somali Republic government on 24 January 1990 and 31 June 1985 respectively. This answers, for example, those who might argue that parties or associations campaigning actively for re-union with Somalia should have a right to do so. No one is limiting the freedom of thought, but forming such associations is tantamount to actively working to dismantle the constitutional order and sovereignty of Somaliland which has been endorsed by the vast majority of Somalilanders in the referendum in 2001, and the lack of international recognition does not affect the rule of law in Somaliland. It very common in the laws of many countries for there to be provisions which make it compulsory for political parties/associations must comply with their constitution and safeguard their sovereignty. An example is of the Indian Political Parties Act 2011 which states that “no political party shall carry on any activity prejudicial to the sovereignty, unity and integrity of India” (Article 4(2)) and that the aims and objects of political parties shall not be “inconsistent with any of the provisions of the Constitution” (Article 4(3)).

<sup>7</sup> Failure of associations to comply with the provisions of the Constitution and other laws would not only lead to rejection of applications for registration, but such associations may also have further action taken against them under, for example Articles 60 and 61 of the [Public Order Law 1963](#) (Law No. 21 of 26 August 1963). Until it is replaced by the bill currently being considered by the House of Representatives, Article 60 of the Law gives power to the Supreme Court (or in this case, now, the Constitutional Court) to dissolve any association “of every kind, nature or aim established or functioning contrary” to Article 23(4) of the [Somaliland Constitution](#) (which, in this context, replaced Article 12(2) of the Somali Republic 1960 Constitution) – see the preceding footnote for the text of Article 23(4)). For other associations which are “established or functioning contrary to the law or carrying on activities contrary to the public order or morals”, Article 61 of the Public Order Law gives power to the Minister of Internal Affairs, on the advice of the cabinet, to dissolve them by a ministerial decree. This is of course an administrative decision which can be appealed against to the Supreme Court under Article 9(4)(c) of the [Somaliland Organisation of the Judiciary Law](#) (Law No. 24/2003). There are also criminal sanctions in Article 61 which states that if the acts do not constitute a more serious offence (under the Penal Code), they carry punishment of imprisonment of up to six months or a fine.

<sup>8</sup> This positive duty relating to the involvement of women and the youth (which, in my view, should have also included excluded minority communities) is also reinforced in Article 5(10)(g) of this Law

<sup>9</sup> Article 9(3) of the Constitution states that it is unlawful for any political party (or a political association) to be based on regionalism or clanism. Whilst clan influences extend to all walks of Somaliland life, political associations or (parties) which are institutionally clan based will not be registered. The same applies to associations which have objectives that are “contrary to the national interest ... or are otherwise against the law, whatever their outward appearance might be” as set out in Article 23(4) of the Constitution. The requirement in Article 5(3)(b) of this Law to the effect that all provisionally registered associations must show proof of a minimum number of members from every region of the country before they can be registered formally as political association is aimed at minimising regionalism. *The Registration Committee will need to develop robust procedures for assessing the objectives of new political associations and their founders/membership base so as to be able, where necessary, to lift the veil of outward appearances.*

<sup>10</sup> The draft bill included “religion” as one of the issues that an association should not be based on but this was amended after the House debates as there was a concern on the part of some Representatives that this may run counter to Article 5 (Islamic religion clause) of the Constitution. Somalilanders are 100% Muslims and the Law includes in this Article a clear provision (Clause 4) that the associations and parties must be managed in a manner which is in accord with Islamic Sharia (and the Constitution), but the concern which the bill was addressing was the misuse of religion for political reasons. The proposal in the bill was aimed at any association that might exploit religion by claiming that it is more “Islamic” than the others or that others are less “Islamic” than they are, which will still be caught by this general provision in the law against “all issues”



4. The parties and the associations shall be managed in a manner which is in accord with this Law and is not in conflict with Islamic Sharia, the Constitution of the nation, and the laws of the land and the (*relevant*) Rules of the parties or associations.
5. Any person who is a Somaliland citizen<sup>11</sup> and who fulfils the conditions set out in this Law shall have the right to form a political association in accordance with this Law.
6. When, before the election of the local councils, two or more associations merge so as to form an alliance<sup>12</sup> or an association merges with a party,<sup>13</sup> an original copy of the alliance (*merger*) agreement shall be submitted<sup>14</sup> to the Committee for the Registration of Political Associations and the Approval of National Parties.<sup>15</sup>

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that “may divide the society”. It remains to be seen how the Committee will interpret this Clause. *A possible inclusion in the Regulations might be a clause making it clear that “Somaliland is a Muslim nation and in order to protect the unity and security of the nation, no association or party may use the Islamic religion for furthering its own political and sectional interests”.*

<sup>11</sup> The Somali version surprisingly uses the colloquial phrase “*reer Somaliland*”, but I have used the legal phrase Somaliland citizen.

<sup>12</sup> The word “*isbaheysi*” meaning “alliance” is used here but the nature of any alliance between two or more associations can only take the form of a merger and not a loose alliance on policy issues as they and the parties have all to compete independently in the local elections and only the three that come on top can win the coveted prize of being recognised as a national party. In the last round of applications for registration of political associations in 2001/2, ILEYSKA merged with HORMOOD in July 2002 and the latter proceeded to contest the local elections in December 2002. Mergers between two associations will therefore involve the dissolution of one of them and the joining of the founders and members of the other, perhaps stronger, association. It is also open for one or more associations to merge with one of the current national parties (as the three parties cannot merge with each other – see Article 5(9)) in which case, unless the party dissolves itself which is highly unlikely, the merged association shall be dissolved. It is therefore advisable that all associations (and parties) must have a dissolution clause in their Rules so that there is a clear and agreed procedure to follow in the event that the members/founders/central committee decide that this is the best option for them. Such a clause should also include disposal of any remaining assets of the association, which presumably in a merger will be transferred to the relevant association/party. This is also one of the areas which the Registration Committee ought to include in the Regulations. Some good practice guidance can help prevent proposed mergers opposed by splinter groups descending into crippling disagreements which might affect the provisional registration of an association.

<sup>13</sup> There is, in my view, a redundant oblique (/) between association and party in this line in the Somali text which I have disregarded as the Clause now covers both when associations join each other and when an association joins one of the three parties before the local elections. The three parties cannot join each other even in this transitional stage – see Article 5(9) of this Law and its footnote.

<sup>14</sup> There is a need for the Committee, in consultation with the Commission, to set a final date for the submission of such mergers which is well before the deadline for submission of the lists of candidates to the Commission from each party/association, which, under the Article 26(1) of the [2001 Election Law](#), is 45 days before the polling day.

<sup>15</sup> This Clause would have been better placed in Part Four of this Law (Article 5) as it relates to registered associations.

### **PART THREE: STRUCTURE AND DUTIES OF THE REGISTRATION COMMITTEE**

#### **Article 3: The Committee for the Registration of Political Associations and the Approval of National Parties**

1. The Republic of Somaliland shall have a main<sup>16</sup> committee which is independent and which will have the responsibility of registering political associations and approving the national parties<sup>17</sup>.
2. The Committee shall consist of 7 (seven) members of which at least one<sup>18</sup> is a lawyer.
3. The Committee shall elect from its members a Chairman, Deputy Chairman and a Secretary.<sup>19</sup>
4. The Committee (members) shall be chosen on the basis of the following conditions:
  - a) S/he must be a Muslim who observes the Islamic religion<sup>20</sup>.
  - b) S/he must be a citizen who is not younger than 30 years<sup>21</sup>.
  - c) S/he must be physically and mentally able to fulfil his duties.
  - d) S/he must be educated to university (first degree) level<sup>22</sup>.
  - e) S/he must not have been subject of a final sentence for a criminal offence by a court within the preceding five years<sup>23</sup>.
  - f) S/he must be a responsible person with good character and be known for her/his impartiality.
  - g) S/he must have, at least, 5 years' experience<sup>24</sup> of work and management.
  - h) S/he must have been continuously resident in the country of the Republic of Somaliland during the preceding two years<sup>25</sup>.

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<sup>16</sup> I have preferred "main" committee to "general" committee in translating the word "Guddi guud" in this context. This does not imply that there will be other minor committees although, subject to the Committee's Internal Governance Rules, there is nothing stopping the Committee from establishing sub committees or even ad hoc committees on any matters that fall within their statutory functions.

<sup>17</sup> Note that the Committee has also a responsibility to oversee the national parties' compliance with this Law and with the requirements of good governance and internal democracy set out in Article 23 and 25. These functions will be taken over by the National Electoral Commission after the expiry of the (two years) term of office of the Committee (see Article 25(8) of this Law)

<sup>18</sup> In the 2000 Law of the same title, at least two of the members were lawyers.

<sup>19</sup> The Committee elected, on 10 October 2011, from among themselves the following:

1. Abdirizaq Jama Omar Eyale - Chairman
2. Adan Gedi Qayad – Deputy Chairman (Mr Adan G Qayad also served as a Deputy Chairman of the last Registration Committee to which he was elected by then Committee on 20 February 2001)
3. Omar Hasan Ahmed - General Secretary
4. Hasan Ahmed Du'ale (Hasan Ma'alin) - Spokesman

<sup>20</sup> This condition appears in respect of almost all public offices and falls foul of Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the African Charter on Human and People's Rights. This condition is reinforced by the omission of religion as one of the protected equality grounds under the "equality of treatment" Article 8 (1) of the Somaliland Constitution. A similar clause applies to the leaders of the political parties (see Article 16(4) of this Law).

<sup>21</sup> The age limit in the 2000 Law was 40 years. This is a welcome but insufficient change as far too many public officeholders' appointment requirements include high minimum age limits when the overwhelming majority of Somalilanders are aged less than 30 years. See also the similar new lower age limits for the leaders of political parties in Article 16(2) of this Law and the relevant footnotes.

<sup>22</sup> The 2000 Law educational requirement was secondary school level.

<sup>23</sup> A person who had criminal convictions before the 5 year period could still be caught by the following requisite condition of "good character".

<sup>24</sup> Ten years in the 2000 Law.

<sup>25</sup> This residence condition was three years in the 2000 Law. No reasonable justifications for this discriminatory requirement (against the citizens who live abroad) have been advanced in respect of the appointments to this temporary (two years) Registration Committee when no such requirement was deemed necessary for the membership of the permanent National Electoral Commission under a law issued a year later in 2001 (see Article 12 of the 2001 Election Law). It would have made more sense to have similar conditions



- i) As for the lawyer member, s/he shall, in addition, fulfil the conditions for selection of judges of the Supreme Court<sup>26</sup>.
5. The seat (headquarters) of the Committee shall be Hargeisa, and the Committee shall have agents in the regions and districts of the country.
6. The Committee shall hold office for a period of two (2) years<sup>27</sup> beginning from the date when the Supreme Court administers the oath of office to them.<sup>28</sup> *The President may, if necessary, renew their appointment and such extension of their term shall be subject of approval by the House of Representatives.*<sup>29</sup>
  - a) *The members of the Committee may be dismissed in accordance with the procedures for the dismissal of the members of the National Electoral Commission*<sup>30</sup>.

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for membership of both the Commission and the Committee. There may well be cogent reasons, in the future, for challenging this condition on the basis that there was no apparent or reasonable justification for this discrimination against some citizens (see the equal treatment Article 8 of the Constitution which bans differential treatment on grounds similar to the ones listed in the Article, which could include unjustified or unreasonable discriminatory residential requirements against some citizens).

<sup>26</sup> The minimum requisite qualifications for appointment as a judge at any level are set out in Article 21 of the [Organisation of the Judiciary Law \(Law No. 24/2003\)](#). For judges of the Supreme Court judge, the requisite experience is at least on par with the requirement of ten years' experience for the Chairman of the Supreme Court (set out in Article 105(2) of the Constitution).

<sup>27</sup> In the 2000 Law, the term of office of the Committee expired six months after they have approved the three parties which have succeeded in the nation-wide local elections. The Committee was initially appointed in February 2001 and as they announced the winning three national parties on 25 December 2000, their term of office came to an end 6 months later on 25 June 2003. They have therefore served a term of two years and five months. The additions to Article 3(6) of this Law, inserted by the amending law, now gives power to the President to extend, if necessary, the two year term of the Committee and such an extension is subject to confirmation by the House of Representatives.

<sup>28</sup> Article 6(5) of this Law states that political associations may be formed once every 10 years and, at the latest, six months before the local council elections. In contrast to the 2000 Law, Article 3(e) now makes it clear that the period for licensing or recognition of the three political parties shall be 10 years. Both of these changes are very welcome although many people would have preferred a 5 year cycle. In my view, it would have been helpful if this Article included also a clear provision setting out the appointment of a new Registration Committee, perhaps at the latest, a year before the end of the 10 year cycle. As it is now, if Article 9(2) of the Constitution is not changed, an amendment would be required in 2011 or earlier to facilitate the appointment of a new registration committee and perhaps by that stage the function of the registration of political associations and parties might be given to the permanent National Electoral Commission that would, by then, acquire expertise in fulfilling the new function of oversight of the national political parties under Article 25 of this Law.

<sup>29</sup> The amendment caters for the possibility that a term extension of the Committee might be needed. An alternative amendment to increase the term of the Committee from 2 years to 5 years was defeated on a vote at the House.

<sup>30</sup> This is set out in Article 13 of the 2001 Election Law as follows:

1. A member of the Commission may be dismissed:
  - a) when he breaks one of the conditions of his appointment;
  - b) when he is unable to fulfil his duties due to lack of capability or ill health;
  - c) when he commits acts of wanton behaviour, theft, corruption or similar matters.
2. When it is suspected that the matters set out above have happened, the President shall appoint an investigation committee which shall report on the issues so that he can reach a decision thereupon.
3. The President has the power to dismiss the Commission provided that the House of Representatives approves the decision on a simple majority vote.
4. When a vacancy arises in the Commission due to dismissal, death or resignation, it shall be filled in accordance with the procedure adopted when the outgoing member was initially appointed.

- b) *If, prior to the end of the term of office of the Committee, all the membership of the Committee becomes vacant, the newly appointed Committee members shall serve for the remainder of the Committee's term of office.*
- c) *If a member of the Committee vacates his membership, the President shall appoint his successor who shall serve for the remainder of the Committee's term of office.*
- d) *The appointment of a new member or members shall be confirmed by the House of Representatives before they are sworn into office.*
7. The President of the Republic of Somaliland shall nominate<sup>31</sup> the members of the Committee for the Registration of Political Associations and the approval of the National Parties.
8. The nomination of the Committee for the Registration of Political Associations and the approval of the National Parties shall be approved by the House of Representatives<sup>32</sup> on a majority vote of half of the members of House plus one (*absolute majority*)<sup>33</sup>.
9. The Committee shall receive emoluments equivalent to those received by the members of the National Electoral Commission<sup>34</sup>.
10. The Chairman of the Supreme Court shall administer the following oath to the Committee (members) seven<sup>35</sup> days after the date when the House of Representatives approves of their nomination:  
"I SWEAR BY ALLAH THAT I AM NEITHER A MEMBER NOR PART OF A POLITICAL UNIT, ASSOCIATION OR NATIONAL PARTY, AND WILL NOT BE A MEMBER OF ANY other ASSOCIATION OR PARTY WHILST IN OFFICE; AND SHALL SERVE THE SOMALILAND SOCIETY WITH JUSTICE, EQUALITY AND HONESTY".

## **PART FOUR: THE REGISTRATION AND PROCEDURES**

### **Article 4: Requests for Registration and Receipt of Applications**

<sup>31</sup> On 4 September 2011, the President nominated (in Decree No. 01710/092911) the following as members of the Committee:

1. Abdalle Ibrahim Mohamed
2. Abdirazaq Jama Omer (Eyale)
3. Hassan Ahmed Dualeh (Ma'lin) – Lawyer member
4. Omer Hassan Jama
5. Mohamed Abdi Malik
6. Adan Gedi Qayad
7. Ismail Abdillahi Ali

(Mr Adan Gedi Qayad served in the last Registration Committee from their appointment in February 2001 to the end of their term in June 2003.)

<sup>32</sup> The House of Representatives approved the appointment of all the seven nominees on 27 September 2011.

<sup>33</sup> Under the 2000 Law approval was on the basis of a simple majority vote

<sup>34</sup> Indeed the Commission members shall be assuming the functions other than the registration of the political associations and the approval of the national political parties after the expiry of the 2 year term of office of the Committee (see Article 25(8) of this law). There will be a need for liaison and joint working arrangements between the Committee and the Commission *and* specially more so after the local elections and approval of the national parties so that there is a smooth transfer of the on-going oversight work over the national parties.

<sup>35</sup> It is not clear from this Clause whether the oath should be administered within seven days or on the seventh day, but, from the context, I have chosen the former interpretation. The Committee members were sworn into office on 4 October 2011 which (discounting the day of their appointment by the House on 27 September 2010) was on the seventh day.

1. The Committee shall announce through the media of the country the period set for receipt of applications for registration of political associations and the closing date for the receipt of such applications. The period for receipt of applications shall be ~~two months (sixty days) beginning from the day when the receipt of application is publicised~~ <sup>36</sup> *forty five (45) days beginning from the day when the receipt of applications is published or publicised in the media.*
2. The new<sup>37</sup> political associations shall register themselves at the Hargeisa headquarters of the Committee for the Registration of Political Associations and the approval of the National Parties.
3. Any association seeking registration as a political association shall submit an application, in the prescribed form<sup>38</sup>, addressed to the Committee and shall enclose the following particulars and documents:
  - a) The date when and the place where the association held its first founders' meeting.
  - b) A list of the names of the founders<sup>39</sup> of the association and the procedures for their election<sup>40</sup>.
  - c) A list of the names of the members of the leadership, the executive committee and the central committee, signed by the Chairman and the Deputy Chairman.
  - d) The structure of the Association showing the full name of the Association, its acronym and symbol<sup>41</sup>.
  - e) Proof of payment<sup>42</sup> of a registration tax of **150,000,000** (One hundred and fifty million) Somaliland Shillings<sup>43</sup>.

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<sup>36</sup> The inclusion of the word "within" is superfluous in this context as there is no provision for the possibility of reduction of the 45 day period. This application period is in effect the "forming period" for the organisations and is the first stage of the registration process. Contrast this with the second stage "norming period" in Article 5(2) which, as now amended, is up to 6 months but with a possibility of a shorter period. On 12 November 2011, the Registration Committee announced that the 60 day application submission period shall start on that date and end on 11 January 2012. On the coming into force of the amendments on 13 December 2011, the Committee announced on 17 December 2011 that the application period has been reduced to 45 days and that, therefore, the closing date will be on 28 December 2011.

<sup>37</sup> All the political associations will be new as none is currently yet registered until the Committee receives and considers all the new applications. The last registrations took place in 2001/2.

<sup>38</sup> The application form (and probably guidance notes for its completion) shall be issued by the Committee and, as confirmed by the Committee on 12 November 2011, it is mandatory that all applications for registration must be submitted in that form, together with all the other required documents which are listed in Article 4(3)(a) to (e).

<sup>39</sup> It is likely that the information about the founders which the Committee will ask for will include evidence of their Somaliland citizenship (as only citizens can form political associations (Article 2(5)) and be members of such associations (Article 9)) and new associations would be well advised to collect photocopies of the Citizenship or Voters cards of all the founders or, failing that, any other documents such Somaliland passports, which would be acceptable to the Committee. The same information may well be requested of the leadership listed in sub clause (c) of this Clause.

<sup>40</sup> In the 2000 Law the election referred primarily to the Executive Committee.

<sup>41</sup> See Article 15 of this Law about the requirements relating to the name and symbol.

<sup>42</sup> A receipt from the relevant Ministry of Finance revenue collection office is likely to be the requisite evidence of payment.

<sup>43</sup> This amounts to \$20,000 at the current (August 2011) rate of exchange and is a considerable (thirty fold) increase of the fee of Sl. Sh. 5,000,000 (five million) payable under the 2000 Law. The Government proposal was a fee of Sl.Sh. 35,000,000 (i.e a seven fold increase), but the House of Representatives raised it. The proponents of the change argued that this will discourage individuals to pay the whole amount and then claim

- f) *It must be clear that the tax was paid jointly and not by one person<sup>44</sup> and the Registration Committee shall make enquiries into (the compliance with) this requirement.*
- g) The national parties which have already been awarded a party certificate<sup>45</sup> shall not incur any registration tax.
- h) The period of licensing as a national political party shall be ten (10) years<sup>46</sup> beginning from the date<sup>47</sup> when the licence was issued<sup>48</sup>.

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“ownership” of the political association. The Electoral Knowledge Network ([ACE PROJECT](#)) states that their survey showed that 62 countries (30% of the total) required a deposit or fee for registration of political parties. ACE emphasised that the guiding principle for registration of political parties should be “the freedom of organisation”. It should be noted also that any political association which succeeds in its registration application will have to pay a non-refundable deposit under Article 25 of the 2001 Presidential and Local District Council Election (Law No. 20/2001 as amended in 2009 and 2010) for every local district council candidate that they put up in the 2012 nationwide local council elections. The deposit in the 2002 election was only 50,000 SI. Sh. for every candidate, but has since been raised in the 2010 amendments of the Election Law to SI. Sh. 1,000,000 (1 million), which is equivalent to \$133 for every candidate. Considering that there were in the 2002 local elections a total of 379 local council seats (of which 47 in the far eastern districts were not contested, because of various reasons), the deposits to be paid by any association/party which needs to contest all the seats in the 2012 elections to have a reasonable chance of getting into the top three winning association/parties would involve further expenditure of possibly 379 million SL Shillings (which is roughly equivalent to US \$50,533). There was some muted concern in some quarters about the high fees and deposits but there have been no evidence, so far, that this had any chilling effect on the formation of new associations.

<sup>44</sup> The debates at the House on the level and payment of the tax showed a clear concern among some of the Representatives that payment of the tax by one or two persons might foster a feeling of “ownership” of the political association – hence the requirement that the tax should be high and should also be (and shown to be) paid by many members. Although this amendment has only come into force on 13 December 2011, the Committee will need to set out in the Regulations the minimum requisite number of contributors that will satisfy this requirement and the evidence required from the Association to prove the multiple (tax) contributors. A list with the full names of the (tax) contributors and amounts of each contribution signed by each contributor and an accompanying signed declaration by two senior office bearers of the Association might be an option. So would an obligation on the Association’s office bearer to keep receipts signed by every contributor which might also serve as backing evidence.

<sup>45</sup> The current three parties Kulmiye, UCID and UDUB have been certified as national parties on 25<sup>th</sup> December 2001 by the previous Registration Committee under the 2000 Law. It is logical that the registered national parties are not required to pay another registration fee albeit that the fees they paid in 2001/2 were considerably less than current fees to be paid by the new political associations. Note, however, that this exemption does not affect the election deposits that the parties have to pay, in the same way as the other registered new political association, for the candidates that they will put up in the forthcoming 2012 local district councils elections.

<sup>46</sup> There were no such set terms for the duration of political parties’ certificates in the 2000 Law. This new Clause means, in effect, that after the next nation-wide local district council elections to be held in 2012, the new three national political parties shall contest all elections within the next 10 years including the 2017 district council elections. Unless Article 9 of the Constitution is changed and the limit of three political parties is removed or this Law is changed to reduce the parties’ licence period to 5 years, the next opportunity for political associations to be formed will therefore be before the local council elections of 2022. The 10 year cycle of the formation of new political associations is confirmed in Article 6(5) of this Law. Alternative proposals were made for party licences to be limited to 5 years at a time so that new political associations can contest the five yearly local council elections every time. The balance of opinion appears to favour the 10 year cycle, but it is possible that there be calls for the formation of new political associations in the run up to the 2017 local elections, especially if there are rifts within the new three national parties.

<sup>47</sup> This will be the date the Committee announces under Article 6 of this Law the winning three parties/associations. This Clause would have been better placed in Article 6. In 2002, the then Registration Committee announced the names of the three parties on 24 December 2004 after the Commission informed them on 22 December 2002 of the final results of the local elections which were held on 15 December 2002. Only six political associations contested the 2002 local elections and as the more associations and parties are

## **Article 5: The National Parties and the Provisional Associations**

1. On expiry of the period of submission of applications for registration of associations, the Committee for the Registration of Political Associations and the approval of the National Parties shall confirm the associations which fulfil the necessary conditions<sup>49</sup>, and shall grant them a provisional approval which will enable them to operate.
2. The period in which the associations can so operate shall be ~~six (6) months beginning from the date when the provisional approval has been granted~~ *up to six months*<sup>50</sup> *which shall be set by the Committee for the Registration of Political Associations in consultation with the National Electoral Commission.*

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likely to contest the 2012 local elections and the electoral system has been changed recently (in the amendments to the 2001 Election Law which came into force on 13 December 2011) from a closed list to an open list system, the results of the polls are likely to take longer this time.

<sup>48</sup> There is also the issue of the date when these licences come to an end that needs to be re-considered if there is any chance of the new political associations having a level playing ground when they are competing with the national parties once every 10 years. The assumption in this Law is that the three national parties retain their status until they lose their licence and the local elections results are declared. However, in my view, there a good case to be made for the licence to be suspended or to come to an end well before the beginning of the election campaign start so that from then onwards until the local elections the three parties and the new associations are, legally, on the same footing during this transition period. This temporary “transitional” arrangement does not affect Article 9(3) of the Constitution (the party number limit) as, in effect, during that period no political parties are formally recognised whilst the competition for the identification of the three new parties is being concluded through an election campaign and a poll. This could also coincide with this transition (or window) period of permissible of “floor crossing” (or defections) by elected representatives and councillors, as now allowed by the new amendment to the Law (Article 11(4)). The licence period of the three national parties would have then run from the date of their certification to the beginning of the transition period.

<sup>49</sup> These are the **“forming” stage** requirements and are set out mainly in Article 4(3) but regard must be had also to the fundamental requirements of compliance with the Constitution and laws (such as Articles 2 and 7 of the Law). (See also the footnote to Article 4(1)). This also means that it is indeed possible that some applications may not go beyond this initial stage if they do not fulfil the requirement of production of the documents required, at the stage, or fail these basic and fundamental “legality” conditions as no association which falls within Article 7 or which plainly does not comply with the general but fundamental principles set out in Article 2 shall hope to get off this starting line and receive a provisional approval. *The Committee will need to adopt clear Regulations and Directives which explain the process of consideration of applications, initial sifts and decisions on provisional approval, as well as the following stages. On 29 December 2011, the Committee announced that on the closing date of applications, the following 15 political associations have submitted their applications and having fulfilled the stage one requirements and have been granted provisional registration: Wadani, DALSAN, UDHIS, NASIYE, NDP, Ummada, Gurmada, Jamhuuriga, Damal, Badbaado, Horyaal, RAYS, SSCD, Xaqsoor and NUUR.*

<sup>50</sup> The amendment means that the period can now be less than six months, if so decided by the Committee (and the Commission). This **“norming” period** was three months in the 2000 Law - see Article 4(2) of the 2000 Law. During this period, the associations which have formed and submitted their applications (i.e the “forming” stage) and gone through the initial sift of meeting the submission of the relevant documents and fulfilling basic “legality” provisions of the Law are then given a chance to complete their organisational structures and meet the other normative requirements set out in this Law including those set out in Clause 3 of this Article.

3. Every [party<sup>51</sup>]/association shall submit, within the period set out in clause 2 of this Article, the following documents and particulars<sup>52</sup>:

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<sup>51</sup> This Clause applies only to associations and the inclusion of the term “party” in this line is superfluous.



- a) The holding of the general meeting of the association [or party], the date when and the place where it was held, and the main issues dealt with, such as the list of the members of the Central Committee, the Executive Committee and the leadership of the [party] (*association*) .
  - b) Proof<sup>53</sup> that the association has functioning branches and that it has registered at least 1000 (one thousand [persons])<sup>54</sup> members in every region<sup>55</sup>, who should hold legal citizenship confirmation cards.
  - c) *The period of licensing as a national party shall be ten (10) years beginning from the date when the licence was issued*<sup>56</sup>.
4. The Committee shall issue four (4) copies of this Law to every association which is granted provisional approval enabling it to operate.

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<sup>52</sup> On 7 March 2012, the Committee explained (publicly and also, apparently in direct communication with each association) that the 1000 members required in Clause 3(b) of this Article must be a) persons who were registered voters and have their voter registration cards and that the names and cards of each associations supports should be registered at the relevant regional centre each association and forwarded to the committee ; and b) the 1000 supporters of each association should be available on a pre-arranged date and time at the each association's centre for verification by the committee. In the light of the current special circumstances (*duruufo gaar ah*) in the Eastern Sool region, the Committee, whilst invoking its regulation making power under Article 26 of this Law, set out that the lists of the 1000 supporters for each association should be prepared at Las Anod, the capital of Sool, but that each association should produce in person at Ainabo only 20%(i.e 200) of the 1000 supporters for verification. The Committee also announced that the verification process shall take place at each region (starting from Borama (Awdal)) from 9.00 O'clock on 18 March 2012 to 30 March 2012.

The Committee also stated that each association must hold its general meeting and a) form its central committee, executive committee, leadership and structure of the association; b) complete the rules of the association and its political programme; c) forward to the (Registration) Committee visual and sound recording showing the main issues dealt with at the general meeting; d) the general meeting must be attended by at least one member of the (Registration) Committee e) hold the general meeting between 15 March 2012 to 15 April 2012.

The Committee added that it will announce the outcome of its stage 2 (norming stage) assessments of each association on 20 April 2012 and confirm which associations can proceed to the next stage of participating in the local councils' elections. The Committee advised the associations to consider mergers and exhorted them and the parties to observe the laws of the country, the public order and good conduct.

On 20 April 2012, the Committee announced that six associations fulfilled all the stage 1 and stage 2 conditions set out in this Law. These were **Wadani, Dalsan, Ummada, Nasiye, Rays and Xaqsoor**. The remaining 9 associations (see footnote 49 above) were adjudged as having not met all the conditions. It was not clear from the reports so far whether, as should be the case, each association was informed of the reasons for the decision relating to them. The 9 unsuccessful associations announced their disagreement with the decisions. As these are administrative decisions, it open to each association to challenge the decision relating to its organisation at the Supreme Court under Articles 9(4)(c) and 14(6) of the [Organisation of the Judiciary Law](#) (Law No. 24/2003) within 30 days of the date of the decision.

<sup>53</sup> Even though the voter 2007 voter registration system has been voided with effect from 13 December 2011, the Committee understandably used the voters' registration cards as sufficient proof of identity of each association's supporters.

<sup>54</sup> The requisite figure was 500 in the 2000 Law. In my view rather than a requirement of 1000 members from each region, a percentage number based on the total registered voters in each region would have been more equitable. Although the final voters' list issued by the Commission on 22 June 2010 was voided by an [amendment to the Voter Registration Law 2007](#), which came into force on 13 December 2011, it showed 361,498 registered voters in Maroodijeex (Hargeisa) Region and only 43,096 in the Saaxil region and the current required 1000 voters from every region translates as only 0.3% of the former and 2.3% of the latter (i.e the number of voters required now is nearly 8 times more in the Saaxil region than in Maroodijeex region).

<sup>55</sup> These are the six regions in the Regions and Districts Law 2002 (as amended in 2007) – see Article 1(3) of this Law and its footnote.

<sup>56</sup> This amendment was already in Article 4(3)(h) of the Law.



5. The rules<sup>57</sup> of every political association/party shall show clearly adherence to (the principles of) democracy, power-sharing and good governance.
6. Every association shall submit to the committee 3 printed copies of its Rules<sup>58</sup> and the details of its addresses in all the regions and districts of the country.
7. The Rules of every party/association shall conform to the provisions of the Constitution and the other laws of the Republic of Somaliland<sup>59</sup>.
8. Every Somalilander (*Somaliland* citizen) shall be able to become a member of any party/association.

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<sup>57</sup> This Clause repeats Article 4(5) of the 2000 Law but adds good governance. It is this general requirement which underlines the new provisions in this law setting standards for the internal management of associations and parties. Both the Committee and, later, the Commission have the power to oversee how these standards are met. *The Committee (in consultation with the Commission and later the three parties) will need to develop in the Regulations detailed standards and good practice recommendations for the internal democracy and management of political parties, so that the parties can show objectively their adherence to this legal requirement.*

<sup>58</sup> See Article 13 for the minimum requirements of what should be in the Rules.

<sup>59</sup> This reiterates the basic fundamental requirements set out in Article 2 of this Law.

9. A political association which has been granted approval as a party shall not amalgamate with another party prior to or after the elections<sup>60</sup>. Similarly, the Rules of any such party shall make it clear that no member or members of the party who have been elected to the legally recognised Councils<sup>61</sup> may be expelled from the party unless they have contravened<sup>62</sup> the laws of the country or the Rules of the party.<sup>63</sup>

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<sup>60</sup> This first sentence of Clause 9 remains the same as it was in the 2000 Law (Article 4(9)) and in the light of the existing three parties makes more sense now than it did in the previous Law. The most logical interpretation now is that:

a) It applies only to associations that have already been recognised as parties, which means that there were none when the previous law was enacted in 2000 but, now, there are three national parties.

b) These three parties cannot join any other party (i.e each other) but presumably associations can join them, prior to the local elections, as allowed in Article 2(6) of this Law.

c) The elections referred to in this Clause are not specified but it is safe to assume that this non-merger prohibition imposed on the three parties applies both before and after every election (and not just after the local elections in which the association first managed to become a national party as there was nothing stopping an new association joining another association or a party before those local elections).

This Clause would have been better placed in Part Seven of this Law which deals only with the three political parties.

<sup>61</sup> See Article 1 for the definition of “legally recognised councils” – essentially the House of Representatives and the local districts (as well as the House of Elders, which has never been nor likely to be, in my view, popularly elected through political parties).

<sup>62</sup> The Rules of any party should advisedly cover these contraventions and set down transparent procedures which meet natural justice standards for disciplining party members for such contraventions as well as other allegations relating loss of membership (in Article 10 of this Law). There should be separation of investigations from the decision making, rights of defence/representation, especially in serious matters and internal appeals and the right to external appeal to a court, if necessary. Despite the statutory nature of the provisions of this Clause and Article 10 of this Law, a legal dispute between a party member and his party is not a public law matter and is grounded on the Rules of the party and conditions of membership to which the member has agreed to in becoming a member. In my view, therefore, the relevant court for dealing with such cases is the Regional Court. This jurisdiction is similar, but not the same, as that the Regional Court exercises under Article 76 of the Civil Code in respect of membership of charitable associations. The issues of whether or not an elected member might lose his seat is, however, a different matter grounded in either the Constitution or the

10. The programme of every party<sup>64</sup> shall address clearly the following issues:
- a) The maintenance of the peace, tranquillity and the (public) order of the country.
  - b) The advancement of education and religion.
  - c) The promotion of health and welfare.

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public Law and falls either within the jurisdiction of the Constitutional Court or the Supreme Court (as an administrative matter, especially in the case of councillors where the constitution is unlikely to be engaged).

<sup>63</sup> This part of the Clause (then numbered 4(9)) used to include in the 2000 Law a prohibition against such elected members joining another party (floor crossing), which has been removed with effect from the date this Law came into force on 20 August 2011. It is not clear why the unequivocal ban on floor crossing was deleted but with the deletion and the addition of the new Article 9 which reaffirms the right of every citizen (presumably including elected Representatives and local councillors) to join a party/association of his choice, the presumption in this Law is that floor crossing to other parties (or defections to new political associations) is no longer banned, as explicitly as it was in the 2000 Law. The Law, however, now includes a new provision in Article 10 which states that any party/association member may be expelled for joining or campaigning for another association or for contravening the Rules of the party/association. Although Article 5(9) still states that elected Representatives and local councillors may not be expelled from their party, this protection does not apply if the elected Representative/Councillor contravenes the laws of the land or the Rules of the party. Every association/party is very likely to state in its Rules that defections to another party/association will lead to expulsion, as allowed by Article 9 of this Law, and so crossing the floor or defections will almost certainly lead to expulsion from the party. But the problem was and still is that neither this Law (nor the 2000 Law) link unequivocally such expulsion (or even resignation of the member who is an elected Representative/Councillor from his party) to loss of his seat. Loss of a elected seat by an incumbent Representative/Councillor is dealt with by [Article 50 of the Constitution](#), in respect of Representatives, and by [Article 25 of the District and Regions Law](#) in respect of local councillors. Both contain similar clauses which state that the membership of the House or of the District Council will be lost for breach of one of the (pre-requisite) conditions of the election of the member. These pre-requisite conditions relate mostly to eligibility for candidacy for the elections and are set out in Article 41 of the constitution in respect of the Representatives and in the electoral laws in respect of both Representatives (the 2005 Law – Article 15, principally) and Councillors (the 2001 Law – Article 12, principally). Under the electoral laws, to be elected to these offices, prospective Representatives in the 2005 elections have to be nominated by one of the three parties and Councillors by one of the political associations in the 2002 elections. The post-election ban on floor crossing by the elected Representatives and councillors in Clause 4(9) of the previous 2000 Law laid down only that they should not join another party, but neither connected the floor crossing to the constitutional and legal provisions dealing with loss of seats nor stated clearly the penalties for floor crossing. Floor crossing constitutional or legal provisions have been adopted by many countries (including those with first past the post electoral systems) but the loss of office is unequivocally stated in the relevant provisions (see for the example this [major study on floor crossing](#) laws by Kenneth Janda). In Somaliland, despite Article 4(9) of the 2000 Law, there have been many examples of Representatives (as documented in a series of articles in [Haatuf](#) newspaper in September 2011) joining formally or informally one of the other parties since the 2005 election or of councillors joining other parties since 2003. All the three parties have seen formal or informal floor crossing defections but none of them has sought to unseat the defectors until the recent mass defections from UCID party in October 2011. The defections (not strictly floor crossing) of both 17 Representatives (20% of the House members) and a handful of local councillors from UCID party brought this matter to prominence. This matter is still in dispute but the mass defections have mostly taken place after the (anti) floor crossing Article 4(9) of the 2000 Law has been repealed on the promulgation of this Law in August 2011 and, secondly, there is also the new Amendment (Article 11(4) – in force from 13 December 2011) which expressly allows sitting Representatives and councillors to join any party or political associations during the period when political associations are allowed to be formed under this Law. See also the footnotes comments on Article 11(4). Overall, the scheme of this Law introduces a “window” of 6 months (or more) preceding every 10 years the local elections (in which new political associations can contest) when sitting Representatives and Councillors are free to cross the floor to join another national party or defect and join one of the new political associations.

<sup>64</sup> Although this legal obligation applies only to political parties, it makes sense for all political associations aspiring to become parties to address these issues in their programmes and policies. This will not only help the new associations to compete with the previous national parties, but will also stand them in good stead should they succeed in becoming one of the new political parties.

- d) The care and protection of the environment.
- e) The investment in and the utilisation of the natural resources of the country.
- f) The promotion of knowledge and technology.
- g) Encouraging the youth and women to participate in the politics of the country<sup>65</sup>.
- h) Observing the Constitution and the laws of the country.

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<sup>65</sup> See also Article 29(2) of this Law.

### **Article 6: Differentiating the Parties/Associations contesting the local elections**

1. The three parties/associations which gain in the local government election 20% of all the votes cast in every region<sup>66</sup> shall be recognised as national political parties, and shall each be issued<sup>67</sup> with a certificate of recognition as a national party.
2. If only one party [*or association*<sup>68</sup>] succeeds in gaining 20% of the votes in every region, the Committee shall recognise as national political parties that party [*or association*] and the other two parties [*or associations*] which come next in the total percentage of votes<sup>69</sup> cast for them in every region.
3. If the percentage of the regional votes cast for two or more associations [*or parties*] are equal, they shall be differentiated on the basis of the total number of votes cast for each of them<sup>70</sup>.

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<sup>66</sup> As compiled by the Commission after the declarations of the results in each district under Article 61 of the 2001 Election Law

<sup>67</sup> By the Committee.

<sup>68</sup> I have added "association" because it follows from Clause 1 of this Article, and have done the same in respect of "party" in the following two clauses. The forthcoming (2012) local elections will be contested by both registered political associations and the current three national parties. Unless the Law is amended in a few years' time, this will not be the case in the following 2017 local elections as the new national parties "exclusive" licence will last for 10 years - see Article 4(3)(h), 5(3)(c) and Article 6(5) of this Law.

<sup>69</sup> The deciding factor in this second scenario is still the percentage of votes in every region. This is a change from the similar provision in the 2000 Law which referred to "the number of votes cast in every region" for each association/party. To pre-empt any disputes, the Committee will need to clarify in its Regulations (and, perhaps also, in a code of conduct signed by all the associations and parties) the detail of these scenarios for identifying the three winners, so that everyone is fully familiar with these provisions. It is feasible that an association/party with higher percentages of votes in more regions may come ahead of another which has amassed a larger overall total number of votes which are concentrated in fewer regions. The rationale behind the percentage threshold in every region is to gauge the national support that an association/party has across all the six regions. A proper understanding of these issues on the part of the associations/parties and the public will reduce the chances of any disagreements over the outcomes.

<sup>70</sup> The total number of votes is used as a tie breaker in situations coming under the two preceding Clauses where more than one association/party gains the same percentage of votes in each region. Again it is advisable for the Committee to set out examples of various scenarios under this Clause in Regulations prior to the election so that the associations/parties and the public are clear about the various computations. I have still not forgotten the prevalent lack of understanding of the Quotient and Largest Remainders System of allocating seats in the 1969 elections and the rumours that surrounded the outcome of that proportional representation system of voting which we still use. In the forthcoming 2012 local elections, winning one of the three coveted national party status for the following ten years also involves very high stakes and a widely misunderstood narrow separation of two associations/parties could have serious implications for the public order and for confidence in the democratic elections.

4. If no political association [*or party*] gains 20% (*of the votes in every region*), the Committee shall recognise as national political parties the three parties [*or*

associations] that have gained the highest percentage<sup>71</sup> of votes cast in the regions of the country.

5. Political associations may be formed in accordance with this Law once every ten (10) years<sup>72</sup>. However, political associations must be formed at the latest six (6) months before the polling date of the local councils' elections.<sup>73</sup>

<sup>71</sup> In the 2000 Law the comparable Clause used the highest "total number" of votes in all the regions and not the highest "percentage" of votes in all the regions as this Clause now states. The two outcomes are likely to be the same in all cases but, again, it worth emphasising that the Committee needs to clarify in the Regulations more details about what the tie break will be if the two or more associations achieve exactly the same percentage of votes in all the regions, especially when they all come in the third place. A possible tie breaker might be the largest number of votes in more regions than the other(s). In the 2001 elections none of the political associations reached the 20% threshold (although UDUB just missed it by one region out of six) and so the comparable Clause in 2000 Law was used and the three associations which garnered the highest number of votes in all the regions were UDUB, Kulmiye and UDUB, as shown in this table:

Association	Total Regional Votes	Percentage	No. of regions over 20%	No. of Seats Won Through balloting
UDUB	179,389	40.8	5 out of 6	102
KULMIYE	83,158	18.9	3 out of 6	67
UCID	49,444	11.2	0 OUT OF 6	45
Nationwide Votes/seats	440,067	100	N/A	332 (contested) 47 (not contested)

(Source: [Somaliland Local Elections 2002 – Final Report](#) of the EU/GTZ Technical Advisory Team Dec 2002)

UDUB and Kulmiye reached the 20% threshold in 5 and 3 regions respectively, whilst UCID did not reach that level in any of the regions. SAHAN which came fourth (out of the six associations) in the total number of votes (with 47,492 votes) reached the threshold of 20% in 2 regions (but came last in the total seats won) and ASAD which came last of the six associations in total votes (39,596) reached the threshold in one region but gained more contested seats (53) than each of the three associations (including UCID) which came ahead of it in the total votes. This illustrates, in my view, the need for clarity and understanding of all the likely permutations and, more importantly, which factors, as set by the Law, are the most crucial for determining the top three associations/parties that will become national parties.

<sup>72</sup> This 10 year period is also linked to 10 year licence period for the three national parties set out in Article 4(3)(h) (and repeated in Article 5(3)(c)) . There have been proposals for a 5 yearly cycle and in all probability the same arguments for opening up the political space for new entrants will be used again in 5 years' time until such time the constitutional three party limit is removed or this Law is amended.

<sup>73</sup> Presumably by then a new Committee will be appointed by the President and it would have been preferable if this was stated in the Law (perhaps in Article 3 dealing with the Committee's appointment). One of the major criticisms of the 2000 Law was that it did not legislate for the appointment of a new committee and for the next round of registrations – this Law now addresses the latter but not the former issue.

## **Article 7: Matters in which Parties/Associations are forbidden**

1. No party/association shall pass false or inaccurate information to the Committee.
2. No Rules of a party (or an association)<sup>74</sup> shall include a provision or provisions which are contrary to the Constitution<sup>75</sup> or Islamic Sharia.
3. No association/party shall receive financial support from foreign<sup>76</sup> sources.

<sup>74</sup> See also Article 2(4) and 5(7).

<sup>75</sup> And, of course, also other laws.

<sup>76</sup> "Foreign" is defined in Article 1(6) as non-Somaliland citizens. It is important, however, that the Committee covers in its Regulations more detailed provisions on the position of companies, partnerships and other concerns which are partially owned by Somalilanders. Unless the view of the Committee is that any part

4. No association/party shall use or utilise for its own electoral activities the assets of the Somaliland nation<sup>77</sup>.
5. No association/party shall use armed<sup>78</sup> groups or forces for the furtherance of its own interests.

#### **Article 8: The rights of the National Parties**

1. The political parties which have been issued with a certificate as a party shall have the right to:
  - a) have access to the national public media in an equitable manner<sup>79</sup>, and, having obtained the approval of the appropriate agencies, to own their own media;
  - b) express freely their political opinions, without damaging the public order and the general security of the country<sup>80</sup>;
  - c) be free from any suppression of their party officials and from violation of their centres by the security forces without the order of a competent court; *(and)*
  - d) to criticise the Government, as opposition national political parties.
  - e) The parties shall submit, in writing, to the relevant Regional Court any complaints or grievances they may have about the work of the Committee for the Registration of Political Associations and the approval of the National Parties<sup>81</sup>.

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ownership of such concerns, however small, by a foreigner makes them ineligible for supporting the associations/parties, it may consider the position where there is a very high percentage, but not total, ownership by Somaliland citizens. Ideally this ought to have been covered by the Law.

<sup>77</sup> See also Article 26(2) of [the 2005 Election Law](#) which states that no party may use for its purposes the property or assets of the nation.

<sup>78</sup> Article 23(4) of the Constitution outlaws associations which are military in nature or are armed. There are also a number of offences in the [Penal Code](#) relating to the formation of armed groups and ranging from the serious crime under Article 185 (bearing arms against the state) to the contravention under Article 508 (forming an armed body not intended for the commission of offences).

<sup>79</sup> Unlike Article 26(1) of the 2005 Election Law, this provision is not confined to the periods of election campaigns and the Committee shall have oversight of this issue, especially outside election campaign period. During elections periods, however, the Commission has the lead in these matters under Articles 26 and 64 of the 2005 Election Law. This is one of the various areas where the Committee and the Commission will have to liaise closely as, in any case, the Commission will be taking over these duties on its own after the expiry of the Committee's two year term.

<sup>80</sup> A more positive exposition of these rights could be included in the regulations. For example :

“A political party shall be entitled :

- a) to hold and address public meetings in any area in accordance with the relevant laws for the purposes of publicising its party or soliciting membership; and
- b) to the protection and assistance of the police and other security agencies of the state for the purposes of facilitating peaceful and orderly meetings.”

<sup>81</sup> This is a welcome provision which avoids the current “default” first instance jurisdiction of the Supreme Court to deal with all administrative complaints relating to the final decisions of the public bodies (under Article 9(4)(c) of the [Organisation of the Judiciary Law](#) (Law No. 24/2003)) with no chance of further appeal. It is my fervent hope that Article 9(4) of the Judiciary law will be amended so that all administrative cases are, in the first instance, dealt with by a new “Administrative” Division of the Regional Courts with the Supreme Court then acting only as an appellate body in these administrative matters. Although this Article only talks about the “political parties”, it should be noted that as the Registration Committee is an administrative body, any of its final decisions can be challenged by either the political associations or any individuals directly affected by these decisions under Article 9(4)(c) of the Judiciary Law and this Article specifically relating to the rights of the political parties and which gives them a new right to complain to a Regional Court does not, in my view, take away the rights of others, such as the political associations to challenge the administrative decisions of the Committee. In these cases, the Supreme Court (and not the Regional court or the Constitutional Court) will the

- f) If they are dissatisfied with the decision issued by the Regional Court, they can appeal to the Constitutional Court<sup>82</sup>.
- g) The national parties shall have the right to own private property<sup>83</sup>.

### **Article 9: The rights of citizens**

Every adult citizen shall have the following rights<sup>84</sup>:

1. To participate in political activities.
2. To join the party or political association of his/her choice.
3. Members<sup>85</sup> of associations or parties shall have equal rights in being elected or voting the internal party/association elections.
4. Any member who wishes to leave his/her position as an office bearer<sup>86</sup> in a party or association:
  - a) shall submit his/her resignation application to the party/association; *(and)*
  - b) the party/association must accept or reject<sup>87</sup> the member's resignation within 14 days.
5. No person can be a member of two parties/associations or a party and an association at the same time<sup>88</sup>.

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right forum for any such legal action and the time limit is 30 days from the date of the final decision of the Committee.

<sup>82</sup> This should have been the Supreme Court, and not the Constitutional Court, which has normally, under Article 9(4) (c) of the Organisation of the Judiciary Law (Law No. 24/2003), the jurisdiction to deal with complaints against the final administrative decisions of public bodies, such as the Registration Committee set up under this Law. However, if the complaint raises a constitutional issue, then this will be dealt with by the Constitutional Court under Article 6(4) of the Organisation of the Judiciary Law.

<sup>83</sup> This patrimonium right is linked to the legal personality accorded to the parties under Article 20(1) of this Law.

<sup>84</sup> These rights are grounded on the Constitution and in particular Articles 8, 22 and 23.

<sup>85</sup> The scheme of this Law is that membership of Somaliland political associations or parties is on an individual basis and there are no provisions dealing with corporate membership but Somaliland organisations or corporate concerns can contribute donations to a party or association (see Article 19(2)).

<sup>86</sup> I have translated "xil" (literally meaning responsibility) in this respect as someone holding a party office (office bearer) and is elected by the party to such internal office. This does not, in my view, include elected Representatives or Councillors or the president/vice-president that are all selected by the party and/or associations (in respect of some councillors) as candidates for a national or local public office, unless that person was also elected to bear a party post and he is resigning from this latter post. Nonetheless, there is nothing stopping the parties and associations from adding to their Rules similar conditions to the membership of their prospective candidates for national office. In fact, they need to go further than that and have reasonable conditions about floor crossing or defecting, which are in line with this Law and the Constitution, as well as other laws, that their prospective candidates can subscribe to before they are put forward as candidates. These conditions can also include the procedure for dealing with (and possible penalties for) contravention of the association/party's Rules so that issues coming under Article 5(9) and Article 10 can be dealt with in a transparent manner which is consistent with the provisions of this Law.

<sup>87</sup> Subject to the formalities and commitments agreed to willingly by the member, no party can reject a resignation unreasonably as that could amount to an unjustified limitation of the rights of association of the person.

<sup>88</sup> See also the following Article 10 which allows expulsion of a member.

### **Article 10: Reasons for losing membership**



Any member of a party<sup>89</sup> or association may be expelled only when s/he<sup>90</sup>:

- a) forms another association;
- b) participates in the formation of another association;
- c) joins or generally campaigns for the formation of another association [party];
- d) contravenes the Rules of the party/association<sup>91</sup>.

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<sup>89</sup> This Article applies to both parties and associations. See also Article 5(9) of this Law which deals with the expulsion of members of the parties who are also sitting members of the House of Representatives or the local district councils.

<sup>90</sup> This Article should have also covered the legal avenues of redress that such an expelled member may have after exhausting the internal appeals (or in addition to such appeals) through the courts (in my view the Regional Court – see the footnote to Article 5(9) above). Note also that under Article 13(6) of this Law the association/party rules must include as a minimum the conditions of membership and the reasons for the loss of such membership and should also, advisedly, include more in respect of the procedures for investigation of allegations against members, opportunities for the members to defend themselves and to be heard, proper consideration of all the evidence by a panel, reasoned decisions and an internal appeal. Without such clear procedures and natural justice safeguards, parties that discipline members may find themselves being overruled by the Regional Court.

<sup>91</sup> *The Committee should consider* including in the Regulations that parties/associations ought to set out clearly their Rules as to which contraventions of the Rules are serious enough to merit expulsion and objective procedures for disciplining members in such situations that meet the principles of natural justice.

#### **Article 11: Candidates contesting the House of Representatives and the District Councils elections**

1. Any person who is Somaliland citizen shall have the right to be elected and to elect others, but a candidate (for election) can only be:
  - a) a Somaliland citizen who has been adopted as a candidate by a party (or *association*<sup>92</sup> in relevant local elections) and has fulfilled the conditions<sup>93</sup> set by the law.
  - b) No independent candidate who is not standing in the name of a party (*association*) can stand for an election<sup>94</sup>.
2. The executive committees of the parties shall nominate<sup>95</sup> the candidates standing for them in the election of the House of Representatives<sup>96</sup>.

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<sup>92</sup> I have added this for clarity as, at district level, associations will be able to contest the elections.

<sup>93</sup> These conditions are set out in the electoral laws and also in the qualifications set out in the Constitution in relation to the membership of the House of Representatives and the President/Vice-President.

<sup>94</sup> This ban on independent candidates has also been in the 2000 Law and is also in Articles 22(3) and 35(2) of the 2001 Election Law and Article 7(1) to (2) of the 2005 Election Law. In their [General Comment \(No. 25\)](#) on Article 25(b) of the [International Covenant on Civil and Political Rights](#) relating to the right, without unreasonable restrictions, to be elected, the Human Rights Council state that “*The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties*”. Whilst, in my view, the constitutional limit of (up to) three parties contravenes this paragraph and is seen by Somaliland, as a temporary necessary measure at this stage of Somaliland’s development, many countries limit or ban independent candidates and see this as a reasonable requirement. In Somaliland the ban on independent candidates is justified on the basis that it is essential for the preservation of the constitutional limit of three parties.

<sup>95</sup> This Clause needs to be reconciled with Article 16(3) of the 2005 Election Law (Law No. 20-2/2005) which confirms that any disagreements within a party relating to the selection of the candidates or the submission of the list of candidates for the House of Representatives shall be resolved by the Executive Committee of the relevant party. The Commission will need to re-consider both articles – whilst the nominating body can also

3. The committee of the party (*association*) at each region<sup>97</sup> shall nominate the candidates at district level.
4. *Whenever the competition of the political associations in the District Councils (elections) is allowed<sup>98</sup>, any sitting member of the House of Representatives or of the local District Councils shall be free to form a new political association or to join a political association/party of his choice<sup>99</sup>.*

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deal initially with any disagreements arising out of their decisions, the latter role can only be limited to a power to review its previous decision and cannot be in the nature of a final appeal which ought to be made by a different body which can either be a special appeal committee appointed by the party in its Rules for this purpose or a committee of the higher office bearers of the party. The 2000 law did not cover this point and so *both the Commission and the Committee, would need to cover this in the Regulations* and the parties would be well be advised to have an internal appeal system in their Rules as this new Law clearly gives the nomination function to the Executive Committees of the parties.

<sup>96</sup> The nomination of candidates for the Presidency/Vice-Presidency is not covered by this Article. Article 35(2) of the 2001 Election Law, however, states that candidates for these offices must be members of and be nominated for election by a registered or approved party. The Committee may need to impress on the parties that the nomination and appeal procedures for these candidates should be covered clearly in their Rules.

<sup>97</sup> This repeats Article 7(2) of the 2000 Law. Article 23(1) of the 2001 Election Law states that the list of candidates for election to a local council shall be declared by the District Committee of each association/party, but this new Law now re-asserts the position that the nominations will be made by the Regional Committee of the party/association. Article 23(4) of the 2001 Law gives the appeal function to the Central Committee of the association/party and correctly separates the nominating function from the appeal function.

<sup>98</sup> Under this Law, the “competition” is allowed currently (in 2011 – nearly 10 years from the last registration period of 2001/2 ) and, as set out in Article 6(5) (and also Articles 4(3)(h) and 5(30)(c)) once every ten years from onwards. Unless the Law is changed before the 2017 local elections, the next opportunity will, therefore, be in the run up to the 2022 local elections.

<sup>99</sup> This new amendment introduces a “window” in which floor crossing to other parties or defection to new associations is allowed. As clarified by the new amendment to Article 5(9) of this Law, presumably such persons will resign from their parties or would be expelled by their former parties under Article 5(9) read with Article 10. The ban on floor crossing in the 2000 law has already been removed by this Law (see the footnotes to Article 5(9)). The adoption of this transitional “window” period during which Representatives and Councillors can cross the floor as was done in South Africa between 2002 and 2009 (before the [constitutional ban in Article 47](#) on floor crossing was reinstated in 2009), though controversial and heavily criticised by the current national parties gives elected Representatives and Councillors a chance to participate in the periodic opening up of the “political space” for new political associations that might become one of the national parties. Defections from the three parties have already been taking place and the change in the law appears to reflect the reality on the ground. All the Representatives and Councillors that take advantage of this amendment and decide to cross the floor to another party or defect to a new association will, if they continue to remain in office, have to join one of the new three national parties after the local elections (see Article 24) and it will be interesting to see what effects, if any their movements might have on the fortunes of their previous parties and those of the new associations. The major concern about this “permissible” floor crossing/defections has been its possible effect on the scheme of this Law (and the 2000 Law) which was predicated on the principle that serving members of the House of Representatives and, after their elections, of the district council can only be members of the three national parties only - hence the compulsory post local election floor crossing to the three parties – and during this “window” transition period, there will be sitting members who shall belong to the new political associations. It has been argued that this might amount to a breach of the constitutional three party limit. My own preference would have been for this Law to have included a provision which would bring to an end (or suspend) at the same time as the start of the “window” period the licence of the three national parties during so that there would be no recognised national parties during this short completion for national party status “transition” period. After all Article 9 of the Constitution says that the number of parties must not exceed three, but it does not say that there must always be three parties. This would have also underlined that there would also be a level playing ground between all the political parties and associations during this transition period. But, as there is still only three legally recognised parties and the political associations that some of the Representatives and Councillors might join are not accepted as political parties, this temporary arrangement is not strictly against Article 9 of the Constitution,

and I will be surprised if the Constitutional Court consider this amendment as be “unconstitutional”. Nonetheless both the House and local councils need to consider temporary working arrangements under their Rules to ensure that Representatives and Councillors who become members of the new political associations during this “window” period do not organise themselves as “parties” whilst conducting the business of the House and the Councils.

#### **Article 12: Period of office of the President and of Party Chairmen**

1. No person may hold the office of President more than twice<sup>100</sup>.
2. A national party shall not put forward as a candidate for the Chair of its party for more than two terms<sup>101</sup>.

### **PART FIVE: THE RULES, STRUCTURE AND WORK OF THE POLITICAL ASSOCIATIONS**

#### **Article 13: The Rules and structure of the political associations**

The Rules of the political associations shall state clearly the following<sup>102</sup>:

1. Full name of the association.
2. The objects of the association.
3. The structure of the association and its branches.
4. The seat of the association which should be situated inside Somaliland.
5. The procedures for the election or changes of the office bearers the association and their terms of office.
6. Membership conditions and the reasons for its loss and the resignation of members and office bearers.
7. Provisions relating to the ways in which the Rules of the association may be changed.

#### **Article 14: Prohibitions**

Any person who is a member of the armed forces such as the national army, the Police, the Corrections Corps, the national intelligence agencies; the non-governmental organisations<sup>103</sup>, governmental employees (civil servants)<sup>104</sup>; and the members of the

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<sup>100</sup> This is superfluous as it is a re-statement of Article 88(2) of the Somaliland Constitution.

<sup>101</sup> As a general principle, and unless specifically stated otherwise, laws do not have retrospective effect. If this Clause is to affect persons who have already served as Chairmen of the national parties before this Law came into force, then, for the avoidance of doubt, this should have been added. Parties and associations would need to add this mandatory legal condition to their Rules and there is nothing stopping them from making it clear in their Rules that all previous terms of office count towards the two term limit.

<sup>102</sup> These are minimum requirements, and associations/parties will be well advised to trawl through this Law and add to their Rules the numerous other binding conditions which are set out in the Law so as to ensure that their association/party and their members act consistently in conformity with this Law at all times. The Committee may, in its Regulations or good practice recommendations, set out more details about the model contents of Rules which emphasise good governance, democracy community cohesion and positive action measures that help widen the participation of women, the youth and members of excluded communities. It is also essential, in my view, for all parties and associations to have dissolution clauses in their Rules which set out clearly the procedures for such an eventuality and the disposal of any remaining assets.

<sup>103</sup> *The Committee, in consultation with the relevant stakeholders would need to clarify* how far this ban extends to low level employees of NGOs. NGOs, on their part, will be well advised to add to their contracts of employment clear conditions about the consequences of employees compromising their organisations’ political neutrality and bringing them into disrepute.

Judiciary, the Procuracy, and the Registration of Political Associations and the Approval of National Parties Committee<sup>105</sup> are prohibited from:

1. forming a political association or becoming a member of such an association;
2. being appointed as an office bearer of a political association;
3. getting involved in the affairs of parties/associations and losing the impartiality of his present office;
4. supporting or opposing a political party/association.

### **Article 15: Symbols and Names**

No association may use the symbols<sup>106</sup> or a name previously used<sup>107</sup> by another association, party, governmental bodies or the Somaliland state.

### **Article 16: Leaders of the Political Parties/Associations**

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<sup>104</sup> Although prior to 1980, different laws dealt with civil servants of the central government, in contrast to other public employees in independent public agencies or in local government employment or publicly owned industries, a unified system was adopted in the Government Employees Law (Law No. 5 of 2 February 1980) which applied to all permanent employees of the Governmental bodies. Governmental bodies (*Heya'd dawlaadeed*) were defined in Article 1(k) of the Law as "the Presidency, any ministry, agency, local government, bank or any project fully or partially owned by the Government". I doubt if Parliament intended the ban in this Law to apply to all these categories of public employees and if by using the English language phrase "civil servant" after the term "governmental employees" in this Article was meant to signify a narrower band of public employees, perhaps central government employees, then the Committee (in consultation with the Civil Service Commission) needs to clarify this urgently. It could be that the ban on joining political associations/parties should apply only to senior public employees ranking above Head of service (Grade A5) or equivalent as well as any other public employees whose jobs may be compromised by such membership and that the ban on public support and campaigning should cover not only senior staff but also any other public employees whose impartiality may be compromised by such activities. The electoral laws already made it clear that employees of the state and of governmental bodies have to resign before they stand for election to a political office (see Article 7 of the 2001 Election Law and Article 7 of the 2005 Election Law).

<sup>105</sup> Members of other public committees and commissions appointed by the President, such as NERAD, AIDS Commission, Quality Commission, National Anti-corruption and Good Governance Commission etc. (but not their employees) should have been added to this category. The best option would have been to include a general category of "the members of all other public bodies" and a future proof formula of "and any other public bodies designated by a Presidential Decree". This is another issue that the Committee will need to address quickly.

<sup>106</sup> Additional conditions are also set out in Article 24 of the 2001 Election Law and Article 18 of the 2005 Law and confirm that all symbols must be unique and distinctly different from each other; must not have been used in an election by another association/party; and must not show governmental, tribal or sectarian signs. The Committee's regulations and directives would need to stress also that symbols or names which might denote any of the matters listed in Article 7 of the Law or detract from matters listed in Article 2 and, in particular those that might divide the people on sectarian religious or regional grounds, or otherwise unlawful would not be acceptable. Also the use of symbols belonging to companies or organisations, national or international, is not only likely to confuse the public, but will also infringe the rights of their owners.

<sup>107</sup> Previously used names and symbols will also include, in my view, those used in Somaliland not just recently but also in the distant past back to the formation of parties in the 1950s. The Committee will need to collate a database of previously used names and symbols and the new ones for future reference and comparisons. This is another issue which needs further provisions in the Regulations. Until [Somaliland's intellectual property laws](#) are revised, the Regulations may also confer a proprietary right of the associations and parties to their names and symbols for the duration of their registration with the Committee so that others cannot use them for their own use without the permission of the party/association. For disputes about names and symbols that may arise between two associations/parties, see the new Article 29(7).

Persons standing for election of the leadership of the political parties/associations shall fulfil the conditions<sup>108</sup>:

1. S/he must be a Somaliland citizen.
2. His/her age must be no less than 30 years<sup>109</sup>.
3. Unless covered by a pardon<sup>110</sup> by the President of the Somaliland Republic, s/he must not have been subject of a court sentence of more than 3 (three) years for an offence, during the last 5 years.
4. S/he should be a Muslim who observes the Islamic religion<sup>111</sup>.

#### **Article 17: Changes in Leadership and the Rules of the Parties/ Associations**

1. Any changes to the leadership, the Rules and the structure of a party/association must be announced in the media no later than 15 days from the date when the party/association held the meeting which reached the decisions relating to these changes<sup>112</sup>.
2. At the same time, an official record relating to the matter must be sent no later than 15 days<sup>113</sup> to the Procuracy<sup>114</sup>, and the National Electoral Commission.

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<sup>108</sup> This is a new provision and was not in the 2000 Law.

<sup>109</sup> This relatively lower age will be welcomed by many who have pointed out (correctly, in my view) the exclusionary nature of the higher age requirements for national officeholders set out in the Constitution and other laws. Until the relevant constitutional provisions are changed, however, a 30 year leader of a party/association will remain ineligible for election as President of the Republic (minimum age, 40 years – Article 82(3) or as House of Representative member (minimum age, 35 – Article 41(2)) or as a member of the House of Elders (minimum age, 45 – Article 59(1)). Similar age restrictions also apply to election as local district councillor (minimum age, until 13 December 2011, 35, but reduced to 25 after that date - Article 33(4) of the Election Law No. 20/2001).

<sup>110</sup> Under Article 90(3)(5) of the Constitution, the President has the power to grant a pardon or an amnesty. In 2007 President Rayale extended to the then imprisoned Qaran Association leaders a pardon in a Presidential Decree dated 17 December 2011 which, referring to Article 149 of the Penal Code (indult and pardon), stated that the President has granted them individual pardons (i.e indult) in respect of their prison terms but failed to mention the whole sentence which included interdiction from political office for 5 years. A QARAN Press Release on 18 March 2009 states that this was a deliberate decision on the part of President Rayale to confine the pardon to the prison term. (For the background to this issue, see an examination of the amnesty & pardon issues raised in the Qaran case at this [Article](#) which I wrote in September 2007). Now, this Clause of this Law (signed into Law by the President on 20 August 2011) confirms that no one who has received a presidential pardon shall be covered by this condition relating to a court sentence and does, in my view, include all the three former QARAN leaders who may wish to stand for election as leaders of political associations, if they so wish. In any case, I understand that President Silanyo has already extended, when he came into office, the pardon to the three QARAN leaders to include all the accessory penalties of interdiction from public office and appointed two of them as ministers in his first cabinet.

<sup>111</sup> See comments on the similar wording in Article 11(b) of this Law.

<sup>112</sup> It is advisable that a similar provision is added to the Rules of associations/parties.

<sup>113</sup> This is the same 15 day deadline in Clause 1 of this Article.

<sup>114</sup> In Somali “Xeerilaalinta” which is the Procuracy or the Attorney General’s Office. There is no specific reason why an agency other than the Electoral Commission should be informed of these issues. The Procuracy primarily deals with criminal prosecutions (and with a few other defined constitutional issues) but has also some civil law functions under various laws which are linked to the model of the Italian “*Pubblico Ministero*” functions on which this office is still based. The President has recently appointed a Chief Counsel of State (or Advocate General) who shall be dealing with civil law matters and in my view these non-criminal law matters are better dealt with this new office and will require legislative change to effect transfer of these functions. In many countries, these two legal offices are usually in the same department, but criminal prosecutions are dealt with separately.

## **PART SIX: THE MEDIA AND PROPERTY OF THE POLITICAL PARTY/ASSOCIATION**

### **Article 18: The Media of the Party or Association**

1. A political party/association shall have the right to set up its own media in accordance with the laws of the land which relate to privately owned media<sup>115</sup>.
2. No political party/association shall spread, print or publish false news which creates disturbances and public conflict, weakens the unity of the country or damages the public security<sup>116</sup>.
3. Political parties/associations shall have equitable access to the use of the media managed by the Government during the election campaigns<sup>117</sup>.

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<sup>115</sup> The current law is the [Press Law](#) (Law No. 27/2004). No broadcasting or other media laws have been passed yet.

<sup>116</sup> These actions may well amount to criminal offences. Article 328 of the Penal Code, for example, covers the publication or circulation of false, exaggerated or tendentious news capable of disturbing public order.

<sup>117</sup> During the election campaigns periods declared by the Commission, codes of conduct relating to the equitable use of the publicly owned media are usually issued by the Commission which has a statutory duty to oversee such distribution - see Article 26 of the 2005 Election Law which also states that the national parties shall have equal access to such media and to the use of the public assembly grounds (for rallies).

### **Article 19: The Property of the Party/Association**

The assets of a party/association may be gained through:

1. contributions made by the members of the party/association;
2. donations to the party/association which must be given by indigenous (*locally owned*)<sup>118</sup> concerns<sup>119</sup> or Somaliland citizens;
3. grants<sup>120</sup> made equitably by the Government.

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<sup>118</sup> *The Committee will need to clarify* whether indigenous or locally owned means wholly owned by Somaliland citizens or whether substantial ownership (of may be 75% and certainly more than a controlling interest, perhaps) shall suffice. It is very common to bar contributions from foreign sources and Somaliland has good reasons for not allowing undue foreign influence exerted on its political parties and associations. The Regulations ought to make the extent of this bar clear. Future amendments of the Law should also consider making it a criminal offence for a foreigner to provide funds for political parties and associations and for the latter to solicit or receive knowingly such funds. The provisions of this Law relating to party finances are rudimentary and the Committee would need to study this further (even, after the local elections) and having consulted with the stakeholders, produce more details provisions which can be adopted through regulations or, if necessary, through changes in the Law.

<sup>119</sup> The Somali text refers to "*shirkado*" which technically means companies but it is submitted that "concerns" is a more apt term that includes both companies and other businesses more accurately reflects the way the word was used in this context.

<sup>120</sup> These grants has so far only been given to the three parties but as the Government has no resources to award further grants to the new political associations, then the "equity" rule can only be achieved by the creation of a level playing ground between the current three registered parties and the new associations which involves no grants to the parties during the run up to the local elections. In my view, a more transparent level playing ground may have been achieved if this Law ended or suspended formally the status of the three parties once the competition between the three national parties and the new political associations has started, but in any case there is a legal obligation on both Committee and the Commission to treat all the parties and associations fairly and impartially, as set out in their oaths of office (see also Article 19(3) and (4) of the 2001 Election Law).



## **PART SEVEN: EXISTING POLITICAL PARTIES**

### **Article 20: The legal personality of the parties**

1. The three national parties recognised as national parties shall have legal personality<sup>121</sup>.
2. The (*current*) political parties shall have the right to contest the forthcoming local council elections<sup>122</sup>. They shall, however, forward to the Registration Committee the following<sup>123</sup>:
  - a) The full name of the party.
  - b) The objects of the party.
  - c) The structure of the party and its branches.
  - d) The seat of the party which should be situated inside Somaliland.
  - e) The procedures for the election or changes of the office bearers the party and their terms of office.
  - f) Membership conditions and the reasons for its loss and the resignation of members and office bearers.
  - g) Provisions relating to the ways in which the Rules of the party may be changed.

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<sup>121</sup> Political associations should, in my view, also have been included in this Clause as the registration requirements in this Law mean that, when the registered by the Committee, they will indeed pass the tests in the Civil Code for possession of legal personality and their dissolution after the local elections, if they are unsuccessful in becoming a national party, may, in cases of conflict, raise legal issues to be settled by the courts. Legal personality is stated in Article 53(1) of the Civil Code (Law No 37 of 2 June 1973) as being akin to all the rights enjoyed by an individual (natural person) with the exception of those which are inherent in the nature of a human being. Legal personality rights include, as set out in Article 53(2) of the Code, having:

- a) the legal right to own property (patrimonium);
- b) legal capacity, within the limits fixed by the rules (*of the party*), or as established by law;
- c) the right to sue (*or be sued*) and
- d) its own seat (headquarters).

The will and intentions of a juridical person (as compared to an individual) can be expressed by its representatives (Article 53(3) of the Code), which, in political associations and parties would, depending on their Rules, be their elected office bearers.

<sup>122</sup> To be held in 2012.

<sup>123</sup> This should be all set out in the Rules of the Party and the Committee is likely to ask for an up to date copy of the Party's Rules if only to ensure that any changes required of the parties by this Law are made as soon possible. The three current parties need not register again and, as the Law stands presently, shall retain their status as national parties until the declaration of the results of the local elections and the approval of the new national parties by the Committee.

### **Article 21: Fines for contravention of the law**

The Committee shall levy<sup>124</sup> monetary fines of thirty million Somaliland Shillings (**30,000,000 SL/Sh**)<sup>125</sup> on any party/association<sup>126</sup> which contravenes this Law.

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<sup>124</sup> A similar power to levy administrative fines was given to the Commission (NEC) under Article 64 of the 2005 Election Law, of which I have expressed my concerns. Before imposing any fines, the Committee will need, in my view, to set up in its regulations clear procedures, which, at a minimum, separates the investigation of any allegations from the decision making, so that the Committee does not act both as a prosecutor and as a judge; gives the accused full details of the allegations and opportunities to make representations and to defend

himself; and ensures that detailed reasons for any decision are given. *The Committee may well be advised to set up a separate committee for dealing with the investigations and fact finding roles in these matters.*

<sup>125</sup> At the current rate of exchange (August 2011) this administrative fine is equivalent to \$4000. This is a badly drafted Article which does not leave any discretion to the Committee on the level of (administrative) fines that they may be levied and which should have been a range of fines (and other penalties, including warnings, or in extreme cases, recommendations to a court for further action) to reflect the severity or otherwise of the contraventions. Appeals against the administrative decisions of the Committee shall lay with the Supreme Court and the Court is, in my view, very likely to question the inequity of a set fine for all contraventions. Parliament should have set a range rather than a fixed fine, and set some basic procedural safeguards relating to the investigation, fair hearing and adjudication of allegations of contraventions of the law and to the need for reasoned decisions. *The Committee can fill the gap, to some extent, through their power to issue regulations, codes of conduct and Directives under Article 26 of this Law.*

<sup>126</sup> The administrative fines are to be levied against the party/association and not individuals, but where is evidence that an individual was culpable and that the acts committed amount to a crime or contravention under the Penal Code or other criminal laws, then the Committee should pass on the allegations and evidence against any individuals to the Attorney General for his consideration. An example of this could be a matter which relates to the nature of objects of the association which may be contrary to the Articles 9(2) and 23(4) of the Constitution and which may be both a contravention of this Law and of the Public Order Law or the Penal Code (see the footnote to Article 2(3) of this Law).

## **PART EIGHT**

### **Article 22: Prohibitions relating to Government Grants to the parties**

Government grants<sup>127</sup> shall not be used directly or indirectly for inclusion in private commercial undertakings involving either movable or immovable property.

<sup>127</sup> *The Committee (and the Commission) will need to work out, in consultation with the parties, the procedures for reporting on the expenditure of such grants.*

### **Article 23: (Annual)<sup>128</sup> Accounts**

1. Every party shall prepare its annual accounts (income and expenditure) certified by an independent auditor and shall forward it to National Electoral Commission<sup>129</sup> by no later than 31 March of each year.
2. *The engagement of the independent auditor shall be requested<sup>130</sup> by the National Electoral Commission or the Associations<sup>131</sup> Registration Committee.*

<sup>128</sup> The word "Annual" is not in the title of this Article and uses the Somali phrase of "Closing of the Accounts" which is the term used for the finalisation of the "Annual Accounts". The financial year in Somaliland is the calendar year.

<sup>129</sup> As the Committee's term would come to an end within two years, the Commission will be dealing with these accounting matters in Article 22 and 23. As all the provisions of this law have come into force on 20 August 2011, there is no reason why this Article should not apply to the current three parties, and in the circumstances, the first annual accounts are due on 31 March 2012.

<sup>130</sup> It is not clear why the auditing has been changed from being compulsory in all cases to being done only at the request of the Commission or the Committee, but it is still open for both to ask for such audits in all cases. It is likely that the Commission and the Committee will develop a common policy and practice on this issue during the period that they are co-existing.

<sup>131</sup> And Parties. This article relates to the three parties only.

**PART NINE: MISCELLANEOUS PROVISIONS**

**Article 24: The unsuccessful party and the association that does not become a party**

1. Every party/association<sup>132</sup> which does not succeed in the district councils elections shall join<sup>133</sup>, together with its district council members that have gained seats in the district councils of the country, one of the three national parties of its choice and shall inform (*their choice*), in writing, the Registration Committee within a period of no more than one month (30 days)<sup>134</sup>.

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<sup>132</sup> The 2000 law did not include such a provision, but, in respect of new elected district councillors, this was dealt with by Article 34 of the 2001 Election Law which stated that any "Association which did not succeed in becoming an approved party but gains seats in the local elections in some districts must join one of the three approved parties". Now it is not just associations but the three current political parties that would have to comply with this compulsory post-election floor crossing so that only the new three parties are represented at the district councils. The scheme of the Law (was and still is) that only the three national parties can sit as elected councillors or representatives as otherwise the constitutional limit of three parties will be infringed, but new political associations will, when allowed, can contest local district elections only so that they can have a chance to become one of the three national political parties. Once the local elections are held, political associations have no longer any role in the national general elections or in the elected local councils and elected House of Representatives.

<sup>133</sup> After the December 2002 local elections, the successful councillors of all the three political associations (SAHAN 28, HORMOOD 37 and ASAD 53) that did not become a national party and totalling 118 had to join one of the three national parties which, between them, won 214 seats (UDUB, 102; Kulmiye, 67 and UCID, 45). (The other 47 uncontested seats in the far eastern districts were dealt with separately). The compulsory floor crossing rule to join the three new political parties therefore affected 35% of the newly elected councillors. The number of competing associations/parties in 2012 is likely to be more, which may lead to a higher percentage of elected councillors affected by the compulsory floor crossing rule. The Committee should lay down tight procedures in the Regulations for the procedures for this compulsory floor crossing, ways of resolving disputes between an association/party and its newly elected councillors as to the choice of the party to join; the sanctions for non-compliance after the set time limit of one month has expired (which should have been spelt out in the Law itself and can only be forfeiture of the seat and the vacancy to be filled according to Article 27 of the Districts and Regions Law); confirmation that once the choice is made any successor to the vacancy is bound by it and cannot choose another party etc.). As I cover in the following footnote a reinstatement of the 2000 Law (anti) floor crossing provision at this post-election stage through an amendment of the Law would, in my view, also ensure that elected councillors (and incumbent elected representatives) would not need to consider floor crossing (permissible or compulsory) again until the next "transition" period when new political associations are to be formed in 2021/2.

<sup>134</sup> The beginning of this period is not set out in this Article, but it is likely to be the date when the Registration Committee announces the names of the three national parties under the procedures set out in Article 6 of this Law. This is another issue which the Committee needs to add to the regulations or directives that it may issue under Article 26 of this Law.

2. If the party to which a sitting member of the House of Representatives belongs<sup>135</sup> does not succeed in the contest of the associations and parties<sup>136</sup>, the sitting

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<sup>135</sup> For the purposes of this Article, the parties the current (2012) sitting members of the House Representatives belong to are the ones they belonged to at the time of their election in 2005, even though some of them, as allowed (with effect from 13 December 2011) under Article 11(4) of this Law, may have since announced their defection to either another party or to one of the new political associations.

<sup>136</sup> The local district councils' elections to be held in 2012.

member can<sup>137</sup> join one of the parties of his choice, and shall continue to serve the remainder of his term of office<sup>138</sup>.

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<sup>137</sup> Unlike Clause 1 relating to local Councillors, this Clause relating to sitting Representatives does not read “shall” or “must” and there is no a deadline for this legally approved floor crossing or an obligation to notify the Registration Committee. Neither are there any provisions for dealing with any Representatives who decide not to join any of the three parties but it can be assumed from the wording of this Clause that after joining one of the three new parties, these Representatives shall continue to serve in office, as members of their new chosen parties, until the end of their term in, as currently expected, 2013. This is not a clear cut “condition precedent”, the non-compliance of which would lead to not being able to continue to serve in office as the loss of a Representative’s seat, unlike that of a Councillor’s, is governed by Article 50 of the Constitution and not by a law which could have been amended by this Law. The only relevant point to this situation in Article 50 of the Constitution is the clause which states that the membership of the House may be lost for breach of “one of the pre-requisite conditions” of the member’s election (Article 50(3)). But this would not be applicable anyway to a Representative who has already left the party that he was a member when he was elected and is being asked to join one of three new political parties under this Article 24 of this Law. Even if one of these three parties happens to be the one he left, as permitted by this Law, his failure to join one of the three can hardly amount to a breach of a pre-requisite condition of his election in 2005, unless there is “deeming” provision in the new Law (see below in this footnote). The fact remains, however, that any Representative hoping to stand for election again in 2013 will have no choice but to join one of the three new parties but the Law should have addressed more thoroughly the scenario of non-compliance with this legally imposed floor crossing Clause. The Committee would need to study further this matter which may require an amendment to the Law to make the floor crossing requirement compulsory and within a time limit and a possible sanction for non-compliance which can be enforced by the House under its own Rules. Failing any amendments to this Clause, the House will need to adopt Rules to govern notices to the Speaker about the choice made by the affected Representatives and any sanctions for non-compliance with the House Rules.

With all such Representatives joining one of the three new parties, the other issue that will arise is whether or not any of the Representatives can cross the floor and join another party during the ten year licence period of the three parties. There will be no political associations or a “window” of allowed floor crossing/defections until 2021/12. Although there is no longer an express provision (such as Article 4(9) of the 2000 Law) that forbids such floor crossing, Article 5(9) and Article 10 of the Law allow any party to expel any elected Representative (or Councillor) who contravenes their Rules by joining another party. The issue then which will have to be decided by a court of law will be whether or not such floor crossing Representative is obliged then to vacate his seat when he resigns from membership of his party or is expelled from his party after he crosses the floor. The comments in the preceding footnote about the difficulties of applying the Article 50(3) of the Constitution (which deals with the loss of seat) are also relevant until the 2013 election of the House. However, an amendment to Article 15 of the 2005 Election Law (conditions relating to candidates for election) which makes also a condition of candidacy not membership or nomination by a party but also the continuing membership of that party throughout the term of office, except during the “window” period of permissible floor crossing, and linking it with loss of office under Article 50(3) of the Constitution will ensure that the sanction for floor crossing will be loss of the seat. (The same can incidentally be done for local district councillors as their candidacy conditions are set out in Article 33 of the 2002 Election Law and their loss of seat provisions are in Article 25 of the Regions and Districts Law). The ease with which political parties could be set up coupled with the unfettered floor crossing in the 1960s Somali Republic have indeed been instrumental in Somaliland’s choice of a constitutional limit of three political parties. In the 1964 National Assembly elections which was contested by 21 parties, the governing party, SYL won 69 out the 123 seats, but the after the election 12 Deputies crossed the floor immediately and gave the SYL 81 seats. In the last (March 1969) elections of the National Assembly Deputies, there were 63 parties, 22 of which gained one or two seats only and 5 parties gained more than 3 seats. Although the governing party, SYL, won 73 seats, it was promptly joined by 36 deputies who crossed the floor after the election and discarded their “parties” and, in addition, the 11 members of the SNC decided to form an alliance with the SYL, which meant that practically all but 3 seats of the National Assembly were controlled by the governing party, SYL. As Lewis commented “with surprising little fuss or clamour, the Somali Republic at last joined the ranks of one party states” (Lewis I M (2010) *Making and breaking States in Africa – the Somali Experience*, The Red Sea Press Inc, at page 62). It is also the reason why many (over 40) African and Asian and countries, including South Africa and India (and encompassing both “first past post” and “proportional representations” election systems) have legal (or constitutional) provisions banning floor crossing and setting out loss of the seats as penalties for the

3. The President and the Vice-President shall serve the remainder of their terms of office if their party does not succeed (*at the district council elections*) and it is open<sup>139</sup> to them to join the party of their choice.

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infractions of floor crossing laws - see in for example, the list of countries and their legal provisions in the [major study on floor crossing](#) laws by Kenneth Janda.

In summary, in the Somaliland context, it might be worthwhile considering an amendment to this Law, perhaps numbered Article 24A, and stating that, with the exception of the “window” period of admissible floor crossing set out in Article 11(4) of this Law, any member of the House of Representatives or of a local district council who joins another party or resigns from membership of his party shall be considered as having broken one of the conditions on which he was elected and shall therefore cease to be a member of the House, in line with Article 50(3) of the Constitution, or of the council, in line with Article 25(3) of the Regions and District Law 2002 (as amended). The amendment should also include the procedure for the declaration of the vacancy by the Speaker or the relevant Mayor after they have ascertained thoroughly the circumstances and given a chance to the relevant member to state fully his/her response to the alleged floor crossing or resignation. The declaration will then be effective after a set period (perhaps a month) or if the member appeals to the Constitutional/Supreme Court after the decision of the Court. The amendment should also cover explicitly that it applies, as well, to those Representatives or Councillors who may have been nominated by a party or association other than one they defected or resigned from but had to join their current party because of the compulsory floor crossing provision under Article 24 of this Law. In such cases it shall be deemed by the operation of the Law that they have accepted a change in the conditions relating to their election. The deeming provisions are necessary in the case of Representatives as Article 50(3) of the Constitution cannot be amended, but for local district councillors their relevant loss of seat provisions in Article 25 of the Regions and Districts Law floor crossing outside the “window” period. Furthermore, as is done in countries, like Malawi, it would be preferable if the amendments also include that, for the avoidance of doubt, Representatives and Councillors are free to give their opinions or tender their votes at the House or at the council chambers and such opinions or votes which are contrary to the wishes of their party should not, by themselves, be considered as amounting to resignation from the party or an intention to join another party. In other countries, such as India, voting against one’s party, especially on important issues could be considered as defecting from the party.

<sup>138</sup> It is expected that the term of office of the current House of Representatives will end with the elections which are likely to be held in 2013. The five year term of office of the Representatives ended on 1 November 2010, but on 7 September 2010, the House of Elders extended the term of the Representatives for another 2 years and 8 months, up to 30 June 2013. Article 5(9) and Article 10 allow any party to expel any elected Representative or councillor who contravenes their Rules by joining another party.

<sup>139</sup> There is no mandatory floor crossing in this Clause, but it is highly unlikely that any President in such a scenario would fail to join one of the three new parties. It is not clear though why only these provisions in this Article relating to elected Councillors were couched in mandatory terms.

### **Article 25: National Parties’ capacity building and improvement**

1. The National Parties which have succeeded in the election shall implement, within their internal affairs, good governance, democracy and equal access to power. The leadership of the party must always be decided in accordance with the procedures laid down in its Rules.
2. The general assembly of the National Party shall be held once every 5 (five) years and shall be announced sixty (60) days before *the date of the Assembly*.
3. The meeting of the Central Committee shall be held once a year and shall be announced 30 days before *the meeting*.
4. The following shall be elected at The General Assembly of the party:
  - a) the members of the leadership of the party and of the Executive Committee;

(and)

- b) the members of the Central Committee of the party.
  - c) The Programme and the Rules of the party shall be approved *at the General Assembly*.
5. The list of members of the Executive Committee and those of the Central Committee of the party shall be forwarded to the Procuracy, the National Electoral Commission and the Registration Committee within a period of no more than 30 days after the (*date of the*) General Assembly.
6. The removal from office of the leadership of the party, the Executive Committee and the members of the Central Committee may be proposed:
- a) by one third (1/3) of the members of the Central Committee of the party;
  - b) by the Chairman of the party;
  - c) (*through*) resignation;
- and shall be approved by the members of the Central Committee of the party on a vote of half of the members plus one (*qualified majority*).
7. The Registration of Political Associations and the Approval of the National Parties shall monitor the internal democracy of the parties and shall submit, when necessary, reports to the House of Representatives<sup>140</sup>.
8. When the term of office of the Registration of Political Associations and the Approval of the National Parties expires<sup>141</sup>, their duties<sup>142</sup> shall be taken over by the National Electoral Commission.

#### **Article 26: Power to issue Regulations**

The Registration Committee shall have the power to issue Regulations<sup>143</sup>, Code of Conduct and Directives, which shall not be in conflict with the Law.

#### **Article 27: Repeals**

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<sup>140</sup> This is the main function which will be taken over by the Commission after the Committee's term comes to an end (see the following Clause).

<sup>141</sup> As set out in Article 3(d) of this Law, the term of office of the Committee shall expire two years after they were sworn into office.

<sup>142</sup> These duties will by then be confined to matters relating to the three national parties, but the Committee and the Commission will need to have liaison and joint working arrangements, especially during the period after the local elections are held and national parties are approved by the Committee and prior to the Committee's expiry of its term so that there is a smooth transfer of the on-going oversight work with the national parties. The Law is also silent as to whether or not the Commission will have to give up this role in ten years' time when the new cycle of registration of political associations comes round. Unless the Article 9(2) of the Constitution is changed before then or the function of registration of associations is transferred by an amending law to the Commission, there will have to be further arrangements for transferring all these functions back to the new Registration Committee.

<sup>143</sup> Regulations issued under any Law are binding and are as they more focused on implementing the Law, they are confined to the provisions of the Law. Codes of Conduct, on the other hand, can cover wider good practice issues and their infringements are usually taken into consideration in proving infringements of the Law and the Regulations although when parties agree to be bound by them, they become binding, by agreement, rather than by law. Directives are, in my view, the administrative orders or decisions lawfully issued by the Committee under this Law which are binding in character, but can be challenged, like all the administrative decisions of the Committee, at the Supreme Court. The Committee will need to clarify how they will issue these three instruments preferably in their Regulations or in their internal Rules.



1. The Regulation of Political Parties and Associations – Law No. 14/2000 shall be replaced by this Law No. 14/2011.
2. Any provision which is in conflict with this Law shall be null and void.

### **Article 28: Coming into force**

This Law shall come into force when it is approved by the Houses of Parliament and is signed by the President<sup>144</sup>.

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<sup>144</sup> The Law came into force on 20 August 2011 when the President signed it (see the attached Presidential Decree). The Amendments came into force on 13 December 2011.

### **Article 29: Disputes within a party/association or between two associations/parties**

1. *If there a dispute between the members of a party or association in connection with their leadership or they break up into two or more sides (factions) and the various bodies of the party/association cannot settle the dispute, any of the sides which wishes to do so may submit a complaint to the Registration of Political Associations and the Approval of the National Parties Committee<sup>145</sup>.*
2. *When the Registration Committee receives the complaint referred to in Clause 1 of this Article, it shall issue a decision<sup>146</sup> based on the Regulation of Political Associations and Parties Law 2011, Law No. 14/2011, and the Rules of the party/association whose leadership<sup>147</sup> is under dispute and which has been registered by the Registration Committee.*
3. *Any side which is not satisfied with the decision of the Registration Committee may appeal to the Supreme Court<sup>148</sup> whose decision shall be final.*
4. *If the disputing sides produce two different and conflicting Rules made for the association/party whose leadership is in conflict<sup>149</sup>, due regard shall be given to the Rules registered with the Registration Committee and with which the association/party was officially recognised.*
5. *If the dispute referred to in the preceding Clause arises before the association has been registered and recognised<sup>150</sup>, the Registration Committee shall not register the name of the association whose leadership is in conflict.*

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<sup>145</sup> The Committee will need to establish procedures for mediation within a set time table and consider appointing three member mediation panels who can then report to the Committee before the latter reaches any decisions.

<sup>146</sup> Any decision must include full reasons.

<sup>147</sup> Clause 1 already confirms that the dispute may not just be about leadership but could also be about breaking up into different sides (factions) and so this should be read as including the latter event.

<sup>148</sup> The Supreme court has a general power under Articles 9(4)(c) and 14(6) of the Somaliland [Organisation of the Judiciary Law](#) (Law No. 24/2003) to deal with appeals against the final decisions of all public administrative bodies. As no time for this specific appeal from the Registration Committee has not be set under this Law, then the general time limit for appeals which, as set out in Article 15(1) of the Judiciary Law 2003, is 30 days from the date of the promulgation of the decision shall apply. If the time limit has expired, the Supreme Court has discretion under Article 15(5) to extend it if it receives convincing reasons for such an extension.

<sup>149</sup> See the footnote relating to Clause 2 of this Article, which applies equally to this Clause.

<sup>150</sup> Provisionally recognised, presumably, because after the 45 day forming stage is completed, no new application will be accepted by the Committee. This means that there is a duty on the Committee to satisfy itself that no such disputes are present in any association seeking registration before it awards provisional approvals.

6. *The different sides may (in such circumstances) each form<sup>151</sup> separately an association with a name different from one which was in dispute.*
7. *If two associations or an association and a party are contesting a name or symbol after their registration, the one whose ownership of the name and symbol had been registered by the Committee, or the one that has been registered prior to other shall be recognised as the correct owner of that name and symbol<sup>152</sup>.*

**A/Risaq Said Ayanle**  
**G/Secretary of**  
**the House of Representatives**

**A/rahman Mohamed Abdillahi (Cirro)**  
**Chairman of**  
**the House of Representatives**

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<sup>151</sup> This is linked to the preceding Clause and presumably a new association can only stand a chance of being registered if the application is submitted within the 45 “forming” application period. The Committee will need to add explanations of these into the Regulations and the application process guidance.

<sup>152</sup> This is not a clear Clause and could do with re-wording. As I understand it if the name and symbol have already been registered for an association, then that is definitive of ownership, but if that is not the case, then whichever association gets registered first has a prior right to the name and symbol. It is a bit difficult to see the difference between the two scenarios unless the latter is also referring to situations where the Committee registers both organisations with the same names, in which case the one registered first shall have a prior claim (?).

**REPUBLIC OF SOMALILAND**

**REF: JSL/M/XERM/219-683/082011**

**DATE: 20/08/11**

**PRESIDENTIAL DECREE NO. 0168/082011**

**IMPLEMENTATION OF LAW NO. 14/2011**

**THE PRESIDENT OF THE REPUBLIC OF SOMALILAND**

Having Seen: Article 90 of the Constitution of the Republic of Somaliland;

Having Received: The Resolution of the House of Representatives RSL No. GW/KF-15/534/2011 approving the Regulation of Political Associations and Parties Law;

Having Seen: Article 75 of the Constitution of the Republic of Somaliland

Hereby promulgates

The entry into force of the Regulation of Political Associations and Parties of the Republic of Somaliland, Law No. 14/2011

Praise be to Allah

**Ahmed Mohamed Silanyo**  
**President, Republic of Somaliland**

**REPUBLIC OF SOMALILAND**

**REF: JSL/M/XERM/249-803/122011**

**DATE: 13/12/11**

**PRESIDENTIAL DECREE NO. 0179/122011**

**IMPLEMENTATION OF THE CHANGES AND ADDITIONS TO THE REGULATION OF  
POLITICAL ASSOCIATIONS AND PARTIES, LAW NO. 14/2011**

**THE PRESIDENT OF THE REPUBLIC OF SOMALILAND**

Having Seen: Article 90 of the Constitution of the Republic of Somaliland;

Having Received: The Resolution of the House of Representatives RSL No. GW/KF-16/549/2011 approving the changes and additions to the Regulation of Political Associations and Parties Law;

Having Seen: Article 75 of the Constitution of the Republic of Somaliland

Hereby promulgates

The entry into force of the changes and amendments to the Regulation of Political Associations and Parties Law of the Republic of Somaliland, Law No. 14/2011, which are the following articles:

Article 3, Clause 6, paragraphs B, T, J, X

Article 4, Clause 1

Article 4, Clause 3

Article 5, Clause 2

Article 5, Clause 3, paragraph J

Article 11, paragraph 4

Article 23, Clause 2, and

New Article 29.

Praise be to Allah

**Ahmed Mohamed Silanyo**  
**President, Republic of Somaliland**