



**REPUBBLICA SOMALA — SOMALI REPUBLIC,**



**ORDINAMENTO GIU DIZIARIO**



**ORGANISATION OF THE  
JUDICIARY**

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**Stamperia dello Stato - Mogadiscio**



# **SOMALI REPUBLIC**

## **LAW ON THE ORGANIZATION OF THE JUDICIARY LAW NO. 3 OF 12 JUNE 1962**

### **PART I - JUDICIAL ORGANS CHAPTER I - COURTS AND JURISDICTION**

#### **ARTICLE I COURTS**

Justices shall be administered by the following courts:

- 1.** District Court;
- 2.** Regional Court
- 3.** Court of Appeal
- 4.** Supreme Court.

#### **ARTICLE 2 DISTRICT COURT**

- 1.** The District Court shall have its seat in each District Headquarters and shall have jurisdiction over the whole territory of the district.
- 2.** The District Court shall have two sections: the civil section and the criminal section. In each section cases shall be heard by a single judge;
- 3.** The civil Section shall have jurisdiction over controversies where the cause of action has arisen under Shari'a law or Customary law and any other civil controversy where the value of the subject matter does not exceed 3,000 So. Shs provided that on the application of the judge or of either party, the President of the court of Appeal may order the transfer of a case to the General Section of the Regional Court. The said order shall not be subject to appeal.

4. The criminal Section shall have jurisdiction with respect to offence punishable under the Penal Code with imprisonment for a period not exceeding three years, or fine not exceeding 3,000 So. Shs, or both.
5. Separate civil sections of the district court may be constituted outside its normal seat within the territorial limits of the district by decree of the Minister of Grace and Justice, having heard the higher judicial council.

### **ARTICLE 3 REGIONAL COURT**

1. The regional court shall have its seat in each regional headquarters and shall have jurisdiction over the whole territory of the region,
2. The regional court shall have two sections; the General section and the assize section.
3. Cases in the General Section shall be heard by a single judge. The General section shall have jurisdiction:
  - a) in civil matters, over controversies which are not within the jurisdiction of the District Court.
  - b) in Criminal matters, with respect to crimes not within the jurisdiction of the district court, the assize section and the military penal section provided for under paragraph
4. the assize section shall consist of the president of the regional court and of two assessors. It shall have jurisdiction with respect to crimes, not within the jurisdiction of the military penal section, which are punishable with death, imprisonment for life or imprisonment for not less than ten years.
5. The General section and the Assize section may hold sessions, outside their normal seat, within the territorial limits of the court, at such places as may necessary for the convenient and speedy administration of justice.
6. There shall be established a military penal section in the regional courts of Mogadishu and Hargeisa, which shall consist of the president of the regional court and of two military assessors. The military penal section in the regional court of Mogadishu shall have jurisdiction over the regions of Benadir, Upper Juba, Lower Juba, Hiran, Majertinia and Mudug. The

military penal section in the regional court of Hargeisa shall have jurisdiction over the regions of Hargeisa and Burao. The military penal section shall have jurisdiction with respect to crimes committed by military personnel which are punishable under the military penal laws.

7. There may be established by law, tax sections in the regional courts, having jurisdiction in the first instance, over matters relating to taxation.

#### **ARTICLE 4 COURT OF APPEAL**

1. The court of appeal shall have its seat in each regional headquarters and shall have jurisdiction over the whole territory of the region,
2. The court of appeal shall have two sections; the General appellate section and the assize appellate section.
3. Cases in the General Appellate Section shall be heard by a single judge. This section shall hear appeals against judgments of the District Court and the General Section of the Regional Court.
4. The Assize Appellate Section shall consist of the President of the Court of Appeal, Judge of the Court and three Assessors. It shall hear appeals against judgments of the assize sectional for the regional court.
5. There shall be established a military penal appellate section in the courts of appeal of Mogadishu and Hargeisa, which shall consist of the president of the court of appeal and four military assessors. It shall, within the territorial limits referred to in article 3, paragraph 6, hear appeals against judgments of the military penal section of the regional court.
6. there may be established by law tax appellate sections in the courts of appeal which shall exercise appellate jurisdiction in tax matters.

#### **ARTICLE 5 SUPREME COURT**

1. The Supreme Court shall have its seat in each Mogadishu and shall have jurisdiction over the whole territory of the Republic, It shall consist of the President, Vice President and four judges,

2. The Supreme Court shall ensure respect for, and the uniform application of the law, and shall exercise any other function as may be attributed to it by the constitution or by law.
3. Cases before the Supreme Court shall be heard by a division bench of three judges. Such bench shall have jurisdiction over:
  - a. Appeals against judgments given by any court in its appellate jurisdiction or against judgments given by any court from which appeals lie directly to the Supreme Court.
  - b. Petitions against the final decisions of the public administration.
  - c. Petitions relating to rendering of accounts by officers handling public funds.
  - d. Petitions for revision of judgments in criminal matters.
4. A full bench of the Supreme Court shall consist of five judges and shall have jurisdiction over:
  - a. Petitions disputing the validity of the election of deputies to the National Assembly, in accordance with article 59 of the Constitution,
  - b. Controversies relating to conflict of Jurisdiction or competence among judicial organs.
  - c. Any other matter considered by the President to be of particular importance, even though such matter is within the scope of the previous paragraph.

## **ARTICLE 6**

### **CONSTITUTIONAL COURT AND HIGH COURT OF JUSTICE**

1. The Supreme Court constituted as the Constitutional Court or High Court of Justice shall carry out the duties respectively conferred on it by articles 99 and 102 of the Constitution.
2. The organization and functioning of the Court constituted as the Constitutional Court or High Court of Justice shall be governed in accordance with annex I to this law.

## **CHAPTER II – OFFICE OF THE ATTORNEY GENERAL**

### **ARTICLE 7**

#### **COMPOSITION OF THE OFFICE OF THE ATTORNEY GENERAL**

The Office of the Attorney General (Publico Ministero) shall have its seat in Mogadishu. It shall consist of the Attorney General (Procuratore Generale) and four Deputies.

### **ARTICLE 8**

#### **DUTIES OF THE OFFICE OF THE ATTORNEY GENERAL**

- 1.** It shall be the duty of the Office of the Attorney General to ensure respect for the law and to protect the rights of the State, public organs and incapacitated persons. To this end, the Attorney General:
  - a.** Shall either directly or through his deputies or police officers or inspectors authorized by law, investigate, institute and conduct criminal proceedings.
  - b.** Whenever he considers that public interest is involved, he shall institute and conduct or intervene in civil proceedings.
  - c.** Shall, as provided by law, prefer appeals in civil and criminal matters.
- 2.** The investigation and suppression of crimes shall be carried out by the police under the direction of the office of the Attorney General.
- 3.** The Office of the Attorney General shall exercise overall supervision over prisons and other penal institutions, as provided in the prisons law.

## **CHAPTER III –GENERAL PROVISIONS**

### **ARTICLE 9**

#### **APPLICABLE LAW**

Subject to the provision of the Constitution and this law, the courts shall apply:

- a.** The shari'a law or customary law in civil controversies where the cause of action has arisen under the said law.

**b. Statutory law in all other matters**

**ARTICLE 10  
APPEALS AND PETITIONS**

- 1.** Appeals in civil and criminal matter shall lie on questions of fact and law  
In appeals the court shall decide on merits, affirming, modifying or setting aside the judgment of the lower court.
- 2.** Appeals to the supreme Court in civil and criminal matters shall lie only on the following question of law:
  - a)** Lack of jurisdiction or incompetence of the lower court;
  - b)** Violation or erroneous application of legal provisions.
  - c)** Nullity of the judgment or the proceedings;
  - d)** Omission, insufficiency or contradiction in the grounds on which the judgment is based, relating to a material point raised by either party or by the court of its own motion

Where the judgment appealed against is set aside, the court may remand the case to the lower appellate court; or, where no additional evidence is required, it may decide finally the case.

- 3.** Petitions to the Supreme Court disputing the validity of the election of deputies to the National Assembly shall lie only on grounds laid down by the Constitution and the election law.
- 4.** Petitions to the Supreme Court in administrative matter shall lie against final administrative decision on questions of law and, where expressly provided by law, on questions of fact also. The Public Administration shall be bound to comply with the judgment of the Supreme Court within the time – limit which may be stipulated by the Court; where the Public Administration fails to comply with a judgment, the Supreme Court shall, at the instance of the partly concerned, take the necessary action to carry out its judgment.
- 5.** Petitions to the Supreme Court in accounting matters shall lie in the cases provided in the law on the Financial and Accounting Procedure of the State.

The Magistrate of Accounts shall act as prosecutor in proceedings before the Supreme Court in accounting matters.

6. An appeal shall lie in civil, criminal and administrative matters, notwithstanding that no appeal has been provided therefore under any law in force at the time of the entry into force of this law.

## **ARTICLE 11**

### **LIMITATION AND FORM OF APPEAL**

1. In civil matters, appeals shall be filed within thirty days from the date of the notification of the decision appealed against.

The memorandum of appeal shall be signed and shall state the specific grounds of appeal. Where no specific grounds are stated, the appeal shall not be admitted. The memorandum of appeal shall be addressed to the Registrar of the Court which has handed down the decision appealed against; the Registrar shall, without delay, transmit to the Appellate Court the memorandum of appeal together with the records of the case.

2. In criminal matter, appeals shall be filed within thirty days from the date of the decision where the parties are present, where the parties are not present, from the date of the notification of the decision.

The memorandum of appeal shall be filed in the manner prescribed in the previous paragraph. Where the Attorney General files an appeal, the Registrar to whom the memorandum of appeal has been addressed shall serve it on the accused within thirty days from the date of the filing. Where the said limit has not been adhered to, the appeal shall not be admitted.

3. In civil and criminal matters, the Supreme Court may grant to a private party extension of the time-limit where it is satisfied that the said party has not been able to comply with the time – limit for reason beyond his control.

4. In administrative and accounting matters, the time-limit for filing petitions shall be thirty days from the date of the notification of the decision appealed against; where no decision has been communicated through the proper channel or on a formal request for a decision, the appeal shall be filed within thirty days from the expiry of the said period of sixty days.

The petition shall be filed with the Registrar of the Supreme Court and shall contain a summary statement of the facts and the ground of law on which it is based, as well as the relief sought. Where the said requirements are not complied with, the petition shall not be admitted.

5. In electoral matters, the time limit for filing a petition shall be thirty days from the date of the proclamation of the results of the election or from the date on which the alleged incompatibility or ineligibility has occurred.

The petition shall be filed in the manner prescribed in the previous paragraph.

## **ARTICLE 12 PROCEEDINGS BEFORE THE ASSIZE SECTION AND MILITARY PENAL SECTIONS**

In the trial court and the first appellate court, the assessors shall participate in the decision on questions of fact. The judges shall decide on questions of law and shall impose the punishment.

## **ARTICLE 13 FORUM WHERE THE STATE IS A PARTY**

Notwithstanding anything contained in this or any other law, all original civil proceedings in which the state is party shall be filed in the competent Regional Court

## **ARTICLE 14 REPRESENTATION BY COUNSEL IN PROCEEDINGS**

1. The parties may be represented by an attorney in any proceeding in any court.
2. The parties shall be represented by counsel:
  - a) In administrative and accounting proceedings before the Supreme Court;
  - b) In criminal proceedings, where the accused is charged with an offence punishable death, imprisonment for life or imprisonment for more than twenty years.

In the foresaid cases, where a party does not have his own counsel, the court shall appoint a counsel. Where necessary a qualified person who is not on the rolls of practicing attorneys may be appointed in such capacity.

Where a party is poor, the court appointed counsel, when he is not a civil servant, shall be entitled to remuneration, to be paid by the State.

**PART II – PERSONNEL**  
**CHAPATER 1 – GENERAL PROVISIONS**

**ARTICLE 15**  
**THE JUDICIARY**

1. The Judiciary shall consist of the Judges, the Attorney General and his Deputies.
2. All persons temporarily entrusted with the exercise of judicial functions shall, so far as it relates to such functions, be considered as members of the Judiciary.
3. The Court Registrars and a Court Officers (Ufficiali Giudiziari) shall be the auxiliary personnel of the Judiciary.

**ARTICLE 16**  
**TERMS AND CONDITIONS OF SERVICE**

1. The terms and conditions of service of the members of the judiciary and of the auxiliary personnel shall be governed by this law.
2. Where there is no special provision in this law, the Civil Service Law shall apply in so far as it is applicable, For this purpose:
  - a) The members of the Judiciary shall be equated with officers in Division A of the Civil Service;
  - b) The Court Registrars shall belong to Division B;
  - c) The Court Officers shall belong to Division C.
3. The grades, the titles of posts, the category and the number of posts of the members of the Judiciary Court Registrars and Court Officers shall be indicated in Annex II to this law.

**ARTICLE 17**  
**OATH**

1. The members of the Judiciary and the auxiliary personnel shall, before assuming their duties, take the following oath;
  - I solemnly swear in the name of God that I shall loyally.
  - Abide by the Constitution and the laws of the Republic and
  - Shall discharge the duties of my office in the sole interest of Justice.

2. The President of the Supreme Court shall take the oath before the President of the Republic; the other judges shall take the oath before the President of the Supreme Court.
3. The auxiliary personnel shall take the oath before the presiding judges of the courts to which they are assigned.

## **CHAPTER II – MEMBERS OF THE JUDICIARY**

### **ARTICLE 18 GRADES AND FUNCTIONS**

1. The members of the Judiciary shall consist of:
  - a) Assistant District Judge;
  - b) District Judge;
  - c) Assistant Regional Judge.
  - d) Regional Judge.
  - e) Senior Judge (consigliere);
  - f) First Judge (primo consigliere);
  - g) President of the Supreme Court.
2. The assistant District Judge shall be judge of the District Court; the District Judge may be President of the District Court or judge of the same court; the Assistant Regional Judge shall be judge of the Regional Court. The regional judge may be the president of the Regional Court, Deputy Attorney General or judge of the Court of Appeal; the Senior Judge may be President of the Court of Appeal, or Judge of the Supreme Court; the First Judge may be Vice-President of the Supreme Court or Attorney General.

### **ARTICLE 19 ADMISSION TO THE JUDICIARY**

1. Appointment to the Judiciary shall be on the basis of public competitive examination. The notification of examination shall be made by decree of the Minister of Grace and Justice, in accordance with the advice of the higher judicial council. The decree shall establish the terms and conditions of the examination and shall appoint the Examining Board.
2. The competitive examination shall be open to citizens of full age, who have a degree in legal subjects from the University Institute of Mogadishu, or from another University, or who have an equivalent degree, and have the other qualifications required for appointment to the Civil Service.

3. The equivalence of the educational qualifications of the candidates shall be determined by the Minister of Grace and Justice, having heard the Higher Judicial Council.

## **ARTICLE 20 JUDICIAL TRAINING**

1. The successful candidates in the public competitive examination shall be appointed on a probationary basis as judicial trainees, for a period of one year, with the duties of the initial grade and with the salaries and allowances relating to the grade.
2. At the end of the period of training, the judicial trainees who are found to be suitable by the Higher Judicial Council, on the basis of the service rendered and the results of the training courses they may have taken, shall be appointed to the initial grade.
3. The Judiciary trainees who are found to be not suitable shall be discharged

## **ARTICLE 21 SPECIAL APPOINTMENTS**

Notwithstanding anything contained in this law, an eminent jurist, a professor of law, or an Attorney-at-law, with at least ten years' practice at the Bar, may be appointed as judge of the Supreme Court or as a member of the office of the Attorney General.

## **ARTICLE 22 PROMOTION**

1. An Assistant District Judge may be promoted as District Judge after three years of service as assistant district Judge, provided he is found suitable.
2. A District Judge may be promoted as Assistant Regional judge on the basis of competitive examination on the main branches of the law, provided that he has served for three years as District Judge
3. An Assistant Regional Judge may be promoted as Regional Judge after two years of service as Assistant Regional Judge provided he is found suitable.

4. A Regional Judge may be promoted as Senior Judge on the basis of competitive examination on the main branches of the law, provided that he has served for three years as Regional Judge.
5. A Senior Judge may be promoted as First Judge after two years of service as Senior Judge.
6. The President of the Supreme Court shall be appointed from among the First Judges or from among the Senior Judges who have served for at least three years as Senior Judges.
7. All promotions shall be subject to the availability of vacancies in the higher grade.

### **ARTICLE 23**

#### **AGE LIMIT**

1. The retirement age of the President of the Supreme Court, the First Judges and the Senior Judges shall be sixty-five years.
2. The retirement age of the other Judges and the Senior shall be governed by the provisions applicable to the civil service.

### **ARTICLE 24**

#### **GUARANTEES FOR THE MEMBERS OF THE JUDICIARY**

1. Members of the Judiciary shall not be deprived of their judicial functions except as a disciplinary measure in accordance with binding advice of the Higher Judicial Council.
2. They shall not be transferred or assigned to other functions, without their consent, except as a disciplinary measure or for urgent exigencies of the service, for reasons stated in writing, in conformity with the advice of the Higher Judicial Council.
3. They shall not be arrested or be subject to any restriction on their personal liberty without prior authorization of the Minister of Grace and Justice in conformity with the advice of the Higher Judicial Council, except in the case of flagrant delicto for which arrest is mandatory; or in case of execution of criminal judgment.

4. No civil action shall be against any member of the judiciary for acts performed in the exercise of their functions, unless the civil liability arises from the commission of a crime.
5. Members of the Judiciary shall not be required to perform any public function or duty, except military service as provided by law.

## **ARTICLE 25 PROHIBITIONS**

Members of the Judiciary shall not be enrolled and shall not engage in any activity incompatible with dignity of their office.

## **ARTICLE 26 ASSESSORS**

1. The Assessors of the Assize Section and the Military Section of the Regional Court and of the Court of Appeal shall be drawn from lists prepared and reviewed by decree of the Minister of Grace and Justice.
2. The list of Assize Assessors subdivided by Regions, shall consist of citizen of full age, resident in the territory of the Republic, of good conduct and who have at least secondary school diploma.
3. The list of the Military Assessors shall consist of officers of the Armed Forces.
4. Not less than three days before the beginning of the proceedings, the President of the Court shall draw by lot, in open Court session, the Assessors who shall participate in the proceedings. In addition to the Assessors, two substitute Assessors shall be also drawn by lot. The Military Assessors shall be drawn by lot from among those on the list who have a Military rank higher or at least equal to that of the highest rank of any of the accused.
5. Before assuming their duties, the Assessors shall in open Court, take the oath prescribed in paragraph 1 of article 17.

## **CHAPTER III – HIGHER JUDICIAL COUNCIL**

### **ARTICLE 27**

#### **COMPOSITION OF THE HIGHER JUDICIAL COUNCIL**

1. There Shall be established a Higher Judicial Council which shall have its seat in Mogadishu.
2. The Higher Judicial Council shall consist of the President of the Supreme Court who shall be the Chairman, the Attorney General, the members of the Supreme Court, and three members who shall not be deputies or practising Attorneys, elected for a period of three years by the National Assembly.

### **ARTICLE 28**

#### **POWERS OF THE HIGHER JUDICIAL COUNCIL**

1. It Shall be the duty of the Higher Judicial Council to ensure the independence of the Judiciary and to exercise supervision through the President of the Supreme Court, over the functioning of the Courts, as well as over the members of the Judiciary and auxiliary Personnel.
2. The Higher Judicial Council shall:
  - a) Exercise supervision over competitions, examinations and grading with respect to members of the Judiciary, with the assistance if necessary of University Professors of law,
  - b) Advise the Minister of Grace and Justice regarding administrative measures concerning members of the Judiciary. The recommendations of the Higher Judicial Council shall be binding with respect to appointments, transfer, promotions and termination of appointments;
  - c) Conduct disciplinary proceedings against members of the Judiciary and auxiliary Personnel, on its own initiative or at the request of the Minister of Grace and Justice and make binding recommendations regarding the penalties to be imposed;
  - d) Exercise any other function attributed to it by law.
3. The Higher Judicial Council may also make recommendations to the Minister of Grace and Justice on any matter concerning the organization and administration of Justice and may, at the request of the Minister of Grace and Justice, give opinions on laws and regulations pertaining to the administration of Justice;

4. The Higher Judicial Council may request from the Public Administration such information as may be deemed necessary in performance of its functions.

## **ARTICLE 29**

### **PROCEDURE RELATING TO THE HIGHER JUDICIAL COUNCIL**

- 1) The Majority of its members shall form the quorum for the meetings of t The Higher Judicial Council;
- 2) Where there is an even number of votes, the President shall have the casting vote;
- 3) Whenever the Council a matter directly concerning any member thereof, the said member shall not participate in the discussion and the decision on such matter;
- 4) The Attorney General shall act as prosecutor in disciplinary proceedings, and shall not participate in the decision;
- 5) The Higher Judicial Council may adopt its own rules of procedure.

## **PART III**

### **MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS**

#### **CHAPTER I**

#### **MISCELLANEOUS AND TRANSITIONAL PROVISIONS**

### **ARTICLE 30**

#### **JUDICIAL YEAR**

1. The Judicial Year shall commence on the first of January.
2. The inauguration of the Judicial Year shall take place in Mogadishu before the Full Bench of the Supreme Court.

### **ARTICLE 31**

#### **MEASURES RELATING TO THE JUDICIARY**

1. Except as otherwise provided by this law, administrative and disciplinary measures shall be adopted:
  - a) Where relating in the members of the Judiciary, by decree of the President of the Republic, on the proposal of the Minister of Grace and Justice, having heard the Higher Judicial Council,

and having also heard the Council of Ministers in the cases provided for in article 7 of the Law 5 June 1962. No 14;

- b) Where relating to auxiliary personnel, by decree of the Minister of Grace and Justice, having heard the Higher Judicial Council, as provided by law.
2. Annual and extraordinary leave may be granted to members of the Judiciary and auxiliary personnel by the President of the Supreme Court or, where so authorized by him, by the Presidents of the Courts of Appeal within their respective jurisdictions

## **ARTICLE 32**

### **ABOLITION, RECONSTITUTION AND ESTABLISHMENT OF COURTS**

1. The Minister of Grace and Justice, having heard the Higher Judicial Council, shall, by decree, provide for the abolition, reconciliation or establishment of courts in accordance with this law and fix the establishment of each court.
2. Until the establishment of a Court of Appeal for each region, the court of Appeal of Mogadishu shall have jurisdiction also over the regions of Upper Jubba, Lower Jubba, Hiran, Migiurrtniia and Mudugh; the Court of Appeal of Hargeisa shall have jurisdiction also over the Region of Buroa. Furthermore, the Minister of Grace and Justice, having heard the Higher Judicial Council, may by decree establish provisionally separate sections of the Court of Appeal of Mogadishu and Hargeisa outside their normal seats, with limited territorial jurisdiction.

## **ARTICLE 33**

### **PROCEDURE**

1. The composition and jurisdiction of all courts shall be governed by the provision of this law.
2. Until otherwise provided; the procedure of the courts of the Regions of Hargeisa and Burao shall be governed by the provisions indicated below in so far as they are compatible with those of the Constitution and this law:
  - a) The Civil Section of the District Court shall apply in Shariatic matters the procedure of the Qadi's Court; in none-shariatic matters, it shall apply the Code of Civil Procedure;

- b)** The criminal Section of the District Court shall apply the procedure of the District Court of First Class;
- c)** The General Section of the regional court shall apply the code of Civil procedure in civil matters, and the procedure of the District Court of first class in criminal matter;
- d)** The Assize Section and the Military Penal Section of the Regional Court shall apply the procedure of the High Court in its original criminal jurisdiction, provided that the provision of Chapter XVI of the Criminal Procedure ordinance, No. 4 of 1926 (Cap. 6) shall not apply and no preliminary enquiry shall be held;
- e)** The General Section of the Court of Appeal shall apply the procedure of the Chief Qadis' Court in Shariatic matters and the Code of Civil Procedure in civil non-shariatic matter; it shall apply the procedure of the High Court in its appellate jurisdiction in criminal matters.
- f)** The Assize Section and the Military Penal Section of the Court of Appeal shall apply the procedure of the Eastern African Court of Appeal in its appellate jurisdiction over first appeals against judgments of the High Court in criminal matters.

**3.** Until otherwise provided, the procedure of the courts of the Regions of Banadir, Hiran, Upper Jubba, Lower Jubba, Migirtinia and Mudugh shall be governed by the provisions indicated below in so far as they are compatible with those of the Constitution and this law.

- a)** The Civil Section of the District Court shall apply in Shariatic matters the procedure of the Qadi's Court in-non Shariatic matters, it shall apply the procedure of the Regional Court;
- b)** The Criminal Section of the District Court shall apply the procedure of Regional Court;
- c)** The General Section of the Regional Court shall apply the procedure of Regional Court;
- d)** The Assize Section of the Regional Court shall apply the procedure of the Assize Court.
- e)** The Military Penal Section of the Regional Court shall apply the procedure of the Military Court in its original jurisdiction;
- f)** The General Section of the Court of Appeal shall apply the procedure of the Tribunal of the Qadi in Sharitic matter and the procedure of the Court of Appeal (Giudice d'Appello) in civil non-shariatic matters and in criminal matters;
- g)** The Assize Appellate Section of the Court of Appeal shall apply the procedure of the Assize Appellate Court.
- h)** The Military Penal Section of the Court of Appeal shall apply the procedure of the Military Appellate Court.

4. The procedure in force in the Supreme Court shall continue to apply in so far as it is compatible with the provision of the constitution and this law.
5. Any reference to a court contained in any previous law shall be deemed to be a reference to the court competent in the matter under this law.

#### **ARTICLE 34**

#### **FORMATION OF ESTABLISHMENT**

1. Within the time – limit and under the terms and conditions prescribed in the Civil Service Law. The President of the Republic on the proposal of the Minister of Grace and Justice, in conformity with the advice of the Higher Judicial Council, shall fix the establishment of the members of the Judiciary, Court Registrars and Court Officers and terminate the service of the redundant personnel.
2. For this purpose, the functions of the Establishment Commission provided for in the Civil Service law shall be exercised by the Higher Judicial Council.

#### **ARTICLE 35**

#### **FOREIGN NATIONALS**

As a transitional measure, nationals of other countries may be appointed as members of the Judiciary. They shall be entitled to the guarantees established by law and shall be subject, so far as applicable, to the provisions of this law.

#### **ARTICLE 36**

#### **REGULATIONS AND INSPECTION**

1. The Minister of Grace and Justice, having heard the Higher Judicial Council, may make regulations for the implementation of this law.
2. The Minister of Grace and Justice, for the purpose of checking the proper functioning of the services, may order the inspection of courts through the President of the Supreme Court. Such inspection shall be conducted by judges designated by the Minister in accordance with the binding advice of the Higher Judicial Council.

## **CHAPTER II - FINAL PROVISION**

### **ARTICLE 37 ABROGATION**

Any provision contrary to or inconsistent with this law to hereby abrogated.

### **ARTICLE 38 ENTRY INTO FORCE**

This law shall come into force after thirty days from the date of its publication.

## **ANNEX I**

### **ORGANIZATION AND FUNCTIONING OF THE SUPREME COURT CONSTITUTED AS**

### **THE CONSTITUTIONAL COURT OR THE HIGH COURT OF JUSTICE**

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#### **CHAPTER I SUPREME CONSTITUTED AS THE CONSTITUTIONAL COURT**

##### **ARTICLE 1 JURISDICTION OF THE CONSTITUTIONAL COURT**

1. The Supreme Court constituted as the Constitutional Court shall have jurisdiction over questions relating to the constitutionality of law and of provisions having the force of law, in accordance with Articles 98, 99 and 100 of the Constitution.
2. In deciding on the constitutionality of laws the Court shall concern itself with the formal and substantial conformity of the law or provision in question with the provisions of the Constitution without consideration of political implications or the propriety of the use of any discretionary powers of the legislature.

##### **ARTICLE 2 COMPOSITIONS OF THE CONSTITUTIONAL COURT**

The Supreme Court constituted as the Constitutional Court shall consist of all the members of the Supreme Court, with the addition of:

- a) two members appointed for a period of three years by the President of the Republic on the proposal of the Council of Ministers; and
- b) two members elected for the same period by the National Assembly by an absolute majority of the Deputies, as prescribed by the rules of procedure of the Assembly.

##### **ARTICLE 3 REQUIREMENTS FOR APPOINTMENT AND JURIDICAL STATUS OF THE ADDITIONAL MEMBERS**

1. The additional members of the Supreme Court constituted as the Constitutional Court shall be chosen from among persons who are

eligible for election as Deputies and who in addition possess a degree of the University Institute of Mogadishu or its equivalent. As a transitional measure, they may also be chosen from among person who are learned in the law, but do not possess the above said decrees.

2. Additional members of the Constitutional Court shall not, during their membership, exercise any legislative or administrative function and shall not practice before the Courts.
3. Before assuming their duties, the additional members of the Constitutional Court shall take the oath prescribed in Article 17 of the law on the Organization of the judiciary.
4. For the purpose of the exercise of their judicial functions the additional members shall have the same status and shall be entitled to the same conditions of service as Senior Judges.

#### **ARTICLE 4 QUESTIONS OF CONSTITUTIONALITY**

1. The question of the constitutionality of a law or of a provision having the force of law, referred to in Article 99 of the Constitution, may be raised at any time in any judicial proceedings in a Court of first instance or in a first Appellate Court, by the Officer of the Attorney General (Pubblico Ministero) or by any party in the proceedings, by means of a petition stating the grounds, addressed to the Judge by whom the principal case is being heard. The question may also be raised by the judge of his own motion.
2. The Judge shall, by an order stating the grounds therefore:
  - a) Where he considers that the petition is manifestly unfounded or has no bearing on the principal case, reject the petition and proceed with the principal case; or
  - b) Where he considers that the petition is not manifestly unfounded or has some bearing on the principal case, or where he raises the question of constitutionality of his own motion, he shall refer the case to the Supreme Court constituted as the Constitutional Court and shall suspend judgment in the principal case pending the decision of that Court. The decisions of the Constitutional Court shall be binding on all other Courts
3. The order of the Judge referring the case to the Constitutional Court, shall specify the laws or provisions having the force of law

which he considers to be unconstitutional and the provisional of the Constitution which he considers to be offended by such law.

The President of the Constitutional Court shall transmit a certified copy of the order of reference to the President of the Republic, the president of the National Assembly and the Prime Minister.

## **ARTICLE 5**

### **PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT**

1. In proceedings before the Supreme Court constituted as the Constitutional Court, the provisions governing the procedure in appeals to the Supreme Court in administrative matters shall apply insofar as they are applicable.
2. The State Attorney, representing the Government, and the Attorney General, in pursuance of his duty to ensure that the provisions of the Constitutions are safeguarded, shall be entitled to be heard in the case, together with the parties to the case.

## **ARTICLE 6**

### **JUDGMENT**

1. If the Supreme Court constituted as the Constitutional Court finds that the law or provision having the force of law impugned is constitutional, it shall declare accordingly by a final judgment.
2. If the Constitutional Court finds that the law or provision having the force of law impugned is, in whole or in part, unconstitutional, it shall declare by a final judgment the provisions which it finds unconstitutional. Where, as a consequence of such judgment, any other law or provision having the force of law is found unconstitutional, such law shall also be declared unconstitutional by the Court.
3. Certified copies of the judgments of the Constitutional Court shall be sent by the President of the Court to the President of the Republic, the President of the National Assembly and the prime Minister. The Judgment shall be deposited with the Registrar of the Court, for the perusal of the parties concerned. Judgments declaring a law unconstitutional shall be published in the Official Bulletin of the Republic, by the competent administrative authorities, within ten days from the date of the communication of the judgment to the Prime Minister.

4. Law and provision having the force of law declared unconstitutional shall cease to be in force on the day of the publication of the judgment declaring their unconstitutionality.

## **CHAPTER II SUPREME COURT CONSTITUTED AS THE HIGH COURT OF JUSTICE**

### **ARTICLE 7 JURISDICTION OF THE HIGH COURT OF JUSTICE**

1. The Supreme Court Constituted as the High Court of Justice shall have jurisdiction over criminal charges laid by the National Assembly against the President of the Republic or the members of the Government under Articles 76 and 84 of the Constitution.

### **ARTICLE 8 COMPOSITION OF THE HIGH COURT OF JUSTICE**

1. The Supreme Court Constituted as the High Court of Justice, shall consist of all the members of the Supreme Court, and six additional members drawn by lot from a special list of twelve citizens elected by the National Assembly at the beginning of its first session from among persons who are not members of the Assembly.

### **ARTICLE 9 REQUIREMENTS FOR APPOINTMENT AND JURIDICAL STATUS OF THE ADDITIONAL MEMBERS**

1. The additional members of the Supreme Court constituted as the High Court of Justice shall be chosen from among persons who eligible for election as deputies.
2. For the purpose of the exercise of their judicial functions the additional members shall be governed by the provisions of paragraphs 2, 3 and 4 of Article 3 of this Annex.

### **ARTICLE 10 ARTICLES OF IMPEACHMENT**

1. The articles of impeachment as approved by the national Assembly shall specify the offences alleged to have been committed by the accused persons and their accomplices; and the Court shall take cognizance of these offences, unless it decides to proceed separately against the accomplices.

2. The articles of impeachment shall contain a summary description of the evidence supporting the charge.
3. The National Assembly, when approving the impeachment may decide that preventive measure be taken against the accused persons.

### **ARTICLE 11 PRELIMINARY PROCEEDINGS**

1. The articles of impeachment shall be communicated by the President of the National Assembly to the President of the Supreme Court, within two days from the date of its approval.
2. The President of the Supreme Court shall cause the articles of impeachment to be notified to the accused persons immediately, and shall fix a time-limit within which the accused may appoint a defense counsel and submit any written defense. Within the same time – limit he shall draw by lot, at a preliminary public hearing, the additional members of the Court, and shall then issue a writ directing the accused to appear before the Supreme Court constituted as the high Court of Justice.
3. If the accused do not appoint a counsel, the Court shall by the writ directing the accused to appear or by a subsequent order appoint a counsel to act on their behalf

### **ARTICLE 12 PROCEEDING BEFORE THE HIGH COURT OF JUSTICE**

1. Proceedings before the Supreme Court constituted as the High Court of Justice shall be governed, insofar as applicable, by the provision governing Assize proceedings.
2. The functions normally exercised in judicial proceedings by the office of the Attorney General shall, in proceedings before the High Court of Justice, be exercised by a prosecuting Commissioner of Commissioners appointed by the National Assembly.
3. In the course of the proceedings the High Court may, on the application of a party or of its own motion, impose, revoke or modify preventive measures of the kind referred to in paragraph 3 of Article 10 of this Annex.

**ARTICLE 13**  
**DELEGATION OF POWERS TO CARRY OUT INVESTIGATIONS**

The Supreme Court constituted as the High Court of Justice may delegate to one or more of its member's power to carry out any investigations which it considers necessary for the purpose of the proceedings.

**ARTICLE 14**  
**JUDGMENT**

1. When it appears that there is no or insufficient evidence to support the charge, or where the acts alleged do not constitute an offence, or where the accused is not responsible for the acts found or where there exist circumstances which eliminate the culpability of the acts, the Supreme Court constituted as the High Court of Justice shall acquit the accused.
2. Where the charge is found to be true, the High Court of Justice shall be sent by the President of the Court to the President of the National Assembly. Judgments shall be deposited with the Registrar of the Court, for the perusal of the parties concerned and shall be published by the competent administrative authority in the Official Bulletin of the Republic within ten days from the date of deposit.

**ARTICLE 15**  
**EXECUTIVE OF JUDGMENTS**

The execution of Judgments of the Supreme Court constituted as the High Court of Justice shall be carried out by the Attorney General.

**ARTICLE 16**  
**REVISION OF JUDGMENTS**

The Supreme Court Constituted as the High Court of Justice may revise its own judgments of conviction, subject to the provision of law in force insofar as they are applicable.

**ARTICLE 17**  
**CIVIL ACTION**

Civil action arising from facts ascertained in the course of the proceedings shall be instituted separately, after the conclusion of the criminal proceedings.

## **CHAPTER III - MISCELLANEOUS AND FINAL PROVISIONS**

### **ARTICLE 18**

#### **GUARANTEES FOR THE ADDITIONAL MEMBERS OF THE COURT**

The guarantees provided under Article 24 of the law on the Origination of the Judiciary shall apply also to the additional members' o the Supreme Court constituted as the Constitutional Court or the High Court of Justice.

### **ARTICLE 19**

#### **DECISION ON THE CAPACITY OF ADDITIONAL MEMBERS**

If the qualification of any person to sit as an additional member of the Supreme Court constituted as the Constitutional Court on the High Court of Justice is called in question, the matter shall be decided by the remaining members of the Constitutional Court of High Court of Justice as the case may be.

### **ARTICLE 20**

#### **VALIDITY OF THE DECISION OF THE COURT**

- 1.** Decisions of the Supreme Court constituted as the Constitutional Court or the High Court of Justice shall be taken by at least four fifths or five sixths of the members of the Court, as the case may be. All members shall vote.
- 2.** In proceedings before the Constitutional Court, if the members of the Court are equality divide, the President shall have the casting vote; in proceedings before the High Court of Justice, if the members or the Court are equally divided, the vote favorable to the accused shall prevail.

### **ARTICLE 21**

#### **REGULATIONS**

The rules of procedure of the Supreme Court constituted as the Constitutional Court or the High Court of Justice shall be determined, subject to the law, by the members of the Court sitting together.

**ANNEX II**  
**CATEGORIES AND NUMBER OF POSTS OF THE MEMBERS**  
**OF THE JUDICIARY AND AUXILIARY PERSONNEL**

**SCHEDULE "A"**  
**CATEGORY OF JUDGES**

<b>Equivalent Grade Functions posts</b>	<b>Number of</b>
1. President of the Supreme Court	1
2. First Judges	2
3. Senior Judges	12
4. Regional Judges	32
5. Assistant Regional Judges	16
6. District Judges	50
7. Assistant District Judges	50
<b><u>Total</u></b>	<b><u>163</u></b>

**SCHEDULE "B"**

**CATEGORY OF COURT REGISTRARS**

<b>Grade Functions posts</b>	<b>Number of</b>
1. First Court Registrars	2
2. Senior Court Registrars	8
3. Court Registrars	24
4. Deputy Court Registrars	33
5. Assistant Court Registrars	33
<b><u>Total</u></b>	<b><u>100</u></b>

**CATEGORY OF COURT OFFICERS**

<b>Grade Functions</b>	<b>Number of posts</b>
1. First Court Officer	6
2. Court Officer	10
3. Assistant Court Officer	8
<b><u>Total</u></b>	<b><u>24</u></b>